Summary

- The Trans-Pacific Partnership (TPP) was signed by twelve Pacific-rim countries in February 2016. The agreement would create a free-trade area among its parties.
- To date, two signatories, New Zealand and Japan, have ratified the agreement.
- In January 2017 the United States withdrew from the TPP. Consequently the conditions set for the TPP to enter into force cannot be met. The other eleven signatories have agreed to assess options to bring the agreement into force.
- Parliamentary approval for ratification of a treaty is required in five of the TPP signatory countries: Chile, Japan, Mexico, Peru and Viet Nam.
- Parliamentary approval is not required in the other six countries, but it is the practice in New Zealand, Australia and Canada for treaties to be presented to parliament for consideration.
- Parliament’s involvement is necessary if implementing legislation is required to bring domestic law into compliance with treaty obligations.

Introduction

The Trans-Pacific Partnership (TPP) free trade agreement was signed in Auckland in February 2016 by twelve Pacific-rim countries, including New Zealand. To enter into force, the TPP must have been ratified by all twelve signatories by February 2018, or be ratified by at least six of the signatories whose combined gross domestic product (GDP) meets the threshold set by the agreement. In January 2017 the United States withdrew from the TPP. Without its participation the conditions set for the TPP to enter into force cannot be met.

In May 2017 ministers from the other eleven signatory countries reaffirmed the strategic and economic significance of the TPP and agreed to assess options for bringing it into force. The ministers will meet again in November 2017 in Viet Nam.

Two of the signatories, New Zealand and Japan, have already ratified the agreement after completing their required domestic procedures and notifying New Zealand, as the depository, that they have done so.¹ The other nine signatories are at various stages of their domestic pre-ratification procedures.

This paper sets out the framework for parliamentary involvement in the process leading up to the ratification of an international multilateral trade treaty in each of the eleven remaining TPP signatory countries and, as far as can be ascertained, parliament’s involvement in the ratification process for the TPP.

Trans-Pacific Partnership (TPP)

The Trans-Pacific Partnership agreement was signed on 4 February 2016. The twelve signatories were Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam.² Once in force the TPP would establish a free trade area among its parties.³

¹ Trans-Pacific Partnership Agreement (TPP), Ministry of Foreign Affairs and Trade website
² Trans-Pacific Partnership ministers’ statement, 4 Feb. 2016, Ministry of Foreign Affairs and Trade website
³ Trans-Pacific Partnership, art. 1.1, Ministry of Foreign Affairs and Trade website
The TPP enters into force 60 days after the date on which all original signatories have notified the depository in writing of the completion of their applicable legal procedures. If this does not occur within two years of the date of signature, the TPP enters into force 60 days after the expiry of that two-year period if at least six of the original signatories have ratified the agreement, and those signatories together account for at least 85 per cent of the combined GDP of the original signatories in 2013. If neither of these two events has occurred, the TPP enters into force 60 days after the date on which at least six of the original signatories, which together meet the combined GDP threshold, have ratified the agreement.4

On 23 January 2017 President Trump signed a memorandum directing the withdrawal of the United States as a signatory to the TPP and its permanent withdrawal from TPP negotiations.5 Without the participation of the United States, the remaining eleven signatories cannot reach the combined GDP threshold necessary for the TPP to come into force.6

In May 2017 ministers from the other eleven signatories to the TPP reaffirmed its strategic and economic significance and agreed to launch a process to assess options to bring the TPP into force expeditiously, including how to facilitate membership for the original signatories. The ministers tasked their senior trade officials to engage to take forward the preparation of this assessment, and asked for the work to be completed before the ministers met in the margins of the APEC Economic Leaders Meeting on 10-11 November 2017 in Viet Nam.7

Parliament and the ratification of international multilateral treaties

In signing a treaty a country expresses its willingness to continue the treaty-making process. The signature qualifies it to proceed to ratification, whereby it consents to be bound by the treaty. The institution of ratification grants countries the necessary time to seek the required approval for a treaty on the domestic level and to enact the necessary legislation to give it effect. Ratifications of a multilateral treaty are usually collected by a depository, which keeps all parties to the treaty informed of the situation.8

The degree of parliamentary involvement in the process leading up to ratification of an international multilateral treaty varies among countries, and may depend on the nature of the treaty. In some TPP signatory countries, a treaty must be approved by parliament before it can be ratified. In some others, parliamentary approval is not required, but it is the practice for a treaty to be presented to parliament for its consideration. Parliament will also be involved if implementing legislation is required to bring domestic law into compliance with treaty obligations.

For the TPP, parliamentary approval for ratification is required in Peru and Viet Nam, which have unicameral parliaments, and in Chile, Japan and Mexico, which have bicameral parliaments. In Chile and Japan the approval of both houses of parliament is required, while in Mexico only the Senate’s approval is necessary.

