Chapter 5
Impact on U.S. Trade in Services

Introduction

The TPP Agreement would likely positively affect output and employment for the U.S. services sector, although U.S. global net exports of services would likely be lower than the 2032 baseline projections. As a result of TPP, output would rise in nearly all services sectors (except transportation), but demand for U.S. services would increase faster than output, implying an increase in U.S. demand for services imports from global trading partners.

Net exports of services to TPP partners would likely increase substantially due to liberalization in the agreement. TPP would provide three broad types of services liberalization that would significantly reduce trade costs for U.S. services firms exporting to TPP partner markets: increased market access to specific sectors, adoption of a negative list approach, and assurances of the right to transfer data across borders unimpeded.[670] Because of increased market access abroad, net exports of services to TPP countries would improve, in contrast to net exports to the world. This increase would be especially notable for business services and communications, which would realize substantial export gains driven by improved market access and rising incomes abroad.

The positive trade effects of TPP services liberalization are, however, likely to be offset in part by increased imports of services from outside the TPP, in line with the increased demand for services that accompanies higher levels of output. At the same time, TPP's impact on services net exports would likely reflect the relatively larger liberalization taking place in goods sectors. U.S. cross-border trade flows in services are likely to be affected by TPP's reallocation of productive resources away from sectors where TPP liberalization would be relatively limited—these are often services sectors, where the need for domestic regulation often limits the ability to trade. Instead, more productive resources would likely flow towards sectors where TPP liberalization would be greater—e.g., agricultural sectors, which would experience significant tariff reductions.

[670] The data provisions would not apply equally to financial services firms, as discussed further below.

Overview of U.S.-TPP Services Trade Trends

The United States is the world's largest exporter and importer of services, with service industries also accounting for a majority of U.S. production and employment.[671] As discussed above, services can be traded either cross-border or through a commercial presence abroad. Services supplied through commercial presence (i.e., by foreign affiliates) remain the principal means of providing services to foreign markets, while cross-border trade in services is particularly important for several sectors, including travel services and charges for the use of intellectual property.

Cross-border Services Trade

U.S. cross-border services exports to TPP countries were valued at $176 billion in 2014, accounting for about 26 percent of total private U.S. services exports in that year.[672] The United States enjoys overall surpluses in services trade with all TPP parties for which data are available. U.S. cross-border services imports from TPP countries totaled $94 billion in 2014 and represented about 21 percent of total private services imports, giving the United States a services trade surplus with TPP members of $82 billion.[673] U.S. services exports to TPP members rose by 59 percent over the 10-year period from 2005 to 2014 (figure 5.1). However, over the last decade, these exports have grown at a slower rate than exports to non-TPP members. Similarly, over the preceding decade, U.S. services imports from TPP countries rose 45 percent, and these have also increased more slowly than services imports from non-TPP countries since 2005 (figure 5.2). While lower than the rate of growth to non-TPP countries, the upward trajectory of both U.S. exports and imports for TPP countries in most sectors largely mirrors the overall pattern of growth in total U.S. trade in cross-border services.[674]

In 2014, the largest category of private cross-border services trade between the U.S. and TPP members was travel services, which accounted for $57.5 billion in U.S. exports and $26.1 billion in imports. Charges for the use of intellectual property ("IP charges") and transportation services were the next-largest categories (table 5.1). U.S. exports to TPP partners in computer services grew the fastest, rising 92.1 percent between 2009 and 2014, followed by maintenance and repair services. U.S. imports grew fastest in the IP charges category, which increased

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[671] WTO, "International Trade Statistics 2015," Table 1.9 (accessed January 29, 2016); USDOC, BEA, "Real Value Added by Industry," November 5, 2015; USDOC, BEA, Table 6.5D, "Full-Time Equivalent Employees by Industry," August 6, 2015.
[672] The services trade data presented here do not include services provided by governments, such as municipally owned utilities and national defense.
[673] USDOC, BEA, *Survey of Current Business,* October 2015, Table 2.1. Data for U.S. cross-border services trade is not reported for Peru, Vietnam, or Brunei. All growth rates presented here are the simple increase between years, not the compound annual rate of growth.
[674] Chapter 1 includes a more general regional economic overview of TPP member countries.

88.6 percent between 2009 and 2014. No category saw a decline from 2009 to 2014, on average; from 2013 to 2014, however, telecommunications saw a fall in both imports and exports, which dropped 5.8 and 7.5 percent respectively. Travel services represented the United States' largest trade surplus in 2014. No major category recorded a deficit in 2014, though deficits were reported for three subcategories: sea freight (a subcategory of transportation), industrial processes (a subcategory of IP charges), and computer services (a subcategory of communications).[675]

Among the TPP members for which data are available, Mexico, Canada, and Japan together accounted for 20 percent of total U.S. cross-border services exports and 17 percent of U.S. total services imports, consistent with their leading positions in U.S. goods trade (figures 5.3 and 5.4). TPP is likely to have a smaller impact on U.S. trade with Canada and Mexico (owing to their participation with the United States in the North American Free Trade Agreement) than it would have on trade with Japan. Japan currently has no free trade agreement (FTA) with the United States, but it is the second-largest importer of U.S. services and the second-largest services exporter to the United States as well (table 5.2).[676]

U.S. services exports have risen the fastest to Chile (86.4 percent over the 2009 to 2014 period), buoyed by a large increase in exports of professional services. The fastest growth in U.S. services imports was seen in those from Malaysia (69.3 percent in 2009–14), driven by a rise in U.S. imports of Malaysian computer services.[677] More detailed information about U.S. trade with TPP parties can be found in the individual country profiles contained in appendix F.

Services Supplied by Foreign Affiliates

Services supplied by foreign affiliates are a separate category of services trade ("mode 3" trade, in WTO/GATS terminology), and account for the majority of services trade in many sectors. Services supplied by U.S.-owned foreign affiliates to TPP members rose just over 80 percent from 2005 to 2013, increasing from $211 billion to $381 billion, and grew faster than foreign affiliate sales in non-TPP countries.[678] These sales to TPP members accounted for 29 percent of total U.S. foreign affiliate sales in 2013 (figure 5.5). Services supplied to the United States by foreign-owned affiliates of TPP members grew slightly more slowly during 2005–13, increasing 77 percent from $153 billion to $270 billion, but rose more quickly than growth in foreign

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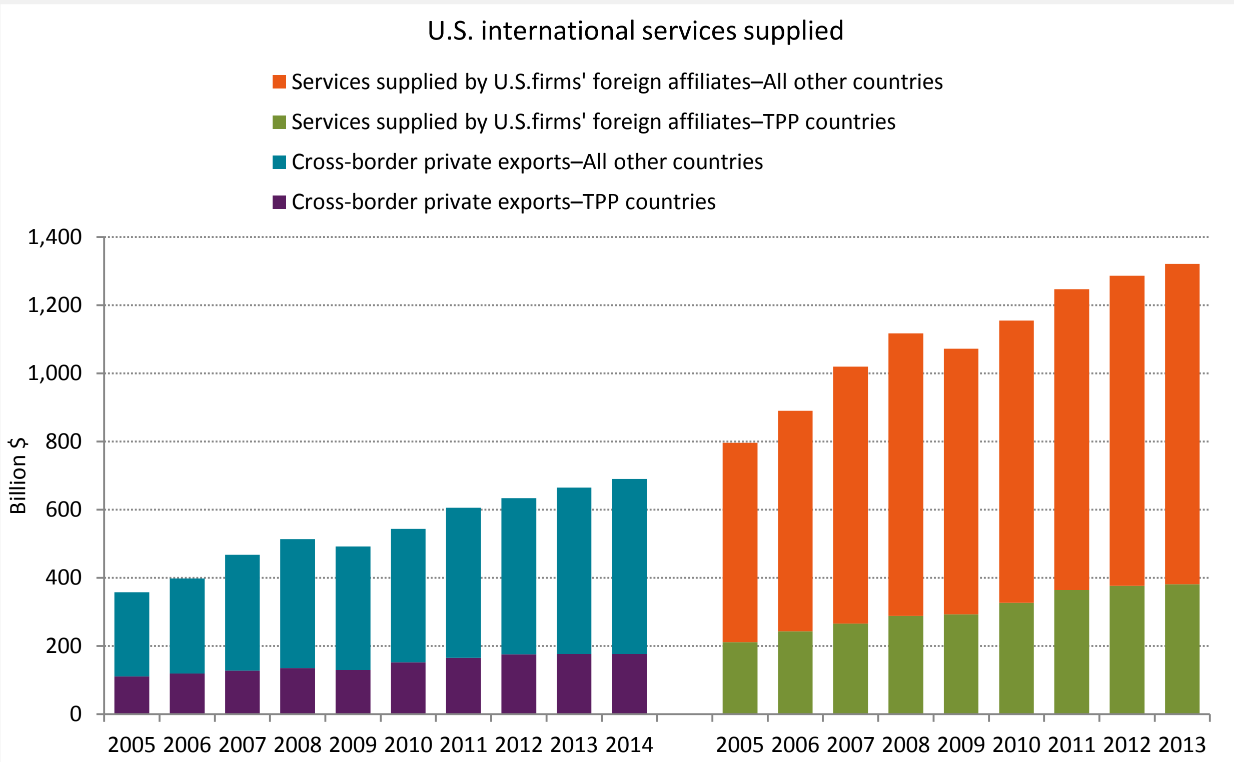
[675] For more detailed information on developments in the U.S. services trade, see USITC, *Recent Trends in U.S. Services Trade*, 2015.
[676] Data for cross-border trade in services between the United States and TPP countries by industry is available only for Australia, Canada, Chile, Malaysia, Mexico, New Zealand, and Singapore. Data for foreign affiliate transactions cannot be disaggregated for individual TPP countries by industry.
[677] USDOC, BEA, Interactive Tables, International Data (accessed January 20, 2016).
[678] While cross-border services trade data are available for 2014, data for foreign affiliate transactions are available only through 2013.

affiliate purchases from non-TPP countries. Foreign affiliate purchases from TPP partners accounted for 32 percent of total U.S. foreign affiliate purchases in the period (figure 5.6).[679]

Like cross-border trade in services, U.S. foreign affiliate transactions with TPP partners were primarily supplied to and purchased from Canada and Japan. Services supplied by U.S. affiliates in Canada totaled $128 billion in 2013, and services supplied by U.S. affiliates in Japan totaled $72 billion in that year. Services supplied to the United States by the foreign-owned affiliates of TPP members were mainly sourced from Japan ($147 billion), Canada ($84 billion), and Australia ($23 billion). U.S. foreign affiliate sales to Singapore grew the fastest (79 percent from 2009 to 2014), while purchases from Mexico rose 126 percent during 2009-13–the second largest increase recorded in the period after Chile. By contrast, purchases through foreign affiliates from neighboring Chile experienced a decline of 49 percent during those years (table 5.3).

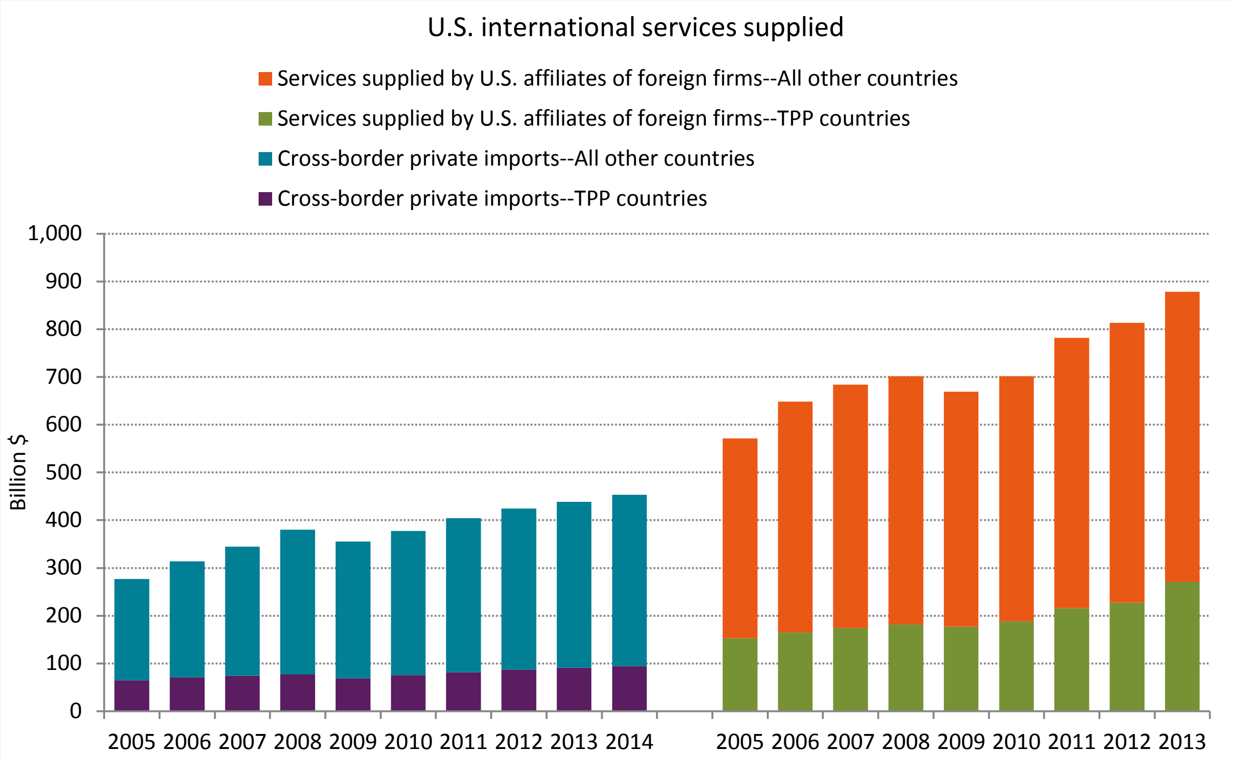
Figure 5.1: U.S. international services supplied, 2005–14



Source: USDOC, BEA, Interactive tables, International Data, January 20, 2016. Corresponds to appendix table J.16.
Notes: Data for affiliates are available from 2005 through 2013. Affiliate data for TPP countries include data for Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Singapore. Affiliate data for Brunei and Vietnam are not available. Cross-border data for TPP countries include data for Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, and Singapore. Cross-border data for Brunei, Peru, and Vietnam are not available.

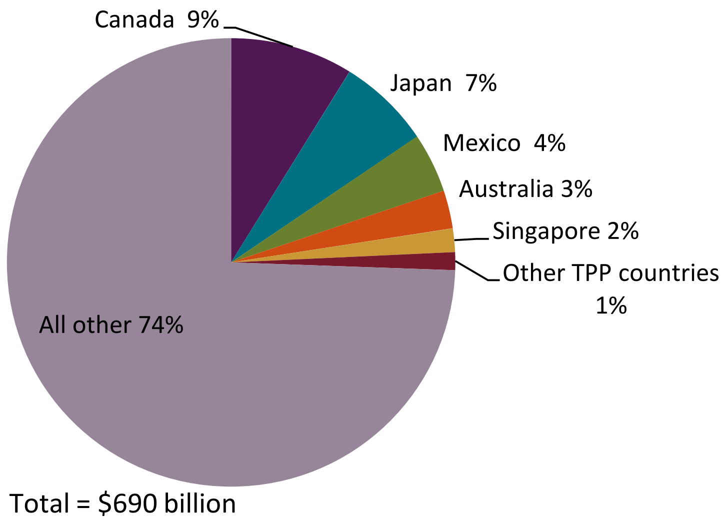
[679] USDOC, BEA, *Survey of Current Business,* October 2015, table 3.1. Data for foreign affiliate transactions are not reported for Vietnam or Brunei. However, Peru is included. The latest year for which U.S. foreign affiliate transactions data are available is 2013. Chile, Malaysia, and Peru did not report data for 2005.

