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Cross Border Trade in 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

Tradable services such as software, R&D, cloud-based computer services, engineering and architecture, logistics and express delivery account for about a third of all U.S. exports, and the U.S. runs a global services trade surplus of more than \$230 billion as of 2014. TPP’s Cross-Border Trade in

Services chapter will open markets for American exporters of these products, ensure fair and transparent regulatory treatment for Americans seeking to provide services abroad, and bar requirements that Americans invest in a TPP country in order to provide services there. This will foster an open Asia-Pacific services environment that helps American workers and businesses take advantage of one of our country's signal strengths.

CHAPTER OVERVIEW

Core obligations

The Cross-Border Trade in Services chapter includes four core obligations found in all U.S. Free Trade Agreements (FTAs) (subject to country-specific exceptions that must be negotiated and agreed): (1) national treatment, providing that no country shall discriminate in favor of its own suppliers; (2) 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; (3) market access, which provides that no country may impose quantitative restrictions on the supply of services (e.g., a limit on the number of suppliers or number of transactions) or require a specific type of legal entity or joint venture; and (4) local presence, which provides that no country may require a supplier from another country to establish an office or affiliate, or to be resident, in its territory in order to supply the service.

Non-conforming measures

TPP countries have agreed to accept these core obligations on a "negative-list basis." This means, for all countries, full access to their markets, apart from those sectors included in a country-specific list of specific reservations describing the nature of any "non-conforming measures" permissible even after the agreement enters into effect. These reservations are recorded in two annexes to the agreement:

- Annex I contains a list of current measures that would otherwise violate one or more of the chapter's core obligations, but which the country has determined that it needs to maintain in force. In listing a measure in Annex I, the country commits to a "standstill," which ensures that the measure will not become more restrictive in the future, as well as a "ratchet," which means that if the measure is amended in the future to become less restrictive, the new, more favorable treatment will set the benchmark for the standstill requirement.

- Annex II contains a list of reservations that enable a country to have full discretion to maintain existing non-conforming measures or adopt new restrictions without any consequence under the agreement.

Domestic regulation

The chapter ensures that TPP Parties develop and administer measures of general application, including licensing processes, in a fair and reasonable manner, while fully recognizing the right to regulate and to introduce new regulations.

Transparency

The chapter sets certain requirements for transparency in the development of new services regulations, including establishing mechanisms for responding to stakeholder inquiries on regulations related to the chapter; processes for notice and comment on new regulations; and allowing for reasonable time between publication of final regulations and their effective date.

Recognition

The chapter ensures that TPP Parties have the flexibility to recognize the credentials of service suppliers of another Party without needing to recognize those of all Parties.

Denial of benefits

The chapter ensures that a TPP Party can deny benefits to a TPP supplier owned or controlled by an entity from a non-TPP country in cases where either the Party has sanctions on the non-TPP country, or where the TPP supplier is only a shell company for the non-TPP entity.

Payments and transfers

The chapter allows for transfer of funds related to the cross-border supply of services to be made freely and without delay, subject to exceptions. These exceptions ensure that governments retain the flexibility to take measures, including non-discriminating temporary safeguard measures such as capital controls, in the context of economic crisis, or to take prudential measures to protect the integrity and stability of the financial system.

Annexes

In addition to an annex covering specific exceptions, the Cross-Border Trade in Services chapter includes two annexes on specific sectors:

- **Professional services**

A professional services annex to encourage cooperative work on licensing recognition and other regulatory issues in order to enhance opportunities for trade in professional services.

- **Express Delivery Services**

An annex on express delivery services to address the unique challenges private suppliers face when competing with national postal entities in express delivery.

NEW FEATURES

The Cross-Border Trade in Services chapter builds on the coverage and quality of services commitments under recent U.S. FTAs—which in turn build on those guaranteed by the World Trade Organization (WTO)—including new commitments that address longstanding issues for U.S. services suppliers. In addition, it includes:

Express Delivery Services Annex

The enhanced disciplines for express delivery services help ensure fair competition in a sector in which private suppliers often compete with government-owned or government-authorized postal monopolies. These enhancements, consistent with the U.S. Postal Accountability and Enforcement Act of 2006, support TPP initiatives for small and medium-sized enterprises, which are often highly dependent on express delivery services for integration into global supply chains and distribution networks.

Domestic regulations

The process of applying for authorization to supply a service should be as fair and transparent in other TPP markets as it is in the United States. To this end, the chapter includes new good-governance guidelines—based on U.S. practice—for providing processing timelines, informing applicants of their status, charging application fees, and other application issues.

IMPACT

Services account for the majority of U.S. and world economic output. In the United States, the services sector supports 4 out of 5 jobs.^[1] Services, including information and communication services, transportation and logistics, wholesale and retail services, energy services, health care, entertainment, software, and professional services, are important contributors to growth and productivity in the U.S. and global economies.

Increased services trade has the potential to significantly help the U.S. economy. America is already the world's largest services trading nation, with approximately \$711 billion in exports and \$477 billion in imports in 2014. Looking ahead, the Internet is making cross-border exports of services easier than ever before, as the user population grows and telecommunications prices fall. This means the U.S. has remarkable prospects both in traditional services exports, and in new ones like the many new health, education, business, and entertainment services developed every year as smartphone "apps." The number of export-supported, high wage services jobs—with trade barriers reduced—is thus poised to grow significantly.

But even for the United States, services trade is far lower than it might be. Despite already accounting for a significant portion of U.S. and world economic output, services industries account for only about 20 percent of world exports and 30 percent of American exports. This reflects the fact that services trade is hampered by complex restrictions and bans on access that have a significant impact on global trade in services.^[2] While affecting American exports in general, they often disproportionately hurt small businesses and push American businesses to move abroad rather than export from home. Examples include:

- Requirements that a U.S. business establish an office overseas before it can supply a service. This hits small businesses much harder than larger firms, given the expense necessary to set up foreign offices, and more fundamentally tilts business choices towards foreign investment over exports and employment within the United States.
- Markets restricted to government monopolies or tilted by favoritism toward a government monopoly provider, often found in industries such as transport and logistics.

[1] **United States International Trade Commission, Recent Trends in U.S. Services Trade, 2014 Annual Report.** <http://www.usitc.gov/publications/332/pub4463.pdf>

[2] **World Trade Organization, World Trade Report 2012.** https://www.wto.org/english/res_e/publications_e/wtr12_e.htm

- Regulatory systems which favor domestic firms, are opaque, or otherwise reduce export opportunities without achieving particular valid policy goals.
- Prohibitions on cross-border provision of legitimate 'content,' such as videos or music.

By addressing these issues in some of the fastest-growing markets in the world, TPP will create generation-long opportunities for growth and support for high-wage jobs.