Parliamentary approval for ratification is not required in the other six countries. In New Zealand, Australia and Canada, however, it is the practice for treaties to be presented to parliament for consideration before they are ratified. In Malaysia the government decided to submit the TPP to Parliament for approval of both signature and ratification, although it was not legally required to do so.

It is the practice of New Zealand, Australia, Canada and Japan to make any changes to domestic legislation that are necessary to implement an international treaty prior to ratifying the treaty. It has not been possible to ascertain with certainty the practice of Brunei Darussalam, Malaysia, Singapore and Viet Nam.

4 Trans-Pacific Partnership, art. 30.5, Ministry of Foreign Affairs and Trade website
5 Presidential memorandum regarding withdrawal of the United States from the Trans-Pacific Partnership negotiations and agreement, 23 Jan. 2017, White House website
7 Trans-Pacific Partnership (TPP) agreement ministerial statement, 21 May 2017, Beehive website
8 Glossary of terms relating to treaty actions, United Nations Treaty Collection website
In Chile, Mexico and Peru, once an international treaty has been ratified and has come into force it becomes part of domestic law. Implementing legislation may still be necessary, however, if the text of a treaty is not specific enough to be applied directly and further clarification is required.9

**TPP ratification process, as at October 2017**

*(Stages shown in italics have not yet, so far as can be ascertained, occurred.)*

<table>
<thead>
<tr>
<th></th>
<th>Parliamentary referral</th>
<th>Parliamentary approval</th>
<th>Implementing legislation prior to ratification</th>
<th>Ratified</th>
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</thead>
<tbody>
<tr>
<td>New Zealand</td>
<td>Committee consideration completed</td>
<td>Not required</td>
<td>Passed</td>
<td>Yes</td>
</tr>
<tr>
<td>Australia</td>
<td>Committee consideration completed</td>
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<td><em>(Required)</em></td>
<td></td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td></td>
<td>Not required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td><em>(To be tabled)</em></td>
<td>Not required</td>
<td><em>(Required)</em></td>
<td></td>
</tr>
<tr>
<td>Chile</td>
<td><em>(To be presented)</em></td>
<td><em>(Approval by both Houses required)</em></td>
<td><em>(Once ratified and in force, TPP becomes part of domestic law)</em></td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>Committee consideration completed</td>
<td>Approved by both Houses</td>
<td>Passed</td>
<td>Yes</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Motion to sign and ratify</td>
<td>Approved by both Houses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>Referred to Senate committees</td>
<td><em>(Senate approval required)</em></td>
<td><em>(Once ratified and in force, TPP becomes part of domestic law)</em></td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>Referred to committee</td>
<td><em>(Required)</em></td>
<td><em>(Once ratified and in force, TPP becomes part of domestic law)</em></td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td></td>
<td>Not required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Viet Nam</td>
<td>Referred to committee for verification</td>
<td><em>(Required)</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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9 Steps required at the national level for ratification, accession, approval or acceptance of the Protocol to Eliminate Illicit Trade in Tobacco Products, WHO Framework Convention on Tobacco Control, p. 2, World Health Organization website
New Zealand

Framework

The process leading up to the taking of binding action on an international multilateral treaty is set out in the Cabinet Manual and the Standing Orders of the House of Representatives. The Parliament is unicameral.

The power to conclude treaties rests with the government. Before the government takes binding action on a multilateral treaty it will present it to Parliament for examination. In addition to ratification, other examples of binding treaty action include changing an existing reservation to a treaty, and termination of or withdrawal from a treaty. An amendment to a treaty may also involve a new treaty (and therefore a binding treaty action).

Treaties are referred to the Foreign Affairs, Defence and Trade Committee. They must be accompanied by a national interest analysis which addresses the following matters:

- the reasons for New Zealand becoming party to the treaty;
- the advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand;
- the obligations which would be imposed on New Zealand by the treaty, and the position in respect of reservations to the treaty;
- the economic, social, cultural, and environmental effects of the treaty entering into force for New Zealand, and of the treaty not entering into force for New Zealand;
- the costs to New Zealand of compliance with the treaty;
- the possibility of any subsequent protocols (or other amendments) to the treaty, and of their likely effects;
- the measures which could or should be adopted to implement the treaty, the intentions of the government in relation to such measures, including legislation, and whether or not the government intends for the treaty to be implemented through a bill;
- a statement setting out the consultations which have been undertaken or are proposed with the community and interested parties in respect of the treaty;
- whether the treaty provides for withdrawal or denunciation.

The Foreign Affairs, Defence and Trade Committee may examine a treaty itself or, if the subject matter is primarily within the terms of reference of another select committee, refer it to that committee. The committee may seek submissions and hold hearings. Following examination of a treaty, the committee must report to the House. If the government has indicated in the national interest analysis that it intends for the treaty to be implemented through a bill, the committee must draw this to the House’s attention. In such case provision is made for the committee’s report to be debated, in exchange for there being no debate on the first reading of the implementing bill.