Figure 5.2: U.S. international services received, 2005–14



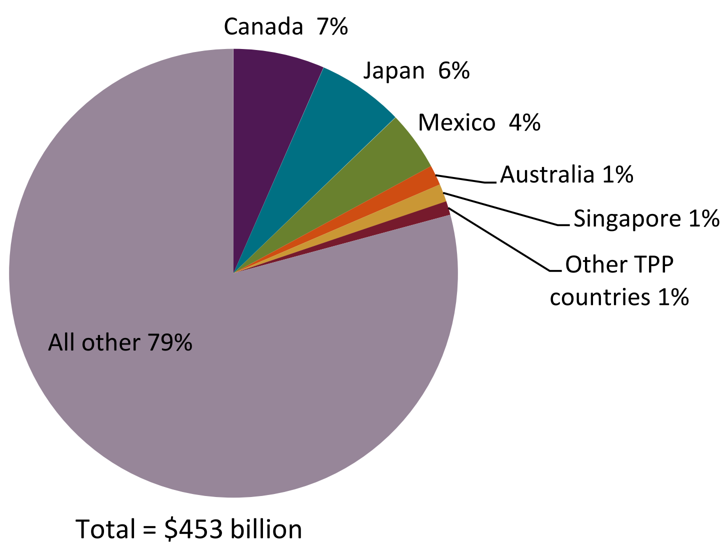
Source: USDOC, BEA, Interactive tables, International Data, January 20, 2016. Corresponds to appendix table J.17.
Notes: Data for affiliates are available from 2005 through 2013. Affiliate data for TPP countries include data for Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Singapore. Affiliate data for Brunei and Vietnam are not available. Cross-border data for TPP countries include data from Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, and Singapore. Cross-border data for Brunei, Peru, and Vietnam are not available.

Figure 5.3: U.S. private cross-border exports of services, 2014



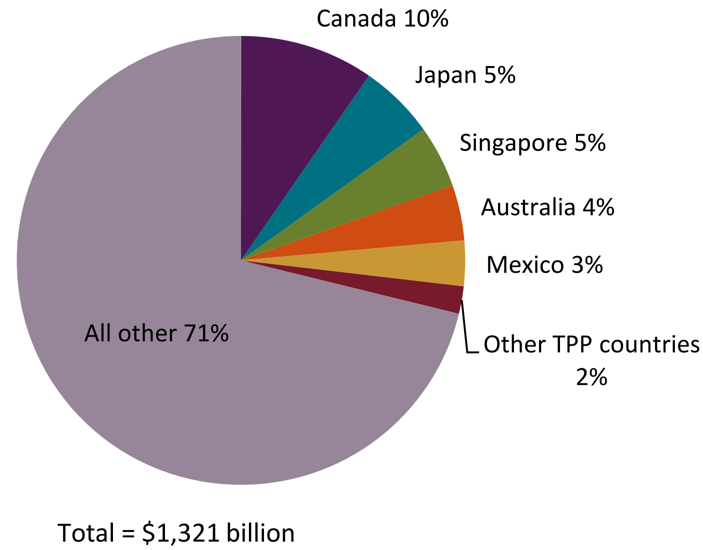
Source: USDOC, BEA, Interactive Tables, International Data, International Services, "Table 2.3: U.S. Trade in Services, by Country or Affiliation and by Type of Service" (accessed January 20, 2016). Corresponds to appendix table J.18.
Note: Other TPP countries include Chile ($3.8 billion), Malaysia ($2.8 billion), and New Zealand ($2.2 billion).

Figure 5.4: U.S. private cross-border imports of services, 2014



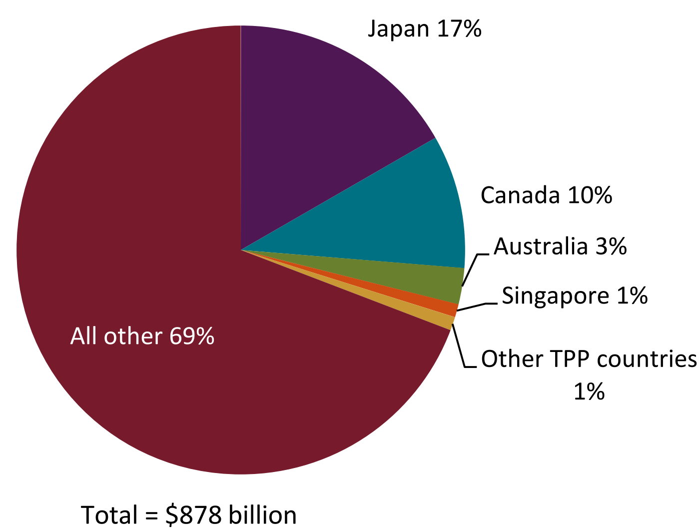
Source: USDOC, BEA, Interactive Tables, International Data, International Services, "Table 2.3: U.S. Trade in Services, by Country or Affiliation and by Type of Service" (accessed January 20, 2016). Corresponds to appendix table J.19.
Notes: Totals may not add to 100 percent due to rounding. Other TPP countries include Malaysia ($1.8 billion), New Zealand ($1.5 billion), and Chile ($1.2 billion).

Figure 5.5: Affiliate transactions: Services supplied to foreign persons by U.S. multinational enterprises through their majority-owned foreign affiliates, 2013



Source: USDOC, BEA, Interactive Tables, International Data, International Services, "Table 3.2: Services Supplied to Foreign Persons by U.S. MNEs through Their MOFAs, by Country of Affiliate and by Destination" (accessed January 20, 2016). Corresponds to appendix table J.20.
Note: Other TPP countries include Chile ($11.5 billion), Malaysia ($7.9 billion), New Zealand ($4.2 billion), and Peru ($2.6 billion).

Figure 5.6: Affiliate transactions: Services supplied to U.S. persons by foreign multinational enterprises through their majority-owned U.S. affiliates, 2013



Source: USDOC, BEA, Interactive Tables, International Data, International Services, "Table 4.2: Services Supplied to U.S. Persons by Foreign MNEs through Their MOUSAs, by Country of UBO" (accessed January 20, 2016). Corresponds to appendix table J.21.
Notes: Totals may not add to 100 percent due to rounding. Other TPP countries include Mexico ($7,503 million), Malaysia ($467 million), New Zealand ($458 million), Chile ($178 million), and Peru ($6 million).

Table 5.1: TPP countries: Cross-border exports and imports of U.S. private services by sector, 2009–14, million dollars

	2009	2010	2011	2012	2013	2014
Exports						
Travel	41,287	49,160	52,448	56,842	58,899	57,450
Charges for the use of intellectual property n.i.e.	23,060	29,446	33,557	33,409	30,036	28,288
Transport (includes passenger fares)	41,792	21,636	23,246	24,098	25,002	25,464
Financial services	12,269	14,419	14,700	15,028	15,834	15,971
Professional and management consulting services	9,134	*	11,707	12,837	13,866	14,914
Technical, trade-related, and other business services	7,443	*	9,210	10,970	9,204	8,734
Insurance services	1,609	5,290	5,736	6,587	6,633	6,775
Maintenance and repair services n.i.e.	3,281	3,519	3,649	4,732	5,183	5,661
Research and development services	3,443	*	4,264	4,278	4,550	4,847
Computer services	2,381	2,516	3,099	3,240	3,823	4,575
Information services	1,609	1,514	1,477	1,554	1,689	1,822
Telecommunication services	1,633	1,824	1,839	1,998	1,950	1,803
All other	3	22,324	3,647	1	1	0
Total private services	129,526	151,638	164,930	175,574	176,670	176,301
Imports						
Travel	20,804	22,064	21,610	23,262	24,500	26,089
Transport (includes passenger fares)	13,342	15,805	17,021	17,180	18,756	19,323
Charges for the use of intellectual property n.i.e.	2,942	9,596	9,087	11,073	13,862	14,947
Computer services	3,799	4,265	*	6,575	6,383	6,103
Business and management consulting and public relations services	4,359	4759	4621	5,072	5,141	5,409
Financial services	2,459	2,822	3,540	3,647	4,054	4,301
Telecommunication services	1,587	1,421	*	1,288	1,263	1,190
Advertising	715	756	810	857	731	759
Accounting, auditing, and bookkeeping services	370	424	443	492	540	572
Legal	404	409	529	518	494	464
All other	12,925	13,481	23,370	17,052	15,562	15,092
Total private services	68,690	75,802	81,040	87,016	91,286	94,249

Source: USDOC, BEA, Interactive Tables, International Data, International Services, “Table 2.3: U.S. Trade in Services, by Country or Affiliation and by Type of Service” (accessed January 20, 2016).
Notes: Includes Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, and Singapore. N.i.e. = not included elsewhere. * = not available.

Table 5.2: Cross-border exports and imports of U.S. private services by country, 2009–14, million dollars

Country	2009	2010	2011	2012	2013	2014
Exports						
Australia	13,527	15,362	18,276	18,687	19,210	19,047
Brunei	*	*	*	*	*	*
Canada	43,085	52,695	57,935	61,576	62,376	61,069
Chile	2,026	2,416	3,216	3,555	3,563	3,776
Japan	37,543	42,830	43,252	46,133	45,986	46,081
Malaysia	1,847	2,067	2,637	2,593	2,671	2,819
Mexico	33,718	24,361	26,084	27,798	29,403	29,618
New Zealand	1,547	1,727	2,119	2,065	2,097	2,205
Peru	*	*	*	*	*	*
Singapore	7,133	10,177	11,411	13,167	11,364	11,686
Vietnam	*	*	*	*	*	*
Imports						
Australia	5,251	5,090	6,007	6,651	6,678	6,578
Brunei	*	*	*	*	*	*
Canada	23,206	26,943	30,165	30,793	30,446	29,781
Chile	924	1,012	1,321	1,514	1,264	1,217
Japan	19,326	22,241	22,088	24,535	27,463	28,275
Malaysia	1,048	1,253	1,285	1,427	1,410	1,774
Mexico	13,909	13,849	14,258	15,313	17,161	19,368
New Zealand	1,043	1,221	1,391	1,378	1,476	1,448
Peru	*	*	*	*	*	*
Singapore	3,983	4,193	5,154	5,405	5,388	5,808
Vietnam	*	*	*	*	*	*

Source: USDOC, BEA, Interactive tables, International Data, January 20, 2016.
Notes: * = not available. Totals for TPP countries are not provided because data are not reported for certain countries.

Table 5.3: TPP countries: Services supplied by U.S. firms' foreign affiliates and services supplied by U.S. affiliates of foreign firms, 2009–13, million dollars

Country	2009	2010	2011	2012	2013
Services supplied by U.S. firms' foreign affiliates					
Australia	37,581	45,527	50,431	50,398	52,580
Brunei	*	*	*	*	*
Canada	107,148	117,466	126,155	127,406	127,589
Chile	6,541	8,446	9,981	11,487	11,521
Japan	67,413	68,892	75,383	76,785	71,568
Malaysia	6,237	6,778	7,676	7,745	7,876
Mexico	30,178	34,638	37,620	40,478	43,393
New Zealand	2,760	2,690	3,958	4,254	4,229
Peru	1,530	1,605	2,358	2,678	2,623
Singapore	33,303	40.946	50,274	54,830	59,522
Vietnam	*	*	*	*	*
Total	292,691	326,988	363,836	376,061	380,901
Services supplied by U.S. affiliates of foreign firms					
Australia	13,044	13,270	19,039	21,977	22,865
Brunei	*	*	*	*	*
Canada	67,639	67,639	80,656	81,625	84,394
Chile	347	148	166	187	178
Japan	87,993	93,698	101,055	107,731	146,509

Country	2009	2010	2011	2012	2013
Malaysia	248	251	171	407	467
Mexico	3,326	4,492	5,776	6,626	7,503
New Zealand	272	242	378	442	458
Peru	2	2	3	5	6
Singapore	4,344	6,009	8,779	8,436	8,331
Vietnam	*	*	*	*	*
Total	177,215	188,544	216,023	227,436	270,711

Source: USDOC, BEA, Interactive tables, International Data, January 20, 2016.

Summary of Provisions Affecting Trade in Services

The TPP Agreement contains market access provisions that liberalize cross-border trade in services with TPP partners, and national treatment provisions that would enable firms to establish a commercial presence in TPP partner markets more easily.[680] TPP's provisions reflect the complex, evolving environment for services trade. For example, digital communications technologies are enabling new methods of delivering services cross-border.[681]

TPP's Negative List Approach for Services

A particularly important benefit of TPP for services providers is the "negative list" format of the chapters on Cross-border Trade in Services and on Investment. As a consequence of the negative list approach, provisions of these chapters apply to all services unless parties specifically list an exception, known as a nonconforming measure (NCM).[682] Adoption of a negative list approach in TPP implies a significant ongoing source of liberalization of services trade. As new products and services are invented in years to come, which is likely given the pace of digital innovation in many services sectors, they will be automatically covered by the terms of the TPP Agreement, with no need for additional negotiations.

As a consequence of the negative list format, TPP's provisions for services trade represent a substantial increase in commitments from the partner countries with which the United States does not currently have an FTA—Japan, Malaysia, New Zealand, Vietnam, and Brunei. In these cases, TPP provisions need to be compared with each country's existing commitments under the World Trade Organization (WTO) General Agreement on Trade in Services (GATS). The GATS

[680] For additional explanation, see table 5.4.
[681] Walters, Stapleton, and Andrews, "India's Services Sector: Unlocking Opportunity," 2007, 7.
[682] A negative list means that the signatories of the TPP promise to provide full access to their services markets unless they specifically list an exception, or NCM. These NCMs appear in three separate annexes to the agreement: the first lists existing measures that do not conform to a party's obligations under the agreement, the second specifies activities and sectors that a party could subject to new or more stringent limitations in the future, and the third lists NCMs relating to financial services. See appendix E for a list of each country's NCMs.

employs a positive list approach, meaning that the parties made services trade commitments only for services trade specifically listed by each country. TPP’s negative list approach means that the agreement covers a much greater share of overall trade in services between the TPP parties.

Because existing U.S. FTAs also follow the negative list approach for services, overall there is little new liberalization contained in TPP vis-à-vis the six countries with which the United States has existing FTAs. There are a few specific instances, however, where TPP represents improved commitments from these partners, including reduced trade barriers in professional services (Mexico, Singapore, and Chile), media (Peru), and transportation services (Mexico). Nevertheless, most services sectors that were excluded from liberalization in existing FTAs remain excluded in TPP as well. These include air transport services and certain key industries, such as financial services and telecommunications, in which NCMs carve out exemptions.

Summary of Cross-border Trade in Services Provisions

The provisions of TPP’s Cross-Border Trade in Services chapter cover a range of issues, including the supply of a service (i.e., market access), movement of payments, restrictions on the service provider’s location, and access to distribution networks. This chapter applies only to services supplied across borders (mode 1), where a service is supplied by a firm in one country to another firm or individual consumer located in another. It does not apply to services supplied through commercial presence (mode 3, or sales and purchases through foreign affiliates).

Provisions on market access allow firms in TPP member countries to supply services in the way they choose without facing geographic or quantitative restrictions. The Cross-Border Trade in Services chapter also includes provisions on market access covering transparency in licensing requirements (Article 10.8), movement of payments and transfers across borders (Article 10.12), and the recognition of qualifications (Article 10.9). At the same time, the chapter allows parties the ability to deny benefits to services suppliers owned by parties in non-TPP member countries. Further, the chapter contains a ratchet mechanism that incorporates any additional autonomous liberalizations by a party (that is, liberalizations made on a party’s own account after TPP enters into force) into TPP. This mechanism prevents TPP parties from revoking such changes later if services suppliers are using them to conduct business. (See table 5.4 for a complete list of provisions.)

