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Financial Services

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

TPP’s Financial Services chapter opens markets for U.S. financial services providers and workers in the world’s fastest-growing region. Equally important, it makes sure that the United States and other TPP members have the ability to fully regulate financial markets so as to ensure financial stability

that contributes to sustainable growth, providing TPP governments with broad latitude for prudential regulation, including emergency measures in the event of financial crisis, and full ability to perform robust oversight of financial service providers.

CHAPTER OVERVIEW

Scope

TPP's Financial Services chapter includes commitments relating to (1) regulated financial institutions (e.g., in the case of the United States, that means financial services suppliers regulated and supervised by regulators such as the Federal Reserve or the Securities and Exchange Commission); (2) any investors or investments in financial institutions; and (3) cross-border trade in financial services. It does not apply to public retirement plans or social security systems.

Core obligations

The chapter includes several core obligations found in all U.S. FTAs (subject to country-specific exceptions that are negotiated and agreed):

- National treatment for investors and investments in financial institutions in TPP countries—that is, the agreement provides that no country shall discriminate against foreign providers of services in favor of its own nationals;
- Most-favored nation treatment, which provides that no country shall discriminate in favor of one TPP country over another TPP country, or a non-TPP country with regard to the cross-border supply of specifically listed financial services (such as marine, aviation, transportation insurance and financial advisory services);
- Market access, which provides that no country may impose quantitative restrictions on the number of financial institutions, total value or number of financial services transactions or assets or restrictions on the type of legal entity through which a financial institution may supply a service in another TPP market.

Minimum Standard of Treatment

The chapter includes provision of the minimum standard of treatment (e.g., allowing for claims for denial of justice or failure to provide police protection) bounded by customary international law (i.e., those limited actions governments take out of sense of legal obligation), as well as claims for damages due to civil strife (i.e., losses suffered as a result of armed conflict or civil strife); and

Cross-Border Trade

Access to cross-border trade is critical to U.S. competitiveness, and ensures that TPP will promote employment and growth in the United States as well as access to financial products abroad. Reflecting these goals, the Financial Services chapter includes a general commitment that each Party permit the sale of financial services across borders from suppliers located in the United States or other TPP Party. At the same time, the chapter allows a TPP Party to require registration or authorization of cross-border financial services suppliers of another TPP Party in order to help assure appropriate regulation and oversight.

New Financial Services

The chapter includes rules that would allow a Party's financial institution to supply a new financial service in the territory of another Party when that Party already permits the supply of that service by its local financial institutions. It also includes provisions that allow a Party to determine the institutional and juridical form through which the new financial service can be supplied and/or to require authorization for prudential reasons to supply the new service.

Treatment of Confidential Information

The United States is committed to the safeguard of financial information. Consistent with this principle, the Financial Services chapter includes rules that clarify that TPP Parties will not be required to furnish or allow access to information related to the financial affairs and accounts of individual customers, or any confidential information that would impede law enforcement, damage the public interest, or prejudice legitimate commercial interests of particular firms.

Senior Management and Board of Directors

TPP Parties agree not to impose nationality requirements on senior management or other essential personnel, or impose nationality or residency requirements on more than a minority of the board of directors of a financial institution of another TPP Party.

Non-conforming measures (NCMs)

In two annexes to the chapter, Parties have negotiated country-specific exceptions to the core obligations:

- Annex A allows countries to maintain a current measure inconsistent with specified obligations of the TPP, but not to make that measure more restrictive. Any future liberalization of measures listed in Annex A will be subject to the rules of the agreement.
- Annex B allows countries to maintain certain existing or future measures that are inconsistent with TPP in the specific sectors it lists in the Annex.

Exceptions

Two critically important exceptions preserve broad discretion for TPP financial regulators to take measures to promote financial stability and the integrity of their financial systems.

- **Prudential Measures**

The prudential exception provision ensures that a Party may adopt or maintain measures for prudential reasons, including for the protection of investors, depositors, policy holders, persons to whom a fiduciary duty is owed by a financial institution or cross-border service supplier, or to ensure the integrity and stability of the financial system. The prudential measures exception applies to the entire TPP Agreement except for the goods and goods-related chapters.

- **Monetary exception**

The monetary exception provides that certain chapters of the agreement (in particular those relating to services and investment) do not apply to non-discriminatory measures of general application in pursuit of mone-

tary and related credit policies.

Expedited Availability of Insurance Services

The chapter includes rules that formally recognize the importance of regulatory procedures to expedite the offering of insurance services by licensed suppliers and procedures to achieve this outcome.

Specific Commitments

Beyond these general provisions, the Financial Services chapter includes a set of specific commitments:

- **Portfolio Management**

Allows a portfolio manager located outside its territory (other than a trust company) to provide advice to an asset manager located in its territory.

- **Supply of Insurance by Postal Entities**

Obligates Parties not to give preferential treatment to postal entities selling direct insurance, including by giving them preferential rights to distribution channels or subjecting them to less stringent enforcement.

- **Electronic Payment Card Services**

Requires TPP Parties to allow the cross-border supply of electronic payment services, creating new opportunities for U.S. suppliers of electronic credit and debit payment services, a major new growth area in financial services.

- **Transfer of Information**

Obligates Parties to permit cross-border transfer of information for data processing where such processing is required in a financial institution's ordinary course of business.

- **Investment Disputes in Financial Services**

The chapter establishes important safeguards in the event of investment disputes involving financial regulatory measures, including provisions regarding the financial expertise of potential arbitrators. Most significantly, the chapter establishes a special procedure whereby any dispute

relating to a prudential measure can immediately be removed from an investor-State arbitration proceeding and placed under the review of the financial regulatory authorities of the concerned TPP Parties. Any differences between those authorities as to the application of the prudential exception can then be resolved through a separate, State-to-State arbitration between relevant TPP governments, rather than in an investor-State proceeding.

NEW FEATURES

The Financial Services chapter contains several new features:

- Specific commitments allowing for the cross-border delivery of electronic payment card services, a service in which U.S. firms are globally competitive, but which some countries are seeking to restrict.
- Stronger disciplines regarding postal entities selling insurance in order to ensure a level playing field for U.S. insurers competing with such entities in TPP markets.
- Multiple safeguards to help ensure that TPP Parties may apply the prudential measures exception provision or the other exceptions under the Financial Services chapter.

IMPACT

U.S. financial services and insurance firms help Americans to secure and grow wealth, finance opportunities, and prepare for retirement. These firms provide services critical to every sector of the economy, including small- and medium-sized businesses. Financial services exports contribute a \$68 billion surplus to the U.S. balance of payments, reflecting the competitiveness of the American financial and insurance industries. TPP partner countries, with available data, accounted for about one quarter of total U.S. services trade, including purchasing \$16 billion worth of U.S. financial services in 2013.

The Asia-Pacific is an important region for financial services exports. It is the center of global investment in infrastructure, requiring exceptionally large commitments of financial resources for governments and large businesses. High-standard rules for trade and investment in the financial services sector in the TPP will ensure that American businesses and workers can serve all these varied markets, promoting economic growth and job devel-

opment in the United States and throughout the Asia-Pacific region.

At the same time, the United States and other TPP countries have faced serious financial crises in recent years. These crises have heightened the focus on ensuring governments' right to regulate the financial services sector in order to protect consumers and ensure the integrity and stability of the financial system. TPP's Financial Services chapter fully protects and ensures the right to regulate of all TPP parties. Nothing in TPP's Financial Services chapter will require changes to U.S. law, regulations, policy, or practice.