The government will refrain from taking any binding action on a treaty that has been presented to Parliament until the select committee has reported, or until 15 sitting days have elapsed since the treaty’s presentation, whichever is sooner. If a select committee indicates that it needs more time to examine a treaty, the government may consider deferring binding treaty action.

If legislation is necessary to implement a treaty domestically, it should not be introduced into the House until after the treaty has been presented and the time for the select committee to report has expired. It is the government’s invariable practice to pass any necessary implementing legislation prior to ratifying or acceding.
to a treaty to ensure that New Zealand is not in breach of its treaty obligations when the treaty becomes binding on New Zealand.\(^\text{14}\)

**Trans-Pacific Partnership**

The TPP was referred to the Foreign Affairs, Defence and Trade Committee on 9 February 2016. Submissions were called for and public hearings held. The Committee reported on 4 May 2016 with a recommendation that the House take note of its report. The Committee’s government members recommended that New Zealand should complete its domestic processes, and notify that it had done so, within two years of the TPP’s signing. The Labour, Green Party and New Zealand First members of the Committee did not support the recommendation.\(^\text{15}\)

The *Trans-Pacific Partnership Agreement Amendment Bill* was introduced into Parliament on 9 May 2016. Its purpose was to make the legislative amendments necessary to align New Zealand’s domestic law with certain obligations in the TPP, thereby enabling New Zealand to ratify the agreement. The Bill passed its third reading by 61 votes to 57 on 15 November 2016. National, ACT and United Future voted in favour. Labour, the Green Party, New Zealand First and the Māori Party voted against. The Bill received Royal Assent on 21 November 2016.\(^\text{16}\)

New Zealand ratified the TPP in May 2017.\(^\text{17}\)

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**Australia**

**Framework**

The parliamentary process preceding the taking of binding action on an international treaty conforms to a statement made by the Minister for Foreign Affairs to the House of Representatives on 2 May 1996. The bicameral Parliament comprises the House of Representatives and the Senate.

The power to enter into treaties is the responsibility of the government. All treaties are tabled in Parliament at least 15 sitting days before the government takes binding action. Most treaties are tabled for 20 joint sitting days. Binding actions include ratification, negotiating an amendment to an existing treaty if the amendment would alter obligations with a legally binding impact on Australia, and withdrawing from a treaty.\(^\text{18}\)

Treaties are tabled with an accompanying national interest analysis which notes:

- the reasons why Australia should become a party to the treaty, including, where relevant, a discussion of its economic, environmental, social and cultural effects;
- the obligations imposed by the treaty;
- its direct financial costs to Australia;

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\(^{14}\) *International treaty making: guidance for government agencies on practice and procedures for concluding international treaties and arrangements* (2017) Ministry of Foreign Affairs and Trade, p. 5-6


\(^{16}\) *Trans-Pacific Partnership Agreement Amendment Bill 2016 (133-1)*, Explanatory note; *Parliamentary debates (Hansard)* (15 Nov. 2016)

\(^{17}\) Trans-Pacific Partnership Agreement (TPP), Ministry of Foreign Affairs and Trade website

\(^{18}\) *House of Representatives Official Hansard* (2 May 1996) p. 231-233; *Treaty making process*, Department of Foreign Affairs and Trade website; *Tabling of treaty actions in Parliament*, Department of Foreign Affairs and Trade website
how it will be implemented domestically;
what consultation has occurred in relation to it; and
whether there is provision for withdrawal or renunciation.19

Treaties are referred to the Joint Standing Committee on Treaties for consideration. The Committee reports to Parliament on whether Australia should take binding treaty action.20

If new legislation is required to implement a treaty, normal practice is to require that it be passed before Australia brings the treaty into force, to avoid any risk that Australia could find itself legally bound by an international obligation which it could not fulfill.21

Trans-Pacific Partnership

The TPP was tabled in the House of Representatives on 9 February 2016 and referred to the Federation Chamber for debate, which took place between 10 and 22 February. It was tabled in the Senate on 22 February 2016.22

The Joint Standing Committee on Treaties’ inquiry into the TPP lapsed when Parliament was dissolved on 9 May 2016. The TPP was referred once more to the Committee on 12 September 2016 at the start of the new Parliament. As part of its inquiry the Committee called for submissions and held public hearings. The Committee’s report, presented on 30 November 2016, recommended that binding treaty action be taken. Labor opposition members of the Committee expressed concerns about ratifying the TPP. The Greens opposed its ratification. In its response to the Committee’s report, tabled on 8 August 2017, the government welcomed the Committee’s recommendation.23