Table 5.4: Cross-border services provisions

Provision	Meaning	Importance
National treatment (Art. 10.3)	Would prevent TPP members from treating foreign and domestic services (including trademarks, copyrights, and patents) differently once they have entered the market.	Would allow firms to conduct business in a TPP member country on an equal basis with other domestic firms in that country. Along with MFN treatment (see below), this provision is also enshrined in the GATS.
Most-favored-nation (MFN) treatment (Art. 10.4)	Would prohibit TPP members from discriminating between trading partners, with certain exceptions (such as FTAs).	Would allow TPP members to trade on an equal basis with other members.
Market access (Art. 10.5)	TPP members would not be able to impose limitations on the number of service suppliers, the value of services transactions, the number of services operations, or the number of citizens of a certain country who can be employed in the services sector.	Foreign firms are able to supply services in the manner they choose.
Local presence (Art. 10.6)	TPP members would not require service suppliers to establish a local entity, office, or affiliate, or be resident in a territory in order to supply services there.	Foreign firms are able to supply services from wherever they choose.
Domestic regulation (Art. 10.8)	Licensing requirements would not be used to restrict the supply of services. Licensing fees and criteria should be objective and transparent. TPP members should also have procedures in place to domestically assess the competency of foreign professionals in the services sector.	Obtaining licenses is often a barrier to supplying services in foreign countries.
Recognition (Art. 10.9)	Recognition of the qualifications of foreign services suppliers by one TPP member would not imply recognition by any other TPP member. However, recognition of qualifications should not be used as a means of discrimination.	Similar to licensing, obtaining recognition of qualifications in order to supply services can also be a barrier to trade, while the recognition of foreign qualifications allows foreign firms to compete on a level basis with domestic firms.
Denial of benefits (Art. 10.10)	Any TPP member would be able to deny benefits to a services supplier if that supplier is owned or controlled by a non-member country.	TPP members are not obligated to extend any TPP benefits to firms owned by non-TPP members (including shell companies).
Transparency (Art. 10.11)	TPP members would be encouraged to establish ways to deal with questions about regulations, and they should provide advance notice and opportunity for comment before regulations go into effect.	Transparency about regulations and their implementation is important to foreign firms and helps prevent discrimination against them.
Payments and transfers (Art. 10.12)	Payments and transfers should be permitted to move freely across borders, and to be made in a usable currency at market exchange rates, but parties may regulate transfers in a nondiscriminatory way.	This provision protects the ability to move funds across borders, which is essential to the operations of international businesses supplying services.
NCM ratchet mechanism (Annex 10-C)	If any TPP member autonomously liberalizes regulations or policies which allow foreign firms to supply services, that liberalization would become part of TPP and cannot be revoked later if firms of other TPP members are found to be using them to conduct business.	The ratchet mechanism provides certainty and predictability to firms which take advantage of new and more favorable regulations to conduct business in TPP members. Vietnam has a 3-year exception to this mechanism.

Source: USTR, TPP final text.

NCMs contained in annexes to the Cross-Border Trade in Services chapter permit TPP parties to exclude certain industries or practices from the provisions contained in the chapter, and these exclusions could be significant. The impact of listed NCMs contained in the chapter varies by industry. The professional services, retail, and audiovisual services industries would benefit more from liberalization under TPP than the transportation and telecommunications industries, where countries have taken more NCMs.

NCMs with significant negative impacts on opportunities for U.S. services firms would include preferential treatment of local investment and ownership in Malaysia (affecting almost all industries), market access restrictions in transportation services in Canada and Mexico, and restrictions on national treatment and market access in telecommunications in a majority of TPP countries. NCMs involving local-presence requirements, residency restrictions, and restrictions on the recognition of foreign qualifications also exist for certain professional services, retail, and audiovisual services, but have a smaller impact on the chapter's trade-liberalizing provisions. See appendix E for a full list of each TPP party's NCMs.

TPP Cross-cutting Provisions That Impact Services

In addition to the chapters of the TPP Agreement that specifically address services, as discussed above, the agreement includes a number of chapters concerning regulatory provisions that apply to all industries, but that have a significant effect on services firms. These include chapters on investment, government procurement, state-owned enterprises (SOEs), regulatory coherence, and intellectual property.[683] The groundbreaking chapter on e-commerce is particularly important for services firms, and is addressed in more detail later in this chapter of the report.

The provisions of the Investment chapter (TPP Chapter 9) are particularly important for services trade, because so much of that trade is carried out through sales by foreign-owned affiliates in local markets (so-called mode 3 trade under the WTO GATS). While the provisions of the Cross-Border Trade in Services chapter shape the rules for services trade across borders (called mode 1 trade under the WTO GATS), sales through affiliates are generally governed by the provisions of the Investment chapter. A notable exception is affiliate sales related to financial services, which are covered by the provisions of the Financial Services chapter (TPP Chapter 11).

The TPP chapter on government procurement is also relevant to services trade, as it covers certain government contracts and governmental entities, and requires signatories to give foreign bidders the same treatment given to domestic bidders. Construction, architecture and engineering services, and information and communications technology (ICT) services are

[683] These chapters are discussed in more detail in chapter 6 of this report.

particularly affected by procurement rules. (Notably, the TPP's government procurement rules exclude services in finance and transportation, as well as those related to water and national security.) U.S. services providers frequently compete with SOEs, particularly in energy-related services, telecommunications, financial intermediation, and audiovisual services. TPP would impose new disciplines on SOEs, requiring them to act on a more commercial basis and limiting government subsidies, thereby providing more equal access for U.S. competitors.

The Regulatory Coherence chapter (TPP Chapter 25) would create coordination and review processes that would let parties review and jointly develop regulations. These measures are likely to help increase trade in services because regulations are particularly apt to limit such trade, especially in financial, education, and health services. In these sectors, opinions about the best principles for domestic regulation often differ significantly; measures in TPP that would encourage parties to adopt widely recognized best practices in designing and implementing regulations are seen as helpful.[684]

The protection of intellectual property rights is particularly relevant to several services sectors. It is especially important for audiovisual services (a broad field that includes film and TV programming, book publishing and sound recording, and broadcasting and recording of live events) and computer and software services. TPP's Intellectual Property chapter would raise the level of copyright protection and enforcement for U.S. audiovisual services providers and software services providers in the region.

One particular horizontal issue addressed in TPP has gained significant public attention: the treatment of e-commerce, and specifically cross-border data flows.[685] Industry representatives note that the provisions enabling businesses to transfer data across borders and prohibiting TPP partner governments from introducing data localization requirements are likely to represent one of the most important advances for trade liberalization in TPP.[686] The provisions contained in the E-commerce chapter are described more fully in the section on e-commerce and digital trade below.

[684] USITC, hearing transcript, January 14, 2016, 266 (testimony of Peter Allgeier, Coalition of Services Industries).
[685] Ibid., 264–6.
[686] Ibid., 263 and 267.

Value of Codifying Existing Practice and Policy

The TPP Agreement would improve the environment for trade in services overall, even though many of the commitments of TPP partners are not liberalized beyond existing policies and regulations already in force. Countries often find it economically beneficial and politically acceptable to have open services sectors, even when they have not made international commitments to openness. As a result, many countries have liberalized their services markets far beyond their commitments in trade agreements, leaving a gap between their de jure and de facto policy environments. See box 5.1 for a comparison of these two benchmarks for assessing TPP's commitments in professional services.

Box 5.1: Assessing Liberalization from TPP in the Professional Services Sector

The Commission has assessed liberalization in services sectors by comparing provisions in the TPP to those in previous FTAs. Another way of assessing liberalization is to compare TPP commitments to current domestic regulatory policy. Since agreements tend to codify existing regulations,[a] this alternate method would be expected to reflect less liberalization than a comparison of TPP with prior agreements.

However, some instances of liberalization which appear related to trade agreements may not be captured by this alternate method. For example, in the case of Malaysia, recent changes in legal services liberalization (implemented in 2014) allow foreign law firms to establish in Malaysia and allow foreign lawyers to practice in permitted areas of Malaysian law.[b] These changes appear to be confirmed in TPP.[c]

[a] A summary of the Roundtable discussion will be included in the forthcoming USITC publication, *Recent Trends in U.S. Services Trade, 2016 Annual Report*, which is scheduled for release in September 2016.
[b] Malaysian Bar, "Liberalisation of Legal Services," April 27, 2015.
[c] See annex E for Malaysia's NCMs related to legal services.

While it is not possible to quantify this effect, reducing the gap between de jure and de facto policies, even with commitments that fall short of the de facto level of liberalization, has value because it reduces uncertainty for market participants. Investors face less risk that in the future, governments will backslide and re-impose discriminatory policies, either in the form of significant protectionist actions or as small adjustments in regulation. Limão and Maggi, for example, present evidence that trade policy volatility, and not just the level of trade restrictiveness, decreases after countries sign trade agreements.[687]

[687] Limão and Maggi, "Uncertainty in Trade Agreements," 2013; Hallward-Driemeier and Pritchett, "How Business Is Done," 2011. Researchers who have compared de jure and de facto policy environments find large gaps. Hallward-Driemeier and Pritchett compared the World Bank's "Doing Business" measures (which assess regulatory conditions) with the World Bank's Enterprise Surveys (which ask firms to report their actual operating experiences). They found large discrepancies: for example, across all countries the median de jure time to obtain a construction permit was 210 days, but the median de facto time was only 59 days.

Summary of Views of Interested Parties

Assessments of TPP's likely impact by representatives of U.S. services industries have been broadly positive. A representative of the Coalition of Services Industries stated that TPP would offer market access commitments for firms providing e-commerce and online media as well as express delivery services. The representative remarked, however, that issues remain concerning remaining restrictions related to data localization, national treatment, and market access for financial services, as well as NCMs on investment in Malaysia.[688] E-commerce commitments were also noted as being particularly important for small and medium-sized enterprises.[689] Another industry representative stated that TPP will provide solid gains in professional services, audiovisual services, and certain financial services, though it will not prevent countries from intervening in reinsurance.[690] However, a representative from the American Insurance Association maintained that TPP would create significant market access for U.S. property and casualty insurers, particularly in countries in Asia that currently have low insurance penetration, and that the agreement would also limit the competitive advantages enjoyed by Japan's state-owned postal service in supplying insurance.[691]

Several industry representatives noted the connection between improved market access for services and increased trade in goods, with services such as research and development and maintenance embedded in the supply chains for producing pharmaceuticals, semiconductors, and aircraft engines.[692] Others, however, highlighted the distributional effects of TPP, contending that even if the agreement generates small increases in employment in services industries, these would not offset the larger job losses projected for manufacturing, given that the provision of services is relatively less labor intensive.[693]

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[688] USITC, hearing transcript, January 13, 2016, 264–68 (testimony of Peter Allgeier, Coalition of Services Industries).
[689] USITC, hearing transcript, January 15, 2016, 835 (testimony of Linda Schmid, Trade in Services International).
[690] USITC, hearing transcript, January 14, 2016, 645–47 (testimony of Bob Vastine, Center for Business and Public Policy, Georgetown University).
[691] USITC, hearing transcript, January 13, 2016, 270–73 (testimony of Stephen Simchak, American Insurance Association).
[692] USITC, hearing transcript, January 13, 2016, 208 (testimony of James Fatheree, U.S.-Japan Business Council); USITC, hearing transcript, January 14, 2016, 516 (testimony of C. Devi Bengfort Keller, Semiconductor Industry Association); USITC, hearing transcript, January 14, 2016, 584 (testimony of Karan Bhatia, GE).
[693] USITC, hearing transcript, January 15, 2016, 835 (testimony of Robert Scott, Economic Policy Institute); USITC, hearing transcript, January 15, 2016, 901–05 (testimony of John Hansen, Americans Backing a Competitive Dollar - Now!).

Impact of TPP on Services

The Commission's model provides a baseline projection of the global economy through 2032, together with a projection of the incremental impact of TPP policy changes on U.S. exports, imports, national output, and employment in each industry sector. According to the Commission's model projections, U.S. output of services would be higher with implementation of TPP—services output would exceed baseline projections by $42.3 billion, or 0.1 percent—with higher output seen in nearly all services sectors (except transportation, logistics, travel, and tourism). However, with increased demand for U.S. exports from TPP partner markets where barriers to services imports would be lowered, total demand for U.S. services is likely to increase faster than output, implying that U.S. services imports would likely rise more than exports, worsening U.S. net exports in services with the world.[694]

Of course, these projections for U.S. cross-border exports and imports of services do not refer to the additional trade effects from TPP on the level of U.S. foreign affiliate sales in other TPP markets and the level of foreign-owned affiliates' sales in the United States, which are likely to be positive. TPP's impact on investment and commercial presence is likely to be significant in many services sectors. TPP partners would agree to reduce investment restrictions and to improve the business environment, with such commitments as those enabling cross-border data flows and those leveling the playing field with local SOEs. The Commission's model takes into account the changes in investment restrictions embodied in the agreement in its projections for changes in output and employment, but does not model the detailed effects of TPP provisions on foreign affiliate sales.

According to Commission model estimates, under TPP, U.S. exports of services to TPP partner markets would be $16.6 billion higher than the baseline projections for 2032, as a result of increased market access abroad. This positive trade impact is likely to be partially offset by lower services exports of $11.8 billion to non-TPP parties upon implementation of the agreement, relative to baseline projections, as trade is diverted from non-TPP markets (table 5.5).

At the same time, services imports from TPP partners are estimated to be $2.1 billion higher, relative to baseline, as certain TPP partners experience productivity gains that translate into

[694] As discussed in chapter 2, the modeling analysis begins by generating a projection of the global economy through 2032, with detailed forecasts for the 12 countries in the TPP, including the United States, and major non-TPP trading partners. This projection provides a baseline against which the effects of policy changes from the TPP Agreement can be compared. The modeling includes three types of liberalization: removing or reducing tariffs and tariff-rate quotas (TRQs), removing certain nontariff measures on goods and on traded (cross-border) services, and investment liberalizations that improve market access for U.S.-owned foreign affiliates. The maximum trade deficit modeling condition implies that a large increase in net exports to TPP partners will be partially offset by a large decrease in net exports with respect to trading partners in the rest of the world.

more efficient supply of services. As the United States is already relatively open to services imports, TPP would represent relatively limited additional liberalization. The increase in U.S. demand for services imports that would arise from higher levels of output and exports would likely be met by the United States' currently important trading partners, such as the EU. The Commission's model therefore estimates that imports from non-TPP countries are likely to be $4.9 billion above baseline projections (table 5.6).

Total U.S. net exports of services to TPP partners are therefore estimated to be $14.5 billion above the baseline level, but total U.S. net exports of services globally are expected to be $2.2 billion below baseline projections, owing to lower U.S. net exports to the rest of the world of $16.7 billion relative to baseline (table 5.7). These estimates take into account trade diversion and substitution effects, as well as changes in relative income and activity levels in country markets.

Table 5.5: Estimated effects of TPP on U.S. services exports: Changes relative to baseline in 2032

Sector	All TPP		NAFTA partners		Existing FTA partners		New FTA partners		Rest of the world		All countries	
	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent
Services	16,566.9	10.8	2,956.2	5.2	1,667.1	5.2	11,943.6	18.6	-11,769.5	-1.9	4,797.4	0.6
Selected industry sectors												
Wholesale and retail trade	1,402.5	15.6	508.5	11.8	184.4	9.5	709.6	25.8	-553.8	-2.2	848.7	2.5
Transportation, logistics, travel, and tourism	-51.4	-0.2	-76.8	-0.9	-29.7	-0.5	55.1	0.7	-1,206.9	-1.3	-1,258.4	-1.1
Communications	1,391.5	25.2	416.9	20.8	237.3	12.4	737.4	46.4	-513.8	-2.0	877.7	2.8
Financial services n.e.c.	1,008.9	8.3	-19.2	-0.4	-25.0	-1.0	1,053.1	24.6	-1,020.9	-2.0	-12.1	0.0
Insurance	564.3	4.6	-23.8	-0.3	-16.4	-1.1	604.4	15.9	-529.9	-1.9	34.4	0.1
Business services	9,520.1	20.7	1,346.7	15.3	857.0	9.5	7,316.4	26.0	-4,944.6	-2.0	4,575.5	1.6
Recreational and other services	-96.7	-0.7	-53.5	-0.8	-37.5	-1.5	-5.7	-0.1	-591.2	-1.8	-687.8	-1.5

Source: USITC estimates.

