

REVISITING THE LEGAL NATURE OF “UN-SIGNING” AN UNRATIFIED TREATY: BROADER IMPLICATIONS OF THE U.S.’ WITHDRAWAL FROM THE TPP

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ABSTRACT

This article focuses on the legal issues arising from treaty withdrawal after signing but before ratification, as is the case in the United States (hereinafter “U.S.”) withdrawal from the Trans-Pacific Partnership Agreement (hereinafter “TPP”). This article attempts to shed light on the definition of “withdrawal” (or “un-signing”) because it can make a practical difference to the fate of the TPP.

More specifically, we consider the legal nature of the U.S. withdrawal and its broader implications for the other signatories. First, is the U.S. still acting within the framework of the TPP or is it already out? Second, what impact does this U.S. action have on the legal status of the other original signatories of the TPP? Third, is the U.S. liable for violating its obligation to not frustrate the object and purpose of the treaty at hand? Finally, what can the 11 original signatories learn from the exit of the U.S. to revive the TPP without U.S. involvement?

Our major arguments are that the U.S. still remains an original signatory to the TPP, despite its notorious notification of withdrawal in January 2017. On the other hand, other original signatories that have already ratified are not exempt from the interim obligation of not frustrating the object and purpose based

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solely on “undue delay” caused by the U.S.’s unilateral notification of withdrawal. In addition, other original signatories are not eligible to claim damages against the U.S. due to their acquiescence, and the U.S. cannot claim damages for the subsequent actions of other original signatories because the current situation was created by the U.S. itself. Finally, the other original signatories have several options to avoid a similar incident in the future.

KEYWORDS: *signature, withdrawal, ratification, provisional application, TPP (Trans-Pacific Partnership)*