The national interest analysis which accompanied the TPP noted that prior to treaty action being taken, Australia would need to pass a number of legislative amendments in order to implement the obligations in the TPP.24

Brunei Darussalam

Framework

There is no specific law dealing with treaty-making in Brunei Darussalam.25 The Legislative Council is unicameral.
**Trans-Pacific Partnership**

In April 2016 the Permanent Secretary of the Ministry of Foreign Affairs and Trade said that Brunei was in the process of changing some of its domestic regulations and laws as part of preparations to pass the TPP for ratification. Ratification would have to go through cabinet level meetings and be reviewed in the Legislative Council.\(^{26}\)

**Canada**

**Framework**

Procedures for concluding international treaties are contained in *Open and Accountable Government*, issued in November 2015, which sets out core principles regarding ministers’ roles and responsibilities, and in the government’s policy on tabling treaties in Parliament. The bicameral Parliament comprises the House of Commons and the Senate.

It is the government’s responsibility to negotiate, sign and ratify international treaties.\(^{27}\)

The Minister of Foreign Affairs initiates, following their adoption and prior to ratification, the tabling in the House of Commons of all treaties governed by public international law. The government will not take binding action on a treaty that does not require implementing legislation until at least 21 sitting days after the treaty has been tabled. During that time members might choose to initiate a debate or to present and vote on a motion. If a treaty requires implementing legislation, the government will observe a waiting period of at least 21 sitting days, and allow members the opportunity to initiate debate and to present and vote on motions, before it introduces the legislation. Any concerns raised by opposition parties will be considered by the government.

Each tabled treaty must be accompanied by a brief explanatory memorandum which covers the following points:

- subject matter;
- main obligations;
- national interest summary;
- ministerial responsibility;
- policy considerations;
- federal-provincial-territorial implications;
- time considerations;
- implementation;
- associated instruments;
- reservations and declarations;
- withdrawal or denunciation;
- consultations undertaken with the House of Commons and other bodies.\(^{28}\)

Once a treaty has been tabled and any necessary legislation adopted, the government will make a decision on whether to proceed to bind Canada to the treaty by way of ratification.\(^{29}\)

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\(^{26}\) [Brunei in process of ratification for TPP](https://energy.gov.bn/), 6 April 2016, Energy and Industry Department website


\(^{28}\) [Policy on tabling of treaties in Parliament](https://www.international.gc.ca), Global Affairs Canada website

\(^{29}\) Open and accountable government, at D.7
Trans-Pacific Partnership

Prior to becoming Prime Minister, Justin Trudeau said that a Liberal government would hold a full and open public debate in Parliament on the TPP to ensure that Canadians were consulted.\(^\text{30}\)

The House of Commons Standing Committee on International Trade decided in February 2016 to undertake a study on the TPP. The primary objective of the Committee's public consultation process was to assess the extent to which ratification of the TPP would be in the best interests of Canadians. In its report, published in April 2017, the Committee recommended that the government should actively pursue a trade and investment agreement with TPP signatories. Of the two opposition parties represented on the Committee, the Conservative Party recorded its support for the TPP, while the New Democratic Party recommended that the government should formally withdraw from it.\(^\text{31}\)

In its response to the Committee's report, presented to the House on 19 July 2017, the government said that it had agreed with remaining TPP signatories to assess options on how best to facilitate a more free, progressive and open trading environment in the Asia-Pacific region.\(^\text{32}\)

The Standing Senate Committee on Foreign Affairs and International Trade was told by a witness in April 2016 that the TPP would require several changes to regimes relating to copyright and patents.\(^\text{33}\)

Chile

Framework

Two laws provide the basic framework for the process of ratifying international treaties: the Constitución Política de la República [Political Constitution of the Republic] and the Ley Orgánica Constitucional del Congreso Nacional [Organic Constitutional Law of the National Congress]. The bicameral National Congress comprises the Chamber of Deputies and the Senate.

It is the President's responsibility to conclude, sign and ratify international treaties. Before a treaty can be ratified, the President must present it to Congress for approval or rejection. The President must inform Congress of the content and scope of the treaty and of any reservations that he or she intends to confirm or make.\(^\text{34}\)

The agreement of both Houses of Congress is necessary for a treaty to be approved. So far as is applicable, the procedure for the approval of a treaty is the same as that for the passage of legislation, although a treaty can only be approved or rejected as a whole. A treaty is presented first to the originating House, where consideration by two or more committees is followed by a plenary vote. The same procedure is then followed in the revising House.