Notes: Dollar values are in 2017 prices. N.e.c. = not elsewhere classified. The services industries which are addressed in detail later in this chapter do not track clearly to the model results presented above. The reason is that the services sectors defined in the GTAP database often aggregate several industries, while some services industries are spread among several GTAP categories. Electronic commerce is relevant to almost all GTAP services sectors. Computer services are mostly included in the GTAP business services category, but Internet service providers are included in the GTAP communications category, as are telecommunications. Except for insurance and pension funding, all financial services are included in GTAP's financial services n.e.c. category. Professional services (engineering, legal, etc.) are included in the broad business services category. Express delivery services are mostly found in the transportation, logistics, travel, and tourism category, although courier services are included in the communications category. While broadcasting falls within the communications category, other audiovisual services are included in the recreational and other services category.

Table 5.6: Estimated effects of TPP on U.S. services imports: Changes relative to baseline in 2032

Sector	All TPP		NAFTA partners		Existing FTA partners		New FTA partners		Rest of the world		All countries	
	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent
Services	2,070.7	2.5	2,058.7	4.9	-150.9	-0.7	162.9	0.8	4,891.8	1.0	6,962.5	1.2
Selected industry sectors												
Wholesale and retail trade	7.6	0.1	-21.8	-0.7	1.8	0.2	27.6	2.1	534.8	1.3	542.4	1.2
Transportation, logistics, travel, and tourism	2,137.8	11.6	2,255.6	23.2	-74.0	-1.6	-43.8	-1.0	-367.3	-0.4	1,770.5	1.5
Communications	50.0	1.4	-10.3	-0.6	-0.8	-0.1	61.2	7.3	256.4	1.1	306.4	1.2
Financial services n.e.c.	-70.1	-0.8	-40.4	-1.0	-49.3	-1.7	19.6	0.9	857.9	1.4	787.8	1.1
Insurance	-45.2	-0.5	-30.0	-0.5	-9.3	-0.7	-5.9	-0.3	748.7	1.3	703.5	1.1
Business services	27.9	0.1	-16.6	-0.2	-21.1	-0.3	65.6	1.4	2,003.6	1.3	2,031.5	1.2
Recreational and other services	-24.4	-0.5	-28.1	-0.8	10.7	1.4	-7.0	-0.9	223.7	1.4	199.3	0.9

Source: USITC estimates.

Notes: Dollar values are in 2017 prices. N.e.c. = not elsewhere classified. The services industries which are addressed in detail later in this chapter do not track clearly to the model results presented above. The reason is that the services sectors defined in the GTAP database often aggregate several industries, while some services industries are spread among several GTAP categories. Electronic commerce is relevant to almost all GTAP services sectors. Computer services are mostly included in the GTAP business services category, but Internet service providers are included in the GTAP communications category, as are telecommunications. Except for insurance and pension funding, all financial services are included in GTAP's financial services n.e.c. category. Professional services (engineering, legal, etc.) are included in the broad business services category. Express delivery services are mostly found in the transportation, logistics, travel, and tourism category, although courier services are included in the communications category. While broadcasting falls within the communications category, other audiovisual services are included in the recreational and other services category.

Table 5.7: Estimated effects of TPP on net U.S. services exports: Changes relative to baseline in 2032

Sector	All TPP		NAFTA partners		Existing FTA partners		New FTA partners		Rest of the world		All countries	
	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent	Million $	Percent
Services	14,496.2	20.5	897.5	6.0	1,818.0	15.8	11,780.7	26.5	-16,661.3	-14.0	-2,165.1	-1.1
Selected industry sectors												
Wholesale and retail trade	1,394.9	36.0	530.3	39.3	182.7	16.4	682.0	48.1	-1,088.6	-6.6	306.3	2.4
Transportation, logistics, travel, and tourism	-2,189.3	-50.3	-2,332.4	-307.4	44.2	3.8	98.9	2.5	-839.6	-11.1	-3,028.9	-94.2
Communications	1,341.5	73.3	427.2	268.1	238.1	25.9	676.2	90.0	-770.2	-20.6	571.3	10.2
Financial services n.e.c.	1,078.9	35.4	21.1	1.4	24.3	4.4	1,033.4	50.3	-1,878.8	-18.2	-799.9	-11.0
Insurance	609.4	24.6	6.2	1.6	-7.1	-2.5	610.4	33.8	-1,278.6	-4.5	-669.2	-2.6
Business services	9,492.2	39.6	1,363.3	123.9	878.1	59.2	7,250.8	30.8	-6,948.3	-7.3	2,544.0	2.1
Recreational and other services	-72.2	-0.8	-25.4	-0.8	-48.2	-2.7	1.3	0.0	-814.9	-5.0	-887.2	-3.6

Source: USITC estimates.

Notes: Dollar values are in 2017 prices. N.e.c. = not elsewhere classified. The services industries which are addressed in detail later in this chapter do not track clearly to the model results presented above. The reason is that the services sectors defined in the GTAP database often aggregate several industries, while some services industries are spread among several GTAP categories. Electronic commerce is relevant to almost all GTAP services sectors. Computer services are mostly included in the GTAP business services category, but Internet service providers are included in the GTAP communications category, as are telecommunications. Except for insurance and pension funding, all financial services are included in GTAP’s financial services n.e.c. category. Professional services (engineering, legal, etc.) are included in the broad business services category. Express delivery services are mostly found in the transportation, logistics, travel, and tourism category, although courier services are included in the communications category. While broadcasting falls within the communications category, other audiovisual services are included in the recreational and other services category.

As a result of TPP, U.S. output and employment in services are projected to exceed the baseline level by a small percentage by 2032 (0.1 percent, as shown in table 5.8), although the size of the U.S. services sector means that this represents a large amount in dollar terms. Despite the global competitiveness of the U.S. services industries, the estimated effects on output and employment are small in percentage terms for several reasons. First, international trade in services is small relative to the total revenues of the U.S. services sectors. Second, as resources move into goods industries (particularly food and agriculture), where the TPP liberalization is greater, this increases the input costs of the services industries. As a result, output and employment in sectors with relatively less liberalization in TPP, such as the transportation sectors, may decline or experience only modest growth. Exports in two services sectors shown in the table: transportation, logistics, travel and tourism; and recreational and other services would be lower than the baseline under TPP; these are sectors that would not experience significant liberalization under TPP, so the model assumes that economic resources would shift away from them, towards sectors that would be liberalized under the agreement.

Table 5.8: Estimated effects of TPP on U.S. services output, employment, and trade: Changes relative to baseline in 2032

	Exports		Imports		Output		Employment
	Million $	Percent	Million $	Percent	Million $	Percent	Percent
Services	4,797.4	0.6	6,962.5	1.2	42,342.6	0.1	0.1
Selected industry sectors							
Wholesale and retail trade	848.7	2.5	542.4	1.2	7,447.5	0.1	0.1
Transportation, logistics, travel, and tourism	-1,258.4	-1.1	1,770.5	1.5	-719.9	0.0	-0.1
Communications	877.7	2.8	306.4	1.2	2,845.6	0.2	0.1
Financial services n.e.c.	-12.1	0.0	787.8	1.1	1,520.0	0.1	0.1
Insurance	34.4	0.1	703.5	1.1	707.9	0.1	0.0
Business services	4,575.5	1.6	2,031.5	1.2	11,576.0	0.2	0.1
Recreational and other services	-687.8	-1.5	199.3	0.9	1,749.8	0.1	0.1

Source: USITC estimates.

Notes: Dollar values are in 2017 prices. N.e.c. = not elsewhere classified. The services industries which are addressed in detail later in this chapter do not track clearly to the model results presented above. The reason is that the services sectors defined in the GTAP database often aggregate several industries, while some services industries are spread among several GTAP categories. Electronic commerce is relevant to almost all GTAP services sectors. Computer services are mostly included in the GTAP business services category, but Internet service providers are included in the GTAP communications category, as are telecommunications. Except for insurance and pension funding, all financial services are included in GTAP's financial services n.e.c. category. Professional services (engineering, legal, etc.) are included in the broad business services category. Express delivery services are mostly found in the transportation, logistics, travel, and tourism category, although courier services are included in the communications category. While broadcasting falls within the communications category, other audiovisual services are included in the recreational and other services category.

The estimated effects on individual services sectors are mixed. For example, the combined transportation, logistics, travel, and tourism sector is projected to see a slightly lower level of employment relative to the 2032 baseline, partially because TPP does not liberalize several segments in this sector (air transportation, for instance, is explicitly excluded from the agreement). At the same time, higher projections for U.S. national income imply higher U.S.

tourism abroad, which shows as an increase in imports for this sector. On the other hand, services liberalization in TPP would generate some positive effects on other U.S. services industries' output and employment. Output in the communications and the business services sectors is projected to improve slightly more than in other sectors, in reflection of these two sectors' greater sensitivity to the liberalization in the TPP's e-commerce provisions. U.S. services providers would face fewer barriers to entering new markets, and would likely increase exports in the services where the United States has a strong competitive advantage, such as cloud computing services or express delivery services.[695] Gains within these more narrowly defined industries may be substantially higher than in the more aggregated sectors available in the Commission's model.

Figures 5.7 and 5.8 illustrate Commission estimates for the reductions in trade costs from TPP liberalization for particular services sectors and TPP markets.[696] The largest reductions in trade costs are estimated for communications and for other business services, reflecting the heavy use of digital technologies in these sectors, as well as certain specific commitments to liberalize in professional services. Financial services and retail and wholesale distribution services also will experience lower trade costs, but to a lesser extent: these sectors are somewhat less digitally intense than the other two, and TPP contains weaker provisions on the prohibition of data localization in the case of financial services, a weakness potentially costly to that sector. The transportation sectors' trade costs would not be lowered significantly by the TPP Agreement, although certain subsectors, such as express delivery, would see a tangible benefit, especially from the agreement's provisions on e-commerce.

Costs of services trade with individual TPP partners vary widely, depending on their overall degree of openness to the foreign provision of services, but the TPP Agreement would lower costs of trade with each partner at least to some degree (see figure 5.8). U.S. services exporters to the countries with no existing U.S. FTA would see a significant benefit from TPP, with a reduction of trade costs by around one-third. Services exporters to Mexico would also see trade costs fall significantly, by 22 percent, as the TPP liberalization starts from a baseline in which trade costs are relatively high.

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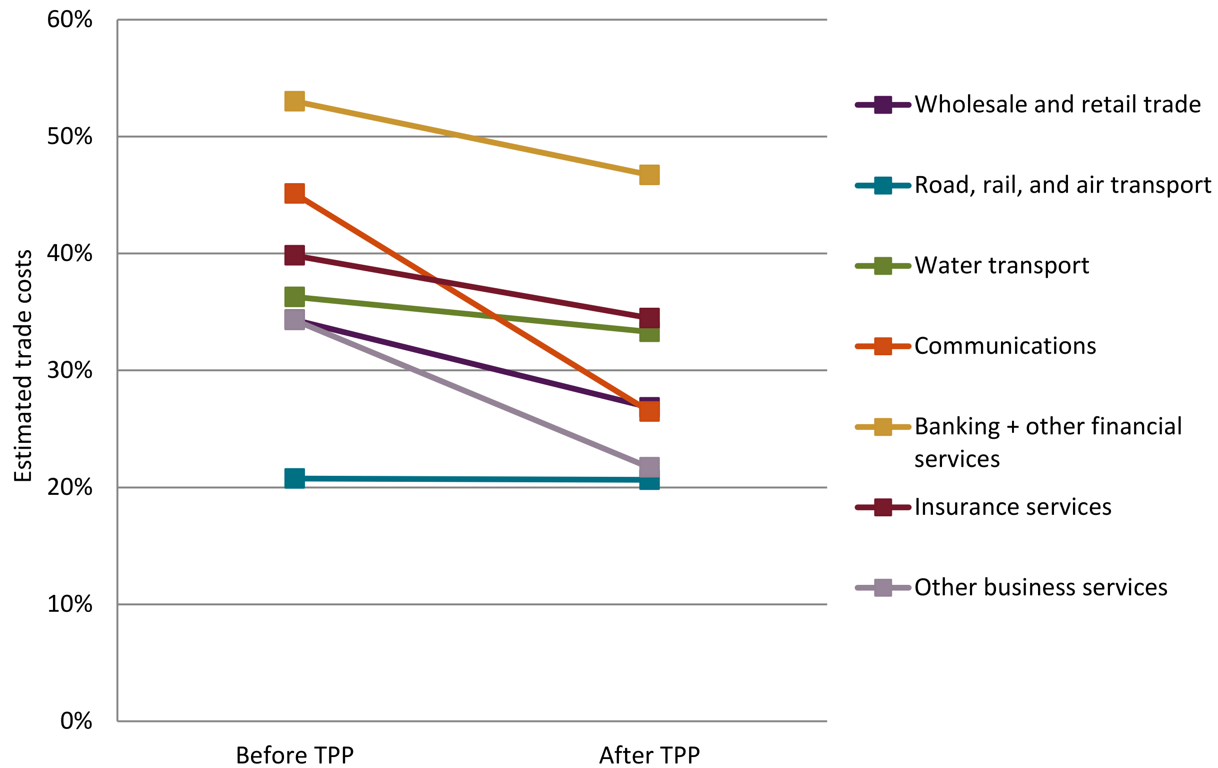
[695] USITC, hearing transcript, January 14, 2016, 263, 267 (testimony of Peter Allgeier, Coalition of Services Industries); USITC, hearing transcript, January 14, 2016, 281 (testimony of Christopher A. Padilla, IBM Corporation); Frankel, "Congress Should Give TPP a Thumbs Up," *Boston Globe*, November 11, 2015. Market-access provisions for services are found in TPP's Chapter 10, Cross-Border Trade in Services (CBTS), Chapter 11, Financial Services, and to a limited extent in Chapter 13, Telecommunication Services. National treatment provisions related to services firms established abroad are included in TPP's Chapter 9, Investment, and in both the financial services and telecommunications chapters. Other chapters that have strong impacts on trade in services include the chapters that address e-commerce, state-owned enterprises, intellectual property, government procurement, and regulatory coherence.

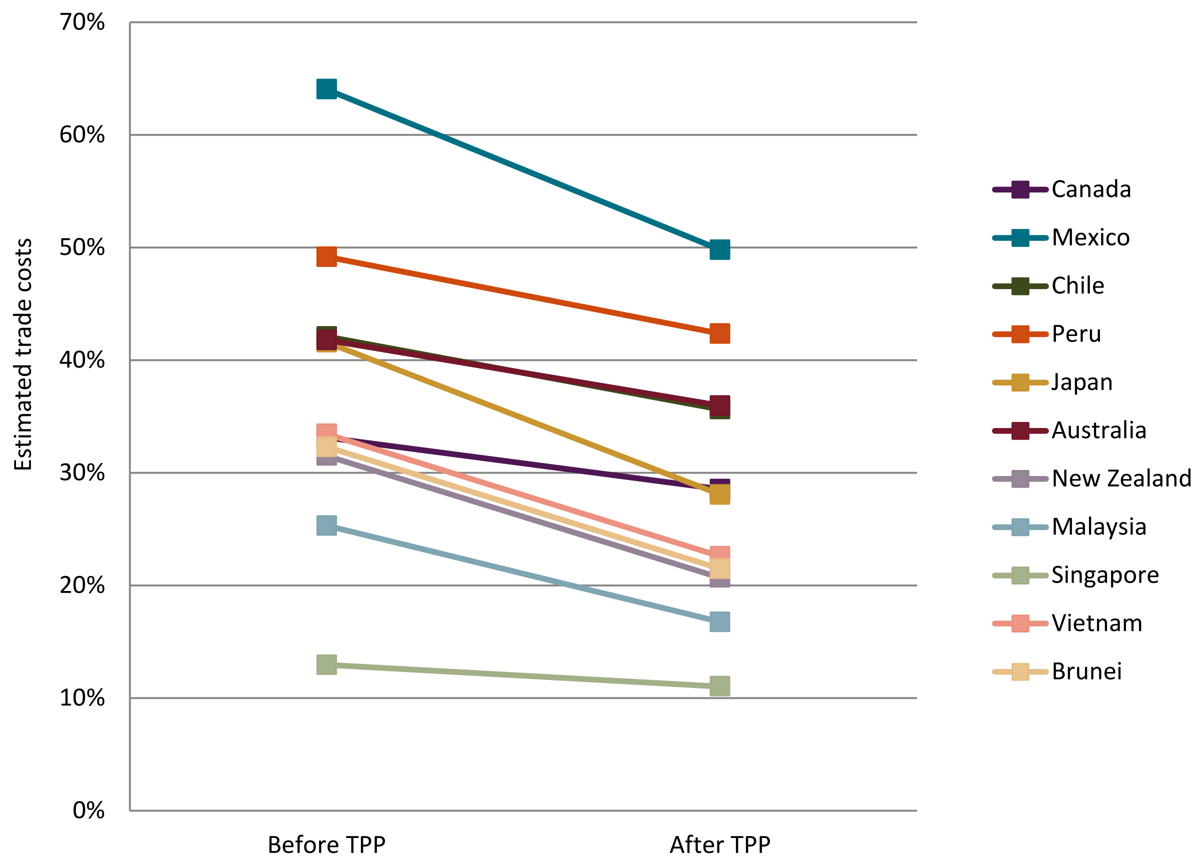
[696] These were assumed in the Commission's CGE model simulation, along with changes in trade costs for goods and reduced restrictions on foreign investment. See appendix G for more on the trade data and modeling methodology of reductions in services trade costs.

