

November 7, 2017

Hon. François-Philippe Champagne

Minister of International Trade

Email: AsiaPacificConsultations-ConsultationsAsiePacifique@international.gc.ca

To the Honourable François-Philippe Champagne,

Re: Data Localization, Cross-Border Data Transfers & Investor-State Dispute Settlement in the TPPA and NAFTA

We write in follow up to our submission of October 30, 2017, to your consultation regarding Asia Pacific Trade,¹ in response to reports that Trans-Pacific Partnership Agreement (“TPP-11”) governments are considering freezing the cross-border data transfer, data localization and Investor-State Dispute Resolution provisions of that agreement.

SOURCE: <https://www.nikkei.com/article/DGKKZO23014270R01C17A1EA1000/>

T P P 11交渉の主な論点 (○はほぼ決着。△は難航、 関係級で政治決着へ)		Main TPP11 issues	
分野	内容	issues	Contents
○ 関 税	議題に上らず、元の協定内容を踏襲へ	Tariff	It is not the agenda. Following the original agreement
○ 知的財産	バイオ医薬品のデータ保護など「凍結」ではほぼ合意	IP	Almost agreed by freezing data protection of biopharmaceuticals, and some other
○ 発効要件	GDPは除外で合意、発効に必要な批准国の数を議論	Requirement for entry	Agreed to exclude requirements on GDP. Now discussing number of countries required for entry into force
△ 原産地規則	アパレル分野でベトナムが凍結を主張	Rule of Origin	Vietnam insisted on freezing in the apparel field
△ 政府調達	外資企業に地元への投資要求を禁じる条項について、アジア各国が凍結要求	Government procurement	Regarding clauses prohibiting foreign investor companies from request for local investment, Asian countries require freezing
△ 電子商取引	データの自由な流通確保で、ベトナムが凍結を主張。日本などは反対	E-Commerce	Vietnam insisted on freezing free flow of data, but Japan and others are opposing.
△ 国有企業	優遇禁止措置について、マレーシアが凍結要望	State-owned enterprise	Malaysia requests freeze on preferential treatment ban
△ 紛争解決	投資家と国家のISDS条項など、各国から凍結要望	ISDS	Some countries request to freeze ISDS

We would encourage Canada to support this move to freeze the provisions in question. Neither the ISDS mechanisms set out in section B of Chapter 9 nor the cross-border data

¹ https://cippic.ca/sites/default/files/File/LT_GAC_re_TPP_30Oct2017.pdf

transfer requirements and the data localization prohibitions currently found in Articles 14.11 and 14.13, respectively of the TPP are of any assistance to Canada. All were largely adopted in concession to the United States, a party that has since withdrawn from the agreement.

Further, it has been reported that the United States is seeking to leverage Canada's TPP concessions on data localization and the cross-border data transfer in its attempt to adopt comparable provisions in NAFTA. Supporting a freeze of the TPP provisions could only serve to strengthen Canada's ability to resist the adoption of comparably unfavourable provisions in NAFTA.

Finally, the ISDS mechanism that has been a feature in NAFTA since its adoption creates an asymmetric, costly and ineffective mechanism for allowing one class of stakeholder—foreign investors—to enforce provisions in trade agreements. Freezing the ISDS TPP chapter would avoid replicating bad policy while bolstering efforts to remove ISDS from NAFTA.

As these proposals are discussed at an APEC Ministerial taking place this week, we urge you to support efforts to freeze these provisions.

Yours truly,

A handwritten signature in black ink that reads "Tamir Israel". The signature is written in a cursive, flowing style with a large, prominent initial "T".

Tamir Israel