In both Houses the majority necessary for a treaty to be approved is the same as the highest of the majorities necessary to pass laws on the matters covered by the treaty. These include majorities of three-

\(^{\text{30}}\) Statement by Liberal Party of Canada leader Justin Trudeau on the Trans-Pacific Partnership, 5 Oct. 2015, Liberal Party website


\(^{\text{33}}\) Standing Senate Committee on Foreign Affairs and International Trade, Evidence, 20 April 2016

\(^{\text{34}}\) Constitución Política de la República, texto actualizado a mayo de 2017, art. 32 N° 15, 54 N° 1
fifths, four-sevenths, or an absolute majority. In the event of approval by one House and rejection by the other, the procedure for the resolution of differences between the Houses applies. Either House may suggest reservations or interpretative declarations which, if approved also by the other House, are then communicated to the President. If a treaty deals with matters relating to the Constitution, or to organic constitutional laws, it is the responsibility of the Constitutional Court to determine the treaty’s constitutionality before it is ratified. It is the Constitutional Court’s responsibility, also, to resolve any issues concerning a treaty’s constitutionality that arise during its progress through Congress.

If the President decides to denounce or withdraw from a treaty that has been approved by Congress, he or she must consult both Houses of Congress.

**Trans-Pacific Partnership**

The Minister of Foreign Affairs announced on 23 January 2017 that, due to the withdrawal of the United States, the TPP would not be presented to Congress.

**Japan**

**Framework**

*The Constitution of Japan* sets the basic framework for the conclusion of international treaties. The bicameral Diet comprises the House of Representatives and the House of Councillors.

It is the responsibility of the government to conclude international treaties. Before or after, depending on circumstances, concluding a treaty the government must obtain the approval of the Diet. A treaty must be presented to both Houses of the Diet. If the House of Councillors’ decision differs from that of the House of Representatives, and no agreement can be reached by a joint committee of both Houses, or if the House of Councillors does not take final action within 30 days, excluding any recess, of receiving a treaty, then the decision of the House of Representatives prevails.

It is customary for implementing legislation to be enacted before a treaty is ratified.

**Trans-Pacific Partnership**

The Request for approval of the conclusion of the Trans-Pacific Partnership and the Bill on the Development of Related Legislation Following the Conclusion of the Trans-Pacific Partnership were presented to the House of Representatives in March or April 2016 and referred to the Special Committee of the House of

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35 Constitución Política de la República, art. 54 N° 1; Ley Orgánica Constitucional del Congreso Nacional, art. 18, 59, 61, 62, 65
36 Constitución Política de la República, art. 93 N° 1, N° 3; Roberto Ruiz Piraces, “La incorporación de los tratados internacionales al derecho interno en Chile” (2016) 30 Podium, p. 57-69
37 Constitución Política de la República, art. 54 N° 1; Ley Orgánica Constitucional del Congreso Nacional, art. 63
38 “Chile cancela envío del proyecto del TPP al Congreso”, El Economista, 24 Jan. 2017
39 The Constitution of Japan, art. 73
40 The Constitution of Japan, art. 60, 61
41 Makoto Seta, Japan country report (2010) Centre for International Law, National University of Singapore, p. 2
Representatives on the Trans-Pacific Partnership. The Committee approved the Request and the Bill by a majority vote on 4 November 2016.\textsuperscript{42}

The House of Representatives voted to approve the Request and the Bill on 10 November 2016. The governing Liberal Democratic Party, its coalition partner Komeito, and an opposition party Nippon Ishin no Kai voted in favour. Members of several opposition parties walked out of the House in protest before the vote was taken.\textsuperscript{43}

By 14 November the Special Committee of the House of Councillors on the Trans-Pacific Partnership had begun its consideration of the Request and the Bill. On 9 December 2016 the Committee concluded its work and the House of Councillors voted to approve the Request and the Bill by 165 votes to 70. The Liberal Democratic Party, Komeito and Nippon Ishin no Kai voted in favour. The Democratic Party and the Communist Party voted against.\textsuperscript{44}

On 20 January 2017 Japan notified New Zealand, as the depository of the agreement, that it had completed its domestic procedures for the TPP.\textsuperscript{45}

\begin{center}
\begin{tikzpicture}
\node (a) {Approved by H. of Representatives};
\node [right of=a, xshift=3cm] (b) {Approved by H. of Councillors};
\node [right of=b, xshift=3cm] (c) {Implementing legislation};
\node [right of=c, xshift=3cm] (d) {Ratified};
\end{tikzpicture}
\end{center}

\textbf{Malaysia}

\textit{Framework}

The \textit{Federal Constitution} provides the basic framework for the conclusion of international treaties. The bicameral Parliament comprises the Dewan Rakyat (House of Representatives) and the Dewan Negara (Senate).