Figure 5.7: How TPP reduces the trade costs faced by U.S. services exporters, by services industry



Source: USITC estimates. Corresponds to appendix table J.22.
Note: This illustration refers to the trade costs faced by U.S. services exporters in the sectors listed with regard to their exports to TPP partner markets. These estimated ad valorem costs (defined as tariff equivalents) measure the magnitude of additional costs (relative to the cost of domestic sales) associated with cross-border services exports from the United States to its 11 TPP partners, by broad services sector. (See appendix G for more detail on the Commission's approach to estimating changes in trade costs.)

Figure 5.8: How TPP reduces the trade costs faced by U.S. services exporters, by TPP partners



Source: USITC estimates. Corresponds to appendix table J.23.
Note: This illustration refers to the trade costs faced by U.S. services exporters in all sectors with regard to their exports to individual TPP partner markets. These estimated ad valorem costs (defined as tariff equivalents) measure the magnitude of additional costs (relative to the cost of domestic sales) associated with cross-border services exports for all sectors combined, by TPP partner country. (See appendix G for more detail on the Commission's approach to estimated changes in trade costs.)

Sector-specific Analysis

TPP would provide significantly improved market access for U.S. services firms in the five countries that do not have an FTA with the United States. In each of these countries, liberalization is concentrated in one or two sectors: professional services (Brunei and Malaysia), media (Malaysia), telecommunications (New Zealand), and retail (Brunei and Vietnam). More detailed analysis of TPP’s impact on specific U.S. services sectors is provided below. The sectors discussed include those that are likely to be significantly impacted because they are important sectors for U.S. services trade and are sectors in which TPP introduces significant liberalization of trade, at least with certain TPP partners.

In addition to the broad Cross-Border Trade in Services chapter, TPP includes chapters dedicated to e-commerce, financial services, and telecommunications services, because these services sectors play an important role in both services trade itself and in enabling goods trade. This chapter of the report describes TPP's potential impact on digital trade and computer services (affected particularly by the TPP E-commerce chapter), financial services (where some important new commitments have been made by TPP partners), professional services (where several TPP partners have lowered barriers), audiovisual services (where U.S. firms are likely to see improved market access), express delivery services (important for facilitating trade in time-sensitive goods and cross-border e-commerce sales), and telecommunications services (where enterprise services represent an important new opportunity). Also, the short case study on retail services highlights how TPP's provisions for goods trade, as well as those for services trade, would have a large impact (box 5.2).

Box 5.2: TPP Is Expected to Assist Trade in Retail Services

The TPP countries represent an enormous market for U.S. retail services, with TPP economies representing 36 percent of global GDP and over 800 million consumers. Although there is no specific retail chapter in the TPP Agreement, retail services benefit from a wide variety of measures distributed throughout the agreement, addressing many existing and potential barriers for retailers. Key provisions include (1) tariff reductions and eliminations, (2) e-commerce and customs facilitation measures, and (3) strengthened foreign investment laws. Likely beneficiaries range from the largest U.S. retail multinationals, such as Walmart and Amazon, to small and medium-sized enterprises (SMEs) and Internet-based microenterprises that increasingly operate internationally through online platforms such as eBay and Etsy.

Lower tariffs and an improved rules-of-origin system were key aims of the U.S. retail industry in TPP negotiations.[a] Reduced tariffs on industrial and agricultural products would likely lower supply chain costs for U. S. retailers marketing in the United States and in TPP markets. For example, in Japan, tariffs would be reduced on U.S.-produced beef, dairy products, and processed foods, which would lower input costs and increase sales for U.S. retailers operating in that country.[b] Moreover, many TPP participants are also key suppliers to U.S. retailers; Vietnam, for example, is the second leading U.S. supplier of footwear and apparel products (after China). Consequently, tariff reductions on textile and apparel products would likely lower the costs on these goods produced in Vietnam and other TPP suppliers, thereby lowering costs for U.S. retailers and consumers in the United States and other TPP markets.[c]

E-commerce, the fastest-growing segment in U.S. and global retail services, is prominently featured in TPP. The agreement's e-commerce provisions, including ensuring the free flow of data and prohibitions against forced localization,[d] would likely assist U.S. online retailers and suppliers, including SMEs and microenterprises that use the Internet as an integral platform to connect with international customers and vendors. Other e-commerce provisions that facilitate retail trade relate to electronic customs forms, signatures, authentication, and payment; these would also likely fuel increased e-commerce growth between U.S. retailers and customers in TPP partner countries.

In addition, TPP addresses significant barriers that disproportionately affect SME retail exporters. Such barriers include security concerns by international shoppers with respect to their payment information, and privacy protections. TPP would establish legal frameworks to facilitate electronic payments transactions, protect personal information, and facilitate cooperation on fraud and spam.[e] Such measures would boost confidence in retailers' international transactions. In addition, TPP addresses customs barriers that raise supply chain costs for U.S. retailers. TPP customs provisions would simplify and smooth customs and border procedures, including customs processing related to express shipments, and would promote the advanced electronic submission of customs documentation.[f]

TPP would strengthen investment laws, deter discriminatory requirements, and ensure that U.S. retail investors have access to dispute settlement mechanisms, likely promoting U.S. retail investment in TPP markets.[g] According to one large U.S. multinational retailer, TPP would provide greater investment certainty. As a result, although barriers to U.S. retail investment in most TPP countries are relatively low,[h] the agreement is expected to promote increased investment in certain participant countries, including fast-growing developing economies in the Asia-Pacific region. For example, Vietnam, a key growth market for U.S. retailers, would eliminate an economic needs test for foreign retail stores of over 500 square meters after five years, which would increase certainty for U.S. investors and would serve as a template for other countries in future negotiations.[i]

[a] NRF, "NRF Applauds Bipartisan Senate Letter," May 1, 2012; RILA, "Retailers Applaud," February 25, 2014. For additional discussion of rules of origin in TPP, see chapter 4.
[b] USITC, hearing transcript, January 14, 2016, 291–92 (testimony of Sarah Thorn, Walmart).
[c] AAFA, "Apparel and Footwear Association Releases Statement," February 1, 2016; Thorn, written testimony to the USITC, December 29, 2015.
[d] Data localization measures are laws or regulations requiring firms to locate data and/or computing facilities within a country's borders as a condition of doing business in that country. For additional information on localization, see the e-commerce discussion later in this chapter.
[e] E-Commerce Chapter, Articles 14.8 and 14.5.
[f] See the discussion of the Customs and Express Delivery sections for an analysis of TPP customs provisions. Cummins Inc., written submission to the USITC, February 14, 2016.
[g] USTR, "Chapter 9, Investment: Chapter Summary," November 5, 2015.
[h] The World Bank STRI database indicates that only a few TPP countries restrict investment in retail services, and those countries have relatively low STRI scores.
[i] Thorn, written testimony to the USITC, December 29, 2015; USITC hearing transcript, January 14, 2016, 293 (testimony of Sarah Thorn, Walmart).

Digital Trade and Computer Services

Assessment

TPP's provisions bearing on digital trade and Internet-based commerce,[697] areas in which the United States has strong competitive advantages, are more wide-ranging than in any previous U.S. FTA. According to many observers, TPP's e-commerce and other digital trade-related provisions are the most transformative measures in the agreement.[698] The E-commerce chapter provides a broad framework for digital trade and serves as a template for future U.S. and global trade agreements. This is especially true when this chapter is combined with other TPP

[697] Provisions in TPP Chapter 14, "Electronic Commerce," apply to measures "that affect trade by electronic means." This broadly includes transmissions of data, information, and digital products over the Internet or over private electronic networks. Such transmissions by financial services firms are excluded from coverage under this TPP chapter.
[698] USITC, hearing transcript, January 13, 2016, 275-76 (testimony of Ed Brzytwa, Information Technology Industry Council); 280-81 (testimony of Christopher Padilla, IBM); 299 (testimony of Carl Schonander, Software & Information Industry Association); 142-43 (testimony of Alan Wolff, National Foreign Trade Council).

chapters, including Cross-Border Trade in Services, Intellectual Property, Investment, and Customs and Trade Facilitation. The e-commerce provisions will therefore likely have a positive economic impact on a wide array of U.S. businesses, from large multinational corporations to SMEs, and across a broad range of U.S. economic sectors.

For computer services firms in particular, the provisions of the E-commerce chapter would provide U.S. firms with levels of market access, national treatment, and regulatory transparency that generally exceed those afforded by parties' commitments under the GATS and other existing U.S. FTAs.[699] Exports of computer services would be expected to increase in the long term, especially to the five countries that do not have existing U.S. FTAs.[700]

Underscoring the potential importance of the new TPP provisions is the proliferation of both tariff and nontariff barriers to computer services trade around the world, with many countries enacting laws that block the free flow of information. Since 2008, governments of the 11 TPP parties have erected 10 measures that have had an impact on U.S. exports of computer services.[701] These measures pertain to government procurement, local-content requirements, restrictions on cross-border data transfers of personal information, in-country data center requirements, permission for full inspection, and import licenses for hybrid ICT products.[702] TPP would address such measures in TPP Chapter 29 (Exceptions) and in the provisions of the E-commerce chapter (TPP Chapter 14).

Discouraging future barriers among the TPP parties is critically important, as these relatively recent and rapidly evolving technologies are creating new kinds of services, as well as enabling, for the first time, international trade in existing services.[703] Services increasingly provided

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[699] Computer services include hardware- and software-related services; data processing services; customized software and related use licenses; non-customized software with a periodic license fee; and software downloaded or otherwise electronically delivered. Cross-border transactions in non-customized packaged software with a license for perpetual use are computer goods. BEA, DOC, International Transactions tables (accessed February 18, 2016).

[700] These countries—Brunei, Japan, Malaysia, New Zealand, and Vietnam—would switch to a "negative list" schedule of services commitments, which would contribute to improved market access. As discussed, for rapidly evolving computer services, a "negative list" approach will lead to greater gains over time, as it automatically captures liberalizing changes to laws and regulations, provides greater transparency, and reduces transaction costs.

[701] According to Global Trade Alert, these measures affected trade with all relevant trading partners, including the United States. In addition, the United States itself implemented four measures that affected imports of computer services from other countries. Examples include "Buy America" provisions (Pub. L. No. 111-147 (2010) and a tax on foreign procurement of goods and services by the federal government enacted in 2011 (Pub. L. No. 111-347). Global Trade Alert tracks imposition of 25 types of trade impediments in this sector, ranging from import bans to technology transfer requirements and local content requirements. Global Trade Alert website, http://www.globaltradealert.org/ (accessed February 17, 2016).

[702] In June 2015, the Malaysian government amended its Customs Act to require import licenses for hybrid ICT products, including devices with multiple features ranging from medical devices to computer products.

[703] Chander, "Robots, the Internet of Things," October 23, 2015, 5.

across TPP borders include abstract concepts such as thinking, analyzing, recommending, and remembering.[704] Christopher A. Padilla, representing IBM, testified that “computer systems can learn, they can reason and they can understand language and help us to analyze the floods of data that all the devices we all carry and that are in everything we use are generating.”[705]

Summary of Provisions

The TPP Electronic Commerce Chapter

TPP’s e-commerce provisions are intended to provide a framework for an open Internet and encourage electronic commerce. They seek to do so by ensuring the free flow of digital information and data among TPP partners and by prohibiting government requirements that data storage and use be restricted to a single country. These provisions address digital trade in all industries, including the digitally intensive computer services sector,[706] except financial services, which were specifically excepted. Key provisions include:

- *Cross-border data and information flows* (Article 14.11): Ensures that firms and individuals can transmit data freely across borders, unless there is a legitimate public policy objective.
- *Data and server localization measures* (Article 14.13): Prohibits governments from forcing businesses to set up computing and/or data storage facilities within their borders, subject to public interest regulations.[707]

The e-commerce chapter also covers a range of other provisions that facilitate digital transactions and trade, provide consumer protection and privacy, protect software, and promote cooperation. These other provisions cover:

- *Customs duties and other discriminatory measures* (Articles 14.3 and 14.4): Prohibits tariffs on digital goods, such as software, video, and music. Provides for nondiscriminatory treatment of digital products, and prohibits TPP countries from favoring domestic suppliers of digital goods and services.
- *Electronic customs forms, signatures, authentication, and payment* (Articles 14.5 and 14.6): Facilitates digital and physical trade of goods by encouraging paperless trading.
- *Software code* (Article 14.17): Constrains governments from requiring that software code be divulged as a condition for market access.

[704] Ibid., 6.
[705] USITC, hearing transcript, January 13, 2015, 281 (testimony of Christopher Padilla, IBM).
[706] A discussion of the impact of the TPP on U.S. computer services is discussed below, after the general discussion of the e-commerce provisions and impacts.
[707] Examples of such public interest regulations include preventing spam, protecting privacy, and combating cyber-crime. USTR, “Chapter 14, Electronic Commerce: Chapter Summary,” November 5, 2015.

- *Personal information protection* (Article 14.8): Requires adoption of legal frameworks to protect personal information.
- *Interconnection* (Article 14.2): Enables parties to negotiate with foreign suppliers of digital services on a commercial basis.
- *Spam* (Article 14.14): Adopts measures to prevent unsolicited email.
- *Cooperation* (Article 14.15): Commits parties to assist SME businesses in e-commerce, including sharing experiences with other parties on regulations, policies, and enforcement.
- *Cybersecurity* (Article 14.16): Builds capabilities and collaboration to counter Internet and e-commerce security threats.
- *Principles on access to and use of the Internet for electronic commerce* (Article 14.10): Recognizes the benefits of consumers being able to access and use online services and applications of their choice, and to connect the devices of their choice to the Internet. These principles are hortatory in nature, are "subject to applicable policies, laws and regulations," and this article is therefore not enforceable.