The government’s authority extends to external affairs, including the making or conclusion of treaties, agreements and conventions with other countries, and their implementation. Parliament may make laws with respect to treaties, agreements and conventions with other countries, and their implementation.\textsuperscript{46}

\textbf{Trans-Pacific Partnership}

The government said in July 2015 that, in the event that agreement on the text of the TPP was reached, it would present the TPP, together with two cost-benefit analyses, to Parliament for debate. A decision on whether or not to sign the TPP would be taken after the debate.\textsuperscript{47}

\begin{itemize}
\item \textsuperscript{42} “Cabinet approves TPP bills, to step up explaining pact’s benefits”, \textit{The Japan Times}, 8 March 2016; \textit{Meeting of the Special Committee of the House of Representatives on the Trans-Pacific Partnership}, 7 April 2016; Prime Minister and His Cabinet website; “Uncoordinated LDP” and railroading of TPP bills delay Paris Agreement approval”, \textit{The Mainichi}, 5 Nov. 2016
\item \textsuperscript{43} “Lower House approves TPP agreement & related bills: Shinzo Abe’ Administration and ruling parties persistent in ratification at current Diet session”, \textit{The Japan Agri News}, 11 Nov. 2016; “TPP ratification bill forced through Lower House”, \textit{Japan Press Weekly}, 11 Nov. 2016
\item \textsuperscript{44} \textit{Meeting of the Special Committee of the House of Councillors on the Trans-Pacific Partnership}, 14 Nov. 2016, Prime Minister and His Cabinet website; \textit{Meeting of the Special Committee of the House of Councillors on the Trans-Pacific Partnership}, 9 Dec. 2016, Prime Minister and His Cabinet website; “Diet ratifies TPP but trade deal remains dead in the water without U.S.”, \textit{The Japan Times}, 9 Dec. 2016; “Japan ratifies TPP despite Trump opposition”, \textit{American Shipper}, 12 Dec. 2016
\item \textsuperscript{45} Notification of completion of domestic procedures for the Trans-Pacific Partnership (TPP) Agreement, 20 Jan. 2017, Ministry of Foreign Affairs of Japan website
\item \textsuperscript{46} \textit{Federal Constitution}, as at 1 November 2010, art. 74, 80, Ninth Schedule; Abdul Ghafur Hamid, Khin Maung Sein, “Judicial application of international law in Malaysia: an analysis”, Malaysian Bar, 31 March 2006
\item \textsuperscript{47} \textit{Trans-Pacific Partnership Agreement (TPP)}, 29 July 2015, Ministry of International Trade and Industry website
\end{itemize}
At the end of a special two-day session on 26 and 27 January 2016 the Dewan Rakyat voted, by 127 votes to 84, in favour of a motion to sign and ratify the TPP. A supplementary motion from the opposition to omit the word ‘ratify’ was defeated. In a special sitting on 28 January 2016 the Dewan Negara approved the motion on a voice vote.48

The Secretary General of the Ministry of International Trade and Industry said in September 2016 that 18 laws had been identified as needing amendment for the TPP to be implemented. Once all the laws had been amended a decision would be made on ratification.49 The Minister of International Trade and Industry said in May 2017 that amendments to legislation covering several areas of the TPP would continue.50

Mexico

Framework

The three laws which provide the basic legal framework for the conclusion of international trade treaties are the Constitución política de los Estados Unidos Mexicanos [Political Constitution of the United States of Mexico], the Ley sobre la Celebración de Tratados [Law on the Conclusion of Treaties] and the Ley sobre la Aprobación de Tratados Internacionales en Materia Económica [Law on the Approval of International Treaties on Economic Matters]. The bicameral Congress of the Union comprises the Chamber of Deputies and the Senate.

It is the government’s responsibility to conclude international treaties, subject to the approval of the Senate. It is also the government’s responsibility to terminate, denounce, suspend, modify, amend, withdraw reservations to and formulate interpretative declarations to international treaties. These actions, too, are subject to approval by the Senate.51

For a treaty on economic matters to be approved by the Senate it must meet both the general objectives, e.g. contributing to improving the quality of life and level of well-being of the Mexican people, and the particular objectives, e.g. promoting respect for intellectual property rights, set out in law.52

The relevant Senate committees must be notified of the start of formal negotiations for a treaty on economic matters. The committees must be informed of:

- the reasons for entering into the negotiations, and the consequences of not doing so;
- the expected benefits and advantages to be obtained from the negotiations, and the prospects for achieving the relevant objectives; and
- an initial timetable for the negotiations.

The committees monitor the progress of negotiations. Prior to the date set for a treaty’s signing, they must receive a report on the final outcome of the negotiations, and the manner in which the objectives were met.