The provisions on data localization do not cover financial services firms, which are covered separately in the Financial Services chapter (Chapter 11).[708] The E-commerce chapter provisions are subject to the GATS Article XIV exclusions (Article 29.1.3), which permit measures necessary to protect public morals or order; protect human, animal, and plant health; and secure compliance with laws or regulations which are not inconsistent with the provisions of the GATS.[709] Government procurement and government data processing are also excluded from the e-commerce provisions (Article 14.2.3).[710]

Data and Information Flows

A key new provision[711] in the TPP E-commerce chapter commits signatories to allow cross-border information and data transmission by electronic means, unless there is a legitimate public policy objective that is not unjustifiable discrimination, arbitrary, or a disguised barrier to trade (Article 14.11). The transformation brought about by digital technologies and the Internet now requires unrestricted and protected cross-border data flows for consumers and businesses

[708] Financial services are covered under a different standard to accommodate more regulatory discretion for prudential reasons, allowing regulators to more effectively maintain financial stability and to respond more quickly to a potential financial crisis. The financial services section of this chapter provides more detail below.
[709] WTO, Article XIV (General Exceptions) of General Agreement on Trade in Services, paragraphs (a), (b), and (c).
[710] Governments may require the processing and storage of government data to occur on domestic computing facilities.
[711] No commitments ensuring the free flow of data and information have been included in any existing U.S. trade agreement with a TPP partner. For analysis of earlier agreements' E-commerce chapters, see USITC, *U.S.-Colombia Trade Promotion Agreement*, December 2006, and *U.S.-Korea Free Trade Agreement*, September 2007.

large and small—protections that are now considered fundamental by many U.S. firms.[712] The Internet and digital connections are replacing many physical flows with digital flows, including for such functions as back-office operations, distribution and logistics, and manufacturing.[713] Cross-border data flows are substantially larger than indicated by commercial transactions and official trade statistics.[714]

Manufacturing is one field to which the E-commerce chapter's provisions would be of increasing importance; the growing use of the Internet of Things (manufactured goods connected to the Internet through embedded technology)[715] requires the free movement of ever-larger amounts of data, which would be protected under TPP. At the USITC hearing, a representative from GE stated that its operations depend on cross-border data flows to link its smart-technology manufactured products, such as aircraft engines and power plant turbines, over wireless networks and the Internet, so they can use data analytics to process, analyze, and store information and data from across the globe. GE refers to these digital global networks as the "Industrial Internet," which is becoming more and more commonplace as smart technology embedded in manufacturing goods becomes more ubiquitous.[716]

TPP's e-commerce provisions would also be particularly important for SMEs that rely on Internet-based services to sell and source products and services around the globe. SMEs, including very small businesses and individual entrepreneurs, are able to use the Internet to connect to clients and vendors and to leverage their computer data storage and management operations using cloud computing. Freedom of access to digital channels and the Internet would allow them to expand in ways that, in the view of several observers, would not be possible without this technology and the new digital trade protections that would be afforded by TPP.[717]

Not least, the TPP provisions protecting free data flows would also be critical to individual U.S. consumers, according to several experts. Many of the 800 million people in TPP countries who are equipped with mobile phones and other IT devices use software applications, such as mobile apps and online productivity tools, which depend on the transfer and processing of data

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[712] USITC, hearing transcript, January 13, 2016, 299 (testimony of Carl Schonander, SIIA); January 14, 2016, 668 (testimony of Robert Vastine, Georgetown University)
[713] McKinsey Global Institute, "Global Flows in a Digital Age," April 2014.
[714] USITC, hearing transcript, January 13, 2016, 333 (testimony of Peter Allgeier, Coalition of Services Industries).
[715] For more detail, see the discussion below.
[716] USITC, hearing transcript, January 14, 2013, 529 (testimony of Karan Bhatia, GE).
[717] Several hearing participants commented on the importance of the open Internet for SMEs. USITC, hearing transcript, January 14, 2016, 603 (testimony of Linda Dempsey, SIA); January 13, 2016, 225 (testimony of Vanessa Sciarra, Emergency Committee for American Trade); NFTC, "NFTC Statement on TPP Agreement," December 22, 2015. Digital technologies enable even the smallest firms or individuals to sell and source products and services globally. McKinsey Global Institute, "Global Flows in a Digital Age," April 2014.

remotely, including across borders.[718] Increasingly, software and storage functions used by individual consumers are moving to cloud platforms, for which unimpeded data flows are critical to efficient operation.[719] Rules prohibiting forced localization will reportedly boost the competitive advantage currently enjoyed by U.S. cloud-based services, since a substantial number of firms use such services and the cloud providers themselves are located in the United States.[720]

Data and Other Localization Policies

TPP is the first U.S. trade agreement that would prohibit measures that compel companies to conduct certain digital trade-related activities within a country's borders. Examples of prohibited measures would include requiring data servers to be located in-country; requiring local content for digital goods and services; and requiring domestic consumers to use local digital companies.[721] Similar to the data and information flow provision, under TPP governments would not be able to require localization unless there is a legitimate public policy objective (Article 14.13).[722]

The TPP e-commerce provisions prohibiting forced localization and preventing digital protectionism would allow U.S. firms to locate computer servers and data storage anywhere across the globe, based on cost, efficiency, and security, thereby lowering costs and reducing inefficiencies.[723] Data localization laws particularly affect sectors that use web-based technologies, including retail, healthcare, professional services, computer services, and others. Localization can also impose costs on the countries that establish these policies. According to one study, the costs are substantial in a number of countries that have instituted such measures.[724] According to Commission witnesses, localization rules can be especially costly to small businesses. For SMEs, data processing, management, and storage can be made much easier via external, often remote, data centers in the cloud that are easily accessible via the Internet. Industry experts contended that requiring SMEs, microenterprises, and individual entrepreneurs to set up data centers in every country where they operate would be

[718] Espinel, "International Data Flows: Promoting Digital Trade," November 3, 2015.
[719] Swedish National Board of Trade, "E-commerce—New Opportunities, New Barriers," April 2012, 16.
[720] Kilic and Israel, "The Highlights of the Trans-Pacific Partnership," November 15, 2016.
[721] USTR, TPP, full text, E-Commerce chapter, Articles 14.4 (Nondiscriminatory Treatment of Digital Products); 14.13 (Location of Computing Facilities); and 14.10 (Principles on Access to and Use of the Internet).
[722] For example, according to the government of Australia, the country's Privacy Act and e-health record system (Personally Controlled Electronic Health Record Act 2012) would not be subject to the TPP e-commerce commitment on data localization, because privacy and health are public policy objectives of the government. Government of Australia, DFAT, "Trans-Pacific Partnership Agreement: Chapter Summary," December 11, 2015.
[723] USITC, hearing transcript, January 13, 2016, 312 (testimony of Peter Allgeier, Coalition of Service Industries).
[724] Modeling estimates range from 0.1 percent to nearly 2 percent of GDP for certain countries. Bauer et al., "The Costs of Data Localization," May 2014; USITC, hearing transcript, January 14, 2016, 599 (testimony of Karan Bhatia, GE).

prohibitively expensive for them. Moreover, the cost of cloud computing services for consumers would likely rise if access to cloud services was restricted.[725]

Other Provisions

The provisions prohibiting customs duties on electronic transmissions would be another key protection for content providers and streaming services. Beneficiaries would include U.S. providers of computer software and platforms, mobile applications, and suppliers of cloud computing services. The TPP E-commerce chapter also includes protections for personal privacy and online consumer protection, which are of increasing concern for U.S. individual Internet users and cross-border shoppers (Article 14.7).[726] Building on past U.S. trade agreements, the e-commerce chapter promotes electronic authentication and signatures and paperless trading. It also eases electronic transactions, which will likely facilitate electronic commerce and e-sales of both electronic products and physical goods among TPP signatories.[727]

Provisions Most Significant for Computer Services

As described above, under TPP, U.S. providers of computer services would be entitled to unrestricted market access, nondiscriminatory regulatory treatment, and greater transparency according to the terms of the agreement. The negative list approach is an important factor for improving U.S. firms' access to TPP markets. The negative list approach would also cover the services for which countries scheduled limited or no commitments under the GATS, including services yet to be offered commercially.

TPP would promote cross-border information flows and data exchanges among the 12 signatories and, thus, likely increase U.S. computer services exports to the Asia-Pacific region, although the impact would vary by country depending on the size of the market.[728] The impact

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[725] USITC, hearing transcript, January 13, 2016, 348 (testimony of Ed Brzytwa, Information Technology Industry Council) and (testimony of Peter Allgeier, Coalition of Service Industries), and January 14, 2016, 512 (testimony of Linda Dempsey, NAM). Establishing a data center can cost $70 million–$80 million. Verge, “Second Google Data Center Coming to Singapore,” June 2, 2015.

[726] Annex 10-C exempts Brunei and Vietnam from the requirement to “adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce” until they actually put such a framework into place, after which they would simply have to maintain it.

[727] Among existing U.S. trade agreements with TPP participants, the Australian FTA and the Peru TPA include provisions on electronic authentication and paperless trading. USTR, “E-Commerce FTA Chapters” (accessed February 10, 2016).

[728] The eight TPP parties for which data are available (Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, and Singapore) accounted for 30 percent of U.S. computer services exports and 25 percent of U.S. computer services imports in 2014. The Asia-Pacific region is the fastest-growing ICT spending region in the world, with growth of 4.5 percent in real terms forecast for 2016 (worldwide ICT spending growth of 0.6 percent is forecast for 2016). Gartner, Inc., “Forecast Alert: IT Spending, Worldwide, 4Q15 Update,” January 14, 2016. The Asia-Pacific region is also leading in the growth of both IT services and spending on the Internet of Things, accounting for more than 40 percent of worldwide total spending in this segment. IDC, “APeJ IT Services to be Resilient,” December 6, 2015; IDC, “Internet of Things Spending Forecast,” December 10, 2015.

on U.S. exports specifically of online computer services associated with cloud computing, the Internet of Things, and big data analytics would likely also be very positive, given that these services are often most efficiently provided by global providers over the Internet.[729] Over time, despite slower phase-in of liberalization in Malaysia and Vietnam (described below), TPP's provisions would helpfully address issues of interoperability and access to Internet infrastructure and content, and would represent a reduction in trade impediments for providers of cross-border data services.[730] Taken together, the TPP e-commerce provisions would likely benefit U.S. computer services firms. These provisions would remove almost all significant barriers to trade and investment in computer services and deter the establishment of future barriers among the parties.[731]

However, while TPP would liberalize trade in computer services to a great extent, some barriers would remain after the agreement enters into force. An important caveat to TPP's provisions enabling cross-border digital commerce is that governments can impose measures for legitimate public policy objectives, such as health, morals, the environment, and national security (Article 29.1.3) (Also see the discussion above in this chapter).

In addition, TPP's provisions for liberalization will be more challenging for some TPP partners, such as Malaysia and Vietnam, and these partners will not liberalize immediately. Currently, Australia, Canada, and New Zealand, for example, are largely open and present few barriers to imports, inward foreign direct investment, exports, or competitiveness. However, Malaysia and Vietnam are much more trade restrictive. Both countries have traditionally provided preferential treatment for domestic providers in government procurement.[732] Malaysia generally invites international tenders only when domestic services are not available, and in those cases, U.S. companies usually find it is necessary to have a local partner before their tenders will be considered.[733] Vietnam imposes barriers to encrypted software and requires U.S. providers of cloud computing services to operate under laws or policies that mandate the use of certain types of software, services, standards or technologies, and that discriminate

[729] As the provision of computer services moves increasingly to the Internet, cloud computing and big data services, as well as the expansion of connectivity through the Internet of Things, are becoming more prominent. "Cloud computing" refers to online computer services, i.e., scalable and elastic IT capabilities that are delivered as a service using Internet technologies. "Big data" describes information assets that are high volume, high velocity and/or high variety and that can be processed to enable enhanced insight, decision making, and process automation. The "Internet of Things" is a network of physical objects that contain embedded technology to communicate and sense or interact with their internal states or external environments.
[730] Localization barriers to trade are among the most potentially distorting trade measures. Ezell, Atkinson, and Wien, *Localization Barriers to Trade*, September 2013, 4–6.
[731] Canada, Malaysia, New Zealand, Australia, Brunei, and Vietnam had either considered introducing, or had already introduced, local data storage requirements, as well as data security and data privacy regulations that would restrict where companies would be permitted to store and process data. Wein and Ezell, *Concluding a High-Standard, Innovation-Maximizing TPP,* December 2013, 11.
[732] Malaysia and Vietnam are observers, but not signatories, to the WTO Committee on Government Procurement.
[733] USTR, *2015 National Trade Estimate Report on Foreign Trade Barriers*, 263, 427.

based on the nationality of the vendor, developer, or service provider.[734] Additional barriers to trade in both Malaysia and Vietnam include a lack of transparency in government decision making and procedures, as well as investment measures that may disadvantage U.S. firms.

For the first two years of the agreement, existing measures in Malaysia and Vietnam would not be subject to the dispute settlement process for provisions pertaining to cross-border data flows, localization, or discrimination. Allowing such barriers to persist would appreciably, though temporarily, limit gains in U.S. computer services exports to those quickly growing markets. Nevertheless, in the long term, TPP would likely lead to significant liberalization and changes in the regulatory environments that foreign providers of computer services face in these markets.

As noted, carveouts for government procurement and government data processing under Article 14.2.3 would enable TPP parties to require that processing or storage of government data take place on domestic computing facilities. Because governments are among the largest purchasers of computer services, this is potentially a significant exception, as the decreased openness of the procurement market would likely create delays and raise production costs for U.S. providers of computer services. A prerequisite to use domestic data centers, for example, would greatly undermine the efficiencies of cloud computing.[735]

Four side letters are relevant to computer services. One of these pertains to transparency provisions with Australia; two address government procurement (the applicability of TPP rather than NAFTA for Canada, and the applicability of TPP rather than NAFTA among the United States, Canada, and Mexico); and the final one clarifies the conditions that Vietnam could apply to electronic payment services. Vietnam would be able to require electronic payment services to be supplied through a gateway operated by a national switching facility licensed by the State Bank of Vietnam as long as the requirement (1) ensures the security, speed, or reliability of the services, and (2) is not used to avoid Vietnam's obligations, impose unreasonable costs, or otherwise disadvantage service providers from another party.[736]

Under Article 2.2, Chile and Mexico have agreed only to "endeavor" to become participants in the Information Technology Agreement (ITA), even though the Market Access chapter requires that each party become ITA participants.[737] The requirement to join the ITA would be of greater

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[734] BSA|The Software Alliance, "2013 BSA Global Cloud Computing Scorecard," 2013, 22–23.
[735] Verge, "Second Google Data Center Coming to Singapore," June 2, 2015. Data centers are expensive; Google is building a data center in Singapore for an estimated $380 million.
[736] USTR, TPP, full text, U.S.-Vietnam Letter Regarding Electronic Payment Services.
[737] ITAC-8, *The Trans-Pacific Partnership Trade Agreement: Report of the Industry Trade Advisory Committee on Information and Communications Technologies, Services, and Electronic Commerce*, December 3, 2015. The ITAC-8 considers it "unfortunate" that Chile and Mexico have only agreed to "endeavor" to become ITA participants.

significance to future entrants to TPP, since all parties except Chile and Mexico are already participants.

Estimated Effects of TPP on Digital Trade

The United States is a leading global innovator and creator of digital products and content, and in analyzing, storing, and managing data.[738] At the same time, U.S. firms in nearly all sectors of the economy have moved to adopt digital technologies in their operations.[739] Consequently, TPP's e-commerce provisions, including particularly those ensuring cross-border data flows and protecting against localization measures, will likely strengthen the competitive advantage the United States has in many digital sectors. In the view of several Commission hearing participants, benefits are likely to accrue to a wide array of U.S. businesses and individuals that rely on digital trade and technologies across most sectors of the U.S. economy, from the very largest U.S. corporations, including high-technology leaders such as Amazon, Apple, eBay, Facebook, Google, and Microsoft, to SMEs, microenterprises, and individual Internet users.[740] The expanded e-commerce protections would be particularly beneficial for information and technology firms, and the impact of TPP on U.S. computer services providers is discussed in detail below.

More widely, TPP will likely benefit U.S. businesses in all sectors with relatively higher levels of digital intensity.[741] These include information and technology firms—such as cloud computing and storage services providers, producers of audiovisual products, and providers of streaming services—but also, increasingly, manufacturers, retailers, and other services providers that depend on electronic commerce and the Internet as well.[742] Professional services providers that can digitize and transmit their services electronically, such as engineering and architectural services and healthcare providers, will also benefit from the e-commerce provisions, as well as other parts of TPP, including provisions on the cross-border supply of professional services.[743]

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[738] USITC, *Digital Trade 1*, 2013; Aaronson, "The Digital Trade Imbalance and Its Implications," February 2016.
[739] See USITC, *Digital Trade 2*, 51, figure 2.10, "Characteristics of Internet Usage."
[740] Data flows are increasingly important in almost all sectors, including in IT, manufacturing, healthcare, transportation, energy, and environment. USITC, *Digital Trade 1*, 2013, 3-2; BSA, "What's the Big Deal with Data?" October 2015. Providers of video services, which account for an estimated 60 percent of global Internet bandwidth, are also expected to be important beneficiaries of protections on digital flows. USITC, hearing transcript, January 13, 2016, 282 (testimony of Christopher Padilla, IBM); Espinel, testimony before the House Committee on the Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, November 3, 2015; USITC hearing transcript, January 13, 2016, 198–99 (testimony of John Murphy, U.S. Chamber of Commerce).
[741] This is defined as the degree to which different industry sectors have adopted digital technologies. Several different metrics may be used to rank the digital intensity of different sectors. USITC, *Digital Trade 1*, 2013, xii.
[742] USITC, *Digital Trade 1*, 2013, 2-2, 3-2.
[743] For discussion of digital intensity by sector, see chapter 3, USITC, *Digital Trade 1*, 2013.

Effect of TPP E-commerce Provisions on Services Trade Costs

The effect of the e-commerce provisions is one key component in the calculation of the overall reduction in services trade costs brought about by the Agreement. As discussed above, the impact of the e-commerce provisions on cross-border trade in services is likely to vary by sector, depending on how intensively digital technologies are used in the course of business.[744] Commission modeling estimates that the communications sector would see the largest reduction in trade costs as the result of the liberalization associated with the E-commerce chapter provisions, with the estimated trade costs falling by 19 percent to 37 percent from a baseline level of 45 percent. Other sectors with large estimated reductions in trade costs due to the e-commerce provisions are “other business services” (which includes professional services and technical services, as well as equipment leasing and real estate services), with a 17 percent decline from a baseline ad valorem equivalent (AVE) of 34 percent, and the wholesale and retail trade sector, with a 10 percent decline from a baseline AVE of 34 percent. In each instance, the impact of the e-commerce provisions is significant. Nonetheless, a large part of total trade costs will remain, as these include the impact of the entire range of regulatory impediments to trade.

TPP Impact on U.S. Computer Services Trade

Taken together, the TPP provisions related to trade in computer services introduce important liberalization. As a result, U.S. exports of computer services are projected to increase to above baseline levels in 2032, with the largest increases going to Japan, Malaysia, and Vietnam. Under TPP, Japan’s computer services commitments would improve relative to its GATS commitments; for example, it could not allow discriminatory measures for new services or services that are not yet technically feasible. TPP would not likely have a significant impact on U.S. imports of computer services from any TPP member country, as the United States is already generally open to foreign firms.[745]

Summary of Views of Interested Parties

The Internet Association notes that TPP promotes “pro-Internet policies” that have been absent from previous U.S. trade agreements. The association argues that such policies are important to Internet-based industries, which are an “essential American export.”[746] Numerous Commission hearing participants, representing a range of industry sectors, emphasized the importance of the TPP provision protecting cross-border data flows. For example, a Walmart representative noted that the retail services company is investing heavily in IT and e-commerce, and relies on an open Internet to serve customers at home and internationally. The firm also depends on

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[744] Note: this discussion of the impact of TPP e-commerce provisions on trade costs refers to Commission estimates of inputs to the model, not model results.
[745] Computer services are mainly traded business to business; OECD, “STRI Brief: Computer Services,” 2014.
[746] Beckerman, “Statement in Support of the Trans-Pacific Partnership,” March 30, 2016.

digital connections between its U.S. base and its global affiliates to provide many back-office functions, such as human resources and accounting, from its U.S. base to global affiliates.[747]

U.S. interested parties from the computer services industry support TPP as "an historic trade agreement that potentially opens and grows digital markets, safeguards intellectual property, and advances hightech American jobs."[748] They consider the commitments on core ICT issues, such as market access and behind-the-border trade restrictions (e.g., cross-border data flows, prohibitions on forced localization and technology) to be significant achievements that would promote the economic interests of the United States. Despite some shortcomings, interested parties view TPP as a catalyst for new opportunities in the AsiaPacific region.

Market Access

Industry commentators strongly supported the TPP provisions assuring that (1) parties' market access commitments on services apply as much to services delivered or performed electronically as they do to those delivered conventionally, and (2) parties may not require computer services firms to establish a local presence as a condition for supplying services, which is crucial for ensuring the ability to offer services such as cloud computing.[749] The report of the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC- 8) states that the Market Access chapter would help to ensure that the goods exported by the U.S. ICT industry to the other TPP parties receive national treatment and have full market access.[750] Peter Allgeier, representing the Coalition of Service Industries, testified that there is "integration between services and goods." He further testified that "it's a two-way integration in that to the extent barriers are coming down on goods, they are going to require additional services to meet those markets."[751]

Data and Information Flows

Industry representatives largely endorsed the TPP Agreement, emphasizing that rules ensuring free and full transfer of data and information would likely strengthen demand for the capabilities and cost efficiencies of cloud computing, the Internet of Things, and big data analytics.[752] Upon release of the TPP text, Dean Garfield, president and CEO of the Information Technology Industry Council, released a statement that TPP "addresses new issues critical to the continued growth of, and innovation by, the tech sector. For the first time in a trade

[747] USITC, hearing transcript, January 13, 351 (testimony of Sara Thorn, Walmart).
[748] Entertainment Software Association, "ESA Statement on Trans-Pacific Partnership," October 7, 2015.
[749] Industry representatives, interview by USITC staff, Washington, DC, February 15, 2016.
[750] ITAC-8, *The Trans-Pacific Partnership Trade Agreement,* December 3, 2015, Executive Summary.
[751] USITC, hearing transcript, January 13, 2016, 332 (testimony of Peter Allgeier, Coalition of Service Industries).
[752] Cisco reports that the digital universe—composed of the data we create and copy annually—is doubling in size every two years; by 2020, the digital universe will reach 44 zettabytes, or 44 trillion gigabytes. Industry representative, telephone interview by USITC staff, January 6, 2016.

agreement, there are provisions that prohibit restrictions on cross border data flows."[753] In testimony before the Commission, Carl Schonander, representing the Software and Information Industry Association (SIIA), argued that Article 14.11 on cross-border data flows is the "fundamental commitment" with respect to the digital economy. He further stated that "cross-border data flows are an intrinsic feature of the 21st century global information economy, they are as essential to today's economic, social and political activity as air travel and electricity."[754] Describing data as the "lifeblood of the 21st century economy," Christopher A. Padilla, representing IBM, praised TPP as a "forward looking trade pact that seeks to limit obstacles to digital data flows even before they can take root."[755]

Localization

In their positive comments on TPP, U.S. industry representatives frequently cited provisions prohibiting data localization measures and the benefits they would give to U.S. firms and U.S. economic growth. Victoria Espinel, president and CEO of BSA | The Software Alliance, stated, "For the first time, enforceable trade rules establish free flow of data across borders as the rule and address trade barriers such as requiring localization."[756] Another industry representative testified that Article 14.13, which addresses localization measures, is "ground breaking in trade terms."[757]

Many industry representatives have, however, expressed concern about Article 14.1, which excludes the financial services industry from the provisions pertaining to both cross-border data flows and localization measures. One industry representative considers the localization exception "very disturbing," adding that "financial services are denied the cost and efficiency benefits of the lowered trade barriers but will also be exposed to the considerable risks that derive from data localization laws to managing a secure, well-functioning global information system."[758]

Other Issues

The ITAC-8 considers it a shortcoming that existing measures in Malaysia and Vietnam are not subject to the dispute settlement process for both cross-border data flow and localization provisions for the first two years of the agreement.[759] The ITAC-8 is also of the opinion that

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[753] ITI, "ITI Reviewing TPP Agreement Text," November 5, 2015.
[754] USITC, hearing transcript, January 13, 2016, 299–300, 302 (testimony of Carl Schonander, SIIA).
[755] IBM, "IBM Statement on Close of Trans-Pacific Negotiations," October 5, 2015.
[756] BSA, "BSA Welcomes Trans Pacific Partnership Agreement," October 4, 2015.
[757] USITC, hearing transcript, January 13, 2016, 300 (testimony of Carl Schonander, SIIA).
[758] USITC, hearing transcript, January 13, 2016, 333 (testimony of Peter Allgeier, Coalition of Services Industries). ITAC-8's report "urges the Administration to avoid this exception in future agreements"; ITAC-8, *The Trans-Pacific Partnership Trade Agreement*, December 3, 2015, 3.
[759] ITAC-8, *The Trans-Pacific Partnership Trade Agreement*, December 3, 2015, 8.

establishing restrictions on the regulation of cryptography "will be regarded as groundbreaking and fundamental to progress in the field of information and communication technology," but is disappointed at the exceptions for financial institutions and law enforcement.[760]

Even with these reservations, stakeholders and interested parties largely support TPP and believe the computer services provisions will be of economic and societal benefit to the United States. Ed Brzytwa, representing the Information Technology Industry Council, testified that "the TPP Agreement will be a viable tool to promote durable growth and innovation in the United States and globally and expand the social and economic benefits of the digital economy."[761]

Financial Services

Financial services are traditionally treated separately from other services in free trade agreements. Sector-specific provisions are necessary because countries need to ensure a trade and regulatory environment for financial institutions (such as banks and insurance companies) that is prudent, comprehensive, and efficient, but that also retains regulators' flexibility to react to potential crises. TPP's Financial Services chapter (Chapter 11) contains the agreement's provisions regarding financial institutions' market access, national treatment, and cross-border data flows, as well as provisions addressing cross-border trade of other financial services providers. As listed in TPP Chapter 11, financial services includes direct insurance; reinsurance; insurance intermediation; services auxiliary to insurance; deposit taking and lending; leasing; payments and money transmission; guarantees; trading of all assets, foreign exchange, and equities; securities; money broking; asset management; settlement and clearing; provision and transfer of financial information; and advisory, intermediation, and other auxiliary services.

Assessment

Again, TPP would likely have the greatest impact in markets where the U.S. did not previously have an FTA: Brunei, Japan, Malaysia, New Zealand, and Vietnam. Financial services firms would gain significant protections with regard to market access, most-favored-nation tariff treatment, and national treatment that could result in significant export growth.[762] Insurance firms would likely see the most immediate effects from provisions regarding state-owned postal entities, particularly in Japan, that also sell insurance and other financial services. At the same time, TPP's expected positive impact on overall growth rates in TPP markets would likely lead to increased demand for financial services in those markets, because demand for financial services

[760] Ibid., 13.
[761] USITC, hearing transcript, January 13, 2016, 275–76 (testimony of Ed Brzytwa, Information Technology Industry Council).
[762] AIA, written submission to the USITC, January 13, 2016.

generally tracks economic growth and activity. Additionally, increased goods trade resulting from TPP would also likely increase overall demand for cross-border trade in financial services, especially trade-associated finance and insurance. The derived demand for financial services arising from international trade in goods explains why financial services account for a larger share of global trade in value-added terms than direct exports and imports do.[763]

Banking

Most TPP markets are free of the most restrictive policies affecting market access for providers of banking services (i.e., deposit taking and lending). With the exception of Malaysia, Brunei, and Vietnam, U.S. banks already enjoy relatively open market access to TPP partner countries.[764] However, Malaysia, Brunei, and Vietnam maintain moderate market access barriers (mostly related to foreign equity limits and different licensing criteria for foreign versus domestic banks), which they retain under the TPP Agreement. These are included in Annex III as nonconforming measures (NCMs).

Overall, TPP would provide some additional liberalization for U.S. banks' exports and foreign direct investment, in the form of improved market access and increased certainty for investors from the expanded protections under the investor-state dispute settlement (ISDS) mechanism. These effects are largest for the TPP partners with which the U.S. does not have an existing FTA, but there are also important effects in the other TPP markets, given the expanded access to ISDS and assurances for cross-border data transfer under TPP.

Insurance

TPP would likely increase trade in insurance services among the parties by lowering market access barriers for insurers and by reducing impediments to competition in local markets. These provisions would apply both to cross-border trade (mode 1) and to the establishment of affiliates (mode 3), the primary modes of international trade in insurance services. As is the case in other sectors, the export-boosting effect for insurance would likely be strongest for U.S. trade with TPP parties that do not already have FTAs with the United States. Even a small amount of liberalization would be significant, given the size of the insurance markets in the United States (which accounted for a quarter of the $4.8 trillion insurance premiums written globally in 2014) and in Japan (which accounted for 10 percent).[765] In 2013, the United States

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[763] Rouzet et al., "Services Trade Restrictiveness Index (STRI)," 2014.

[764] The Services Trade Restrictiveness Index (STRI) is a rough measure of market openness whose value changes based on whether a country maintains certain restrictive policies, but it is not a comprehensive measure. All TPP partners have a score of zero, with the exceptions of Brunei, Malaysia, and Vietnam, which have scores of 50, indicating the presence of moderately distorting policies.

[765] Other TPP countries combined accounted for 7 percent (excluding Brunei, for which data are not available). I.I.I., "World Overview," n.d. (accessed January 25, 2015).

exported $17 billion and imported $53 billion of cross-border insurance services, and sold $65 billion of insurance through affiliates abroad while purchasing $69 billion of insurance from affiliates in the United States.[766]

Summary of Provisions Applying to Financial Services

The Financial Services chapter (TPP Chapter 11) defines a financial institution as a financial intermediary or other enterprise that is regulated as a financial institution (Article 11.1). TPP's Annex 11-A lists the financial services that are covered by the cross-border trade provisions. The chapter does not apply to government procurement of financial services. This section will describe provisions in the chapter that apply generally to all financial services, before examining in more detail TPP provisions that specifically affect the banking and insurance sectors.

The TPP Financial Services chapter defines the scope of covered services in line with the GATS. The chapter incorporates certain provisions from the TPP Investment chapter (TPP Chapter 9) and the Cross-border Trade in Services chapter (TPP Chapter 10), and includes provisions for national treatment and most-favored-nation status and for market access. Most importantly, these provisions state that TPP partner countries may not give more favorable treatment to domestic financial services firms than to foreign ones. The Financial Services chapter also contains provisions that relate to the supply of new financial services (Article 11.7). If a TPP partner country allows its own financial institutions to provide new financial services, financial institutions from other TPP parties will also be permitted to provide these services in the market.[767]

The chapter also provides protections to investments in financial institutions, similar to those provided by existing U.S. FTAs. These provisions are particularly important in that financial services are typically traded by establishing commercial presence.[768] In addition, TPP provides expanded rights for U.S. financial services firms to handle investment disputes using the ISDS mechanism in certain instances.

Financial institutions have access to ISDS for violations regarding transfers, special formalities and information requirements, and denial of benefits, as is the case under existing U.S. FTAs. In addition, TPP expands ISDS for financial services to cover violations of the minimum standard of treatment and treatment in the case of armed conflict or civil strife.[769] However, the Financial Services chapter does not go as far as the ISDS section of the Investment chapter (Chapter 9) in extending ISDS to U.S. investors to redress violations of national treatment or most-favored-

[766] USDOC, BEA, "International Services," tables 2.2, 3.1, and 4.1 (accessed January 16, 2015).
[767] This is in line with the adoption of a negative list approach for making services commitments, whereby full liberalization and equal treatment is assumed unless an exception is explicitly stated.
[768] Rouzet et al., "Services Trade Restrictiveness Index: Financial Services," 2014, 6.
[769] Stewart and Stewart, "TPP: A Side-by-Side Comparison," n.d. (accessed January 12, 2016).

nation status. Financial institutions must still pursue such disputes through the state-to-state dispute settlement process outlined in TPP Chapter 28.[770]

The ISDS mechanism for financial services also contains a new provision about an exemption for prudential regulations (Article 11.22).[771] Under this provision, if an ISDS case is brought against a TPP country and the responding country invokes the exemption for prudential regulations, the relevant regulators from the two parties consult to determine if the regulation in dispute is indeed a prudential regulation. If so, then the investment arbitration case is resolved in favor of the host country. However, if the regulators do not agree, a parallel state-to-state dispute settlement on the question of whether the regulation falls within the prudential exception proceeds alongside the ISDS proceeding.