The report must contain a full, detailed explanation of:

- the benefits obtained in the negotiations;
- the scope of the negotiations;
- the negotiations’ commitments; and
- the legal and administrative rules that will need modifying to accord with the treaty.53

50 Malaysia keeps its options open on TPP, Ministry of International Trade and Industry, 21 May 2017,
51 Constitución Política de los Estados Unidos Mexicanos, art. 76-I, 89-X
52 Ley sobre la Aprobación de Tratados Internacionales en Materia Económica, 2 de septiembre de 2004, art. 3, 4
53 Ley sobre la Aprobación de Tratados Internacionales en Materia Económica, art. 5, 6, 8
On its submission to the Senate, a signed treaty must be accompanied by documents which contain:

- all the administrative actions for applying the objectives relevant to the treaty;
- an explanation of how approving the treaty will affect Mexico’s laws and regulations;
- the areas in which Mexico made concessions during the negotiations;
- the manner in which the objectives relevant to the treaty will be met;
- the way in which the treaty fulfills Mexico’s interests; and
- the reservations established by the signatories to the treaty and the reasons for them.

A treaty is referred to the relevant committees, which receive written submissions and hold public hearings.\(^5^4\) The committees’ consideration is followed by a plenary vote.\(^5^5\)

Treaties which have been ratified, with the Senate’s approval, and are in accordance with the Constitution form part of Mexican law.\(^5^6\)

### Trans-Pacific Partnership

On 27 November 2012 the government reported to the Senate on Mexico’s entry into formal TPP negotiations. The report was referred to three committees. Further reports were presented to the Senate by the government during the period of the negotiations, ending with the report on the negotiations’ final outcome presented on 10 December 2015.\(^5^7\)

The TPP was submitted to the Senate on 27 April 2016 and referred to nine committees. The committees held joint public hearings in November 2016.\(^5^8\)

Some legislation will be necessary to enable Mexico to implement its obligations under the TPP.\(^5^9\)

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\(^5^4\) Ley sobre la Aprobación de Tratados Internacionales en Materia Económica, art. 9-12

\(^5^5\) See, for example, the Senate’s approval of the Paris Agreement, Versión Estenográfica (14 Sept. 2016)

\(^5^6\) Constitución Política de los Estados Unidos Mexicanos, art. 133

\(^5^7\) Acuerdo de la Mesa Directiva por el que se establece el proceso de análisis y discusión del Acuerdo de Asociación Transpacífico (TPP), 10 Dec. 2015, Senate website; Memorándum de antecedentes, Tratado de Asociación Transpacífico, Secretaría de Relaciones Exteriores México, p. 10-11, Senate website

\(^5^8\) Gaceta: LXIII/ISPO-133/62553, Gaceta del Senado, 27 April 2016; Acuerdo de Asociación Transpacífico fase de audiencias públicas Senado de la República 7 al 23 de noviembre de 2016, Senate website

\(^5^9\) Memorándum de antecedentes, Tratado de Asociación Transpacífico, p. 5
Congress’s approval is required prior to the ratification of treaties which concern

- human rights;
- the sovereignty, dominion or integrity of the State;
- national defence; or
- financial obligations of the State;

or which

- create, modify or eliminate taxes;
- require the amendment or repeal of any law; or
- require implementing legislation.⁶¹

The President’s proposal to Congress for the approval of a treaty is presented in the form of a legislative resolution. Like bills, a legislative resolution must, so far as is applicable, be accompanied by:

- a statement of the essential reasons for the resolution;
- its effect on domestic legislation;
- a cost-benefit analysis which includes, if relevant, a comment on environmental impact.

A legislative resolution for the approval of a treaty must also be accompanied by:

- the full text of the treaty;
- the background to it;
- a report setting out the reasons why Congress should approve the treaty; and
- favourable expert opinion from the relevant sector or sectors.⁶²

The resolution is referred to one or two committees, which have 30 working days to consider it. The committee consideration is followed by a plenary vote.⁶³

Treaties that have been signed and ratified and are in force are incorporated into Peru’s domestic law.⁶⁴

**Trans-Pacific Partnership**

The government concluded that because new or amending legislation would be needed to implement the TPP, it must be referred to Congress for approval.⁶⁵

The legislative resolution proposing the approval of the TPP was presented to Congress on 23 September 2016 and referred to the Foreign Affairs Committee. The Committee held a public hearing in November 2016.⁶⁶

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⁶⁰ *Political Constitution of Peru*, art. 57, 118
⁶¹ *Political Constitution of Peru*, art. 56, 102
⁶² *Reglamento del Congreso de la República* (2016), art. 75-76
⁶³ *Ley N°. 26647 – Establecen normas que regulan actos relativos al perfeccionamiento de los Tratados celebrados por el Estado Peruano*, art. 2; *Reglamento del Congreso de la República*, art. 77-78
⁶⁴ *Political Constitution of Peru*, art. 55; *Ley N°. 26647*, art. 3
⁶⁵ *Proyecto de ley N°. 288/2016-PE*, p. 12, Congress website
⁶⁶ *Ficha de seguimiento, “Proyecto de Ley 00288/2016-PE”, Congress website; Comisión de Relaciones Exteriores, Audiencias públicas en el marco del proceso de análisis y discusión del Acuerdo de Asociación Transpacífico, 7 Nov. 2016*, Congress website
Singapore

Framework

Singapore’s Constitution makes no reference to treaty-making powers. It is accepted that Parliament’s consent is not required before the government may bind Singapore by way of treaty. Only Parliament, however, possesses the power to translate treaty law into domestic law.\(^{67}\) The Parliament is unicameral.

Trans-Pacific Partnership

The Prime Minister said in November 2016 that Singapore would amend its legislation to bring the TPP into effect and aimed to do so by early 2017.\(^{68}\)

Viet Nam

Framework

The Constitution of the Socialist Republic of Vietnam and the Law on Treaties set out the basic framework for concluding and ratifying international treaties. The National Assembly is unicameral. The Standing Committee of the National Assembly, which has extensive powers, is the permanent body of the National Assembly, continuing to meet when the Assembly itself is not in session.\(^{69}\)

It is the government’s responsibility, as authorised by the President, to negotiate and conclude treaties. The President and government decide on the ratification of, accession to, or withdrawal from those treaties that do not need to be submitted to the National Assembly for ratification.\(^{70}\)

The National Assembly has the power to ratify, or to decide on the accession to or withdrawal from:

- treaties related to war, peace, national sovereignty or Viet Nam’s membership of important international and regional organisations;
- treaties on human rights or fundamental rights and obligations of citizens;
- other treaties that are not consistent with the laws or resolutions of the National Assembly.\(^{71}\)

The President and government must report to the National Assembly on the negotiation and signing of treaties that will require ratification by the Assembly.\(^{72}\)

The Foreign Affairs Committee of the National Assembly assumes principal responsibility for verifying a treaty for which the decision on ratification, accession or termination falls within the competence of the Assembly, and coordinates with other committees. The scope of the verification covers:

- the necessity for ratification;
- the observance of the orders and procedure for proposing the ratification;
- conformity with the Constitution, the laws and resolutions of the National Assembly and the ordinances and resolutions of the Standing Committee;
- the possibility of direct application of all or part of the treaty;

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\(^{67}\) Lim Chin Leng, Mahdev Mohan, Laws of Singapore, Ch.05 Singapore and international law, Singapore Academy of Law, at 5.2.1, 5.2.4

\(^{68}\) “TPP leaders agree to press on with ratification of landmark trade deal”, The Straits Times, 20 Nov. 2016

\(^{69}\) The Constitution of the Socialist Republic of Vietnam, art. 73, 74

\(^{70}\) The Constitution of the Socialist Republic of Vietnam, art. 88, 96

\(^{71}\) The Constitution of the Socialist Republic of Vietnam, art. 70

\(^{72}\) Law on Treaties, art. 12, 24
the requests for legislative action or resolutions by the National Assembly, and ordinances or resolutions of the Standing Committee, to implement the treaty.73

A request for verification of a treaty must be sent to the Foreign Affairs Committee at least 30 days before the opening of a session of the National Assembly. The Committee must convene a meeting to verify the treaty with the relevant agencies and organisations within 15 days of receiving the request. The request for verification must be accompanied by:

- the President’s report on the proposal to ratify the treaty;
- the government’s explanatory report;
- the opinions of the Ministries of Foreign Affairs and Justice and other relevant agencies and organisations;
- a report on responses to and acceptance of the agencies’ and organisations’ opinions and proposed actions;
- a proposed implementation plan for the treaty; and
- the text of the treaty.74

The proposal for the ratification of a treaty is presented to the National Assembly by the President. The verification report and a report from the government, or other responsible agency, are also presented. Prior to the plenary debate on the ratification, deputies may discuss the proposal in their groups and delegations. In the course of the debate, additional information may be provided by the government or responsible agency. The Standing Committee will present a report on responses to and acceptance of opinions on the proposal, and a revised version of the draft resolution for the approval of the treaty, on which the Assembly then votes.75

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The Deputy Chairman of the National Assembly’s Foreign Affairs Committee said in July 2016 that, to speed up the TPP’s ratification, the relevant ministries had been directed to work with the Committee and other Assembly agencies.76

Speaking in July 2016 on the compatibility of the TPP with Viet Nam’s laws, the Deputy Chairman of the National Assembly’s Law Committee said that revisions to the law would be necessary to establish conformity with the TPP.77

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73 Law on Treaties, art. 32, 33
74 Law on Treaties, art. 34, 35
75 Law on Treaties, art. 36
76 “NA to ratify TPP by year’s end”, *Vietnam Economic Times*, 5 July 2016
77 “Law system to be completed once TPP ratified”, *Việt Nam News*, 6 July 2016

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