Consistent with the provisions of the E-commerce chapter that apply to other industries (Article 14.11), the Financial Services chapter provides for the free movement of data across borders to allow firms to carry out the data analysis needed in the regular course of doing business (Chapter 11, Annex B). The general prohibition against data localization requirements stated in the E-Commerce chapter (Article 14.13), however, does not apply to financial institutions and other providers of cross-border financial services (Article 14.1). The Financial Services chapter's provisions on the transfer of information across borders are new and add protections for financial services firms not included in prior trade agreements. However, the impact of these provisions is offset by the exclusion of financial services from the prohibition of data localization measures.

As is the case for cross-border trade and investment in other services industries, the provisions of the Financial Services chapter are applied on a negative list basis, meaning that they apply in the absence of an exception, or NCM. For financial services, the NCMs are outlined in Annex III of the agreement. NCMs of note are an investment screening requirement in Malaysia and a special ratchet mechanism for Vietnam. In its NCM, Malaysia reserves the right to screen all foreign investment in the financial services sector for "the best interests of Malaysia" (Malaysia, Annex III).[772] Vietnam's temporary exemption from the agreement's general ratchet mechanism would allow Vietnam a transition period for new liberalization undertaken after TPP's entry into force (TPP Chapter 11, Annex C). Unlike the rule for other TPP partners, where any new liberalization enacted after TPP's entry into force would be binding moving forward

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[770] For more information on the dispute settlement process, see the section on TPP Chapter 28 in chapter 6 of this report.
[771] As defined in the TPP, "prudential" refers to regulations meant to maintain the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems (Article 11.11, n.10).
[772] While Malaysia's Annex III commitments list certain factors to be considered in the decision, no precise standards are defined.

(Article 11.10), Vietnam would be allowed during the 3 years after TPP enters into force to introduce and subsequently remove more liberal policies than those in place at entry into force.

Banking

The provisions of the TPP Financial Services chapter, as discussed above, apply to providers of cross-border financial services, including the banking sector. Annex 11-A provides a list of financial services sectors, by country, where TPP countries undertake specific cross-border commitments. In no case did a TPP party undertake commitments on cross-border (mode 1) trade in banking services, largely because banks are closely regulated in each market. As a result, mode 3 trade (trade through commercial presence, or investment) accounts for the vast majority of trade in retail and commercial banking.[773] TPP provisions affecting banks are therefore focused on their trade through commercial presence.

Most of the NCMs related to banking address the treatment of branches of foreign banks (where the foreign investor does not control a locally incorporated bank). The treatment of branches ranges broadly: Australia would limit the size of initial deposits in branches of foreign banks to those over $A250,000 (roughly equivalent to $195,000); Canada and Japan would not permit the branches to participate in their national deposit insurance schemes; and Brunei would reserve the right to provide certain benefits only to locally incorporated banks.

Insurance

In addition to the general provisions described above, the Financial Services chapter of TPP contains certain measures that specifically affect insurance firms. It liberalizes cross-border trade in freight insurance and reinsurance,[774] and for some parties it also liberalizes insurance-related auxiliary and intermediation services. The chapter also lets regulators expedite the offering of insurance services (Article 11.16).

Section C of the Financial Services chapter stipulates that postal entities which supply insurance should not be treated more favorably than private suppliers. In the case of Japan, this issue is further clarified in a side letter between the United States and Japan, which affirms that Japan Post can distribute insurance products from companies other than Japan Post Insurance. This gives foreign insurers access to Japan Post's distribution network.

Measures affecting state-owned insurers are generally excluded from coverage through NCMs: Australia, Brunei, Canada, Malaysia, and New Zealand all specifically mention state-owned

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[773] Rouzet et al., "Services Trade Restrictiveness Index: Financial Services," 2014.
[774] Reinsurance is the practice of insurers transferring portions of risk portfolios to other parties by some form of agreement in order to reduce the likelihood of having to pay a large obligation resulting from an insurance claim.

enterprises in their Annex III entries. Compulsory insurance is also a point of sensitivity;[775] New Zealand and Peru exclude any measure related to compulsory insurance, while Chile and Singapore require that compulsory insurance be purchased in-country. The Financial Services chapter generally prohibits nationality requirements for senior managers and boards of directors of foreign-owned companies (Article 11.9), but several signatories would require residency for insurance brokers or board directors. Some countries would place limits on the form that foreign-owned insurance companies can take, such as Mexico's prohibition on branches. These requirements are codified in Annex III, which lists exceptions to generally applicable provisions.

Vietnam and Malaysia both have particular carve-outs related to insurance. Vietnam was concerned that its regulators might need time to build the capacity to handle new, sophisticated financial products so, as with banking, it negotiated a temporary exemption from the ratchet mechanism (the requirement that commitments will not be undone after they are accepted). Malaysia will keep an economic needs test for new insurance products, with the Ministry of Finance determining whether or not to approve a financial services license.

TPP is more comprehensive than previous FTAs, but in many respects it builds on provisions in earlier agreements. For example, the U.S.-Peru agreement let foreign insurers participate in Peru's government-mandated pension program. And in most existing U.S. FTAs, as in TPP, cross-border insurance liberalization is limited to marine, aviation, and transit insurance; reinsurance; and auxiliary services.[776] Separate rules apply to supply of insurance through affiliates.

Impact of TPP in Selected Financial Service Sectors

As banks and insurance providers are the two largest categories of regulated financial institutions, the impact of TPP on these sectors is described in more detail below.

Banking

The Commission's model estimates that, as a result of TPP, the output of U.S. non-insurance financial services (this category consists primarily of banking services providers) would be $1.5 billion higher than the baseline estimate for 2032. Looking at TPP partners without existing U.S. FTAs, the Commission estimates U.S. cross-border net exports of non-insurance financial services would be $1.0 billion higher than the baseline, almost entirely the result of an

[775] Compulsory insurance is insurance that individuals or organizations are legally required to buy, such as auto liability insurance in the United States.

[776] All U.S. trade agreements preserve the right of governments to regulate the insurance industry for prudential reasons, so the effects of FTAs partly depend on how governments interpret and apply this broad exception. Countries like Bahrain, Colombia, Oman, Panama, and Peru have relatively small insurance markets, and most had already committed to significant liberalization in the GATS, so the anticipated effects on insurance trade were modest but positive.

estimated increase in exports to these markets, as estimated imports to the United States from new FTA partners are likely to be small. Net exports of non-insurance financial services to TPP partners with existing FTAs would increase by only $24 million relative to baseline in 2032. However, increased net exports of non-insurance financial services to TPP partners would be more than offset by an estimated $1.9 billion decrease in net exports of these services to other trading partners outside TPP (relative to the baseline estimate for 2032). The combined $1.0 billion fall in the level of exports of these services to non-TPP markets and estimated $0.9 billion rise in the level of imports of these services from non-TPP markets relative to baseline projections reflects the overall shift of both goods and services trade from non-TPP to TPP partners, as well as the impact of stronger demand for services in the United States.

Insurance

Brunei, Japan, Malaysia, New Zealand, and Vietnam do not have prior FTAs with the United States, so from the perspective of U.S. insurers these countries would see the most significant market liberalization with TPP.[777] In TPP parties with existing U.S. FTAs, markets are already relatively accessible to U.S. insurance providers, but the ISDS mechanism, postal insurance provisions, and other elements of TPP should further increase policy certainty and reduce investment risk for U.S.-based insurers. The Commission's model estimates that U.S. net exports of insurance services (mode 1 trade) to TPP partners would be $0.6 billion higher than baseline projections (again because of strong exports and only a very small change in imports), but net exports globally would be $0.7 billion lower than the projected 2032 baseline level.[778]

More significant effects are likely to be seen in mode 3 trade, or the sales of foreign affiliates established in TPP partner markets. A 2009 report by the Commission used a gravity model to estimate the impact of nontariff measures on the insurance industry, and found that a 1 percent decrease in a country's insurance restrictiveness correlated with a 1.5 percent increase in U.S. affiliate sales of insurance to that country.[779] The policy changes in TPP cannot be clearly mapped to this measure of restrictiveness (e.g., the availability of ISDS recourse was not part of the restrictiveness score), but this elasticity suggests that insurance exports are fairly responsive to liberalization.

At the same time, demand for insurance generally tracks economic growth. As people become wealthier, they are more likely to buy health and life insurance and to acquire cars, houses, and other goods that can be insured. If the TPP Agreement raises the overall rates of economic growth in the TPP parties, that should provide opportunities for increased sales of insurance.

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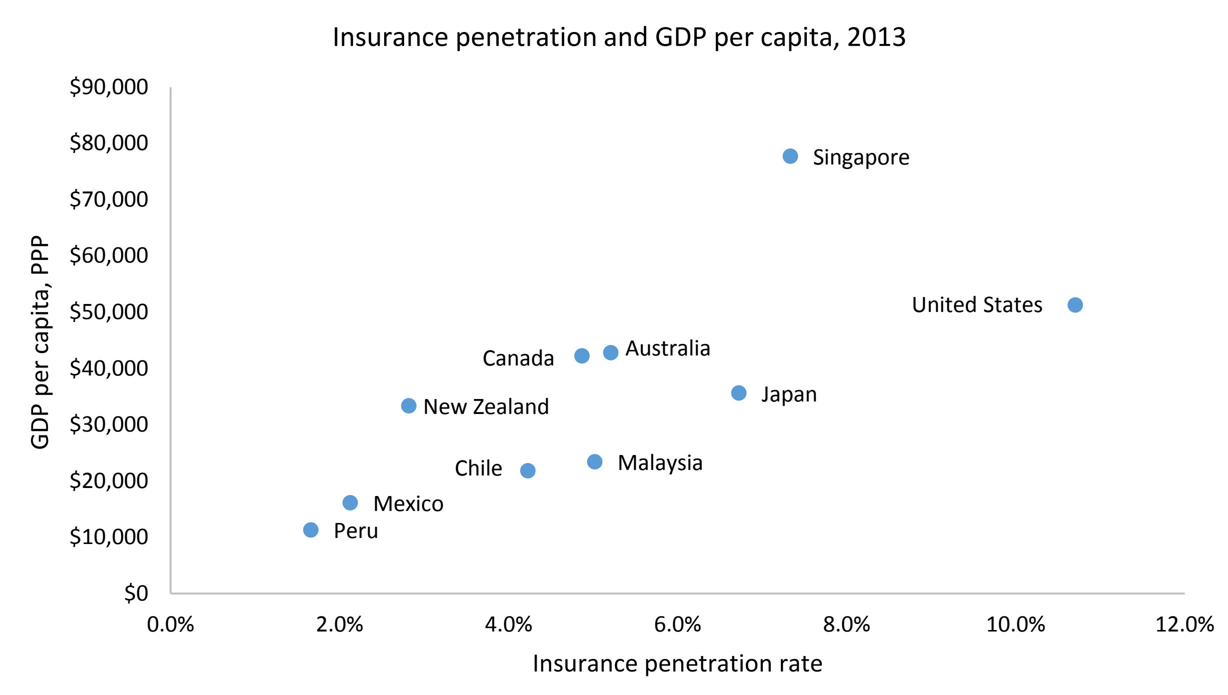
[777] USITC, hearing transcript, January 13, 2016, 268 (testimony of Peter Allgeier, Coalition of Services Industries).
[778] Estimates by USITC.
[779] USITC, *Property and Casualty Insurance Services*, March 2009.

However, insurance penetration rates are a more precise measure of room for growth, and these rates differ from indicators of overall economic development. New Zealand, Singapore, and Mexico all have lower insurance penetration rates than their GDP per capita would predict, possibly because of market access barriers (figure 5.9).[780] These countries are attractive growth markets for insurance companies, since they would be expected to buy more insurance just to meet global averages. New market access facilitated by TPP may lead to additional insurance purchases in these countries.

Figure 5.9: Insurance penetration and GDP per capita, 2013



Source: OECD.Stat, "Insurance Indicators" (accessed January 16, 2016); World Bank, "World Development Indicators" (accessed January 16, 2015). Corresponds to appendix table J.24.

[780] Penetration rates were not available for Brunei or Vietnam.

Summary of Views of Interested Parties

There is broad agreement that the market-access, most-favored-nation, and national treatment protections will increase the ability of U.S. financial services firms to engage in the markets of TPP partners. However, there is also a consensus that U.S. financial services firms will not experience the same benefits from TPP as will U.S. firms in other industries, largely because of differences in investment screening, ISDS coverage, and data-flow provisions.[781] In written testimony to the Commission, the American Insurance Association was optimistic that TPP will create opportunities for U.S. insurers, noting the low insurance penetration rates and high growth rates in TPP countries. The AIA believes TPP has improved upon previous trade agreements by addressing anti-competitive advantages enjoyed by state-owned insurance providers, particularly in Japan, and expanding the coverage of ISDS procedures, though it is disappointed that commitments on financial data flows are weaker than those for non-financial data.[782]

Financial service industry stakeholders have voiced widespread concern about Malaysia's investment screening program. Industry representatives express uncertainty about how Malaysia's investment screening mechanism will work in practice, noting in particular that there is no standard for what constitutes the "best interests of Malaysia."[783]

Additionally, the inability of individual firms to pursue claims through ISDS on these matters is seen as tantamount to those claims being unenforceable, since relying on state-to-state dispute settlement sets such a high bar.[784] However, some observers view the idea of extending ISDS protections in TPP as potentially undermining the domestic regulatory framework for financial services institutions in some TPP countries.[785]

Given the weaker language on transfer of information in the Financial Services chapter, financial services firms have expressed significant frustration that the increased protections for cross-border data flows and against data localization measures won for other industries will not

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[781] USITC, hearing transcript, January 13, 2016, 268 (testimony of Peter Allgeier, Coalition of Services Industries) and 272 (testimony of Stephen Simchak, American Insurance Association); USITC, hearing transcript, January 14, 2016, 648 (testimony of Bob Vastine, Georgetown Center for Business and Public Policy); Guida, "Morning Trade," March 10, 2016; Bliss and Lane, "TPP Series: Services Chapter," March 9, 2016.
[782] USITC, hearing transcript, January 13, 2016, 270-74 (testimony of Stephen Simchak, American Insurance Association).
[783] USITC, hearing transcript, January 13, 2016, 265 (testimony of Peter Allgeier, Coalition of Services Industries); USITC, hearing transcript, January 14, 2016, 647 (testimony of Bob Vastine, Georgetown Center for Business and Public Policy).
[784] USITC, hearing transcript, January 13, 2016, 266 (testimony of Peter Allgeier, Coalition of Services Industries); USITC, hearing transcript, January 14, 2016, 648 (testimony of Bob Vastine, Georgetown Center for Business and Public Policy).
[785] AFL-CIO, written submission to the USITC, December 29, 2015.

apply to financial services firms.[786] Treasury Secretary Jack Lew has defended the differing treatment, however, saying the United States did not push for an equal standard due to prudential concerns of U.S. financial regulators.[787]

Professional Services

This section provides a summary of provisions and outlines instances of potential liberalization in professional services across TPP partners. Three categories of professional services are included in the discussion: (1) architectural, engineering, integrated engineering, and urban planning and landscape architectural services; (2) accounting, auditing, and bookkeeping services; and (3) and legal services.

Liberalization in professional services is observed in the same way as for other services sectors. For existing FTA partners, the degree of liberalization is the difference between the NCMs listed in existing FTAs and those listed in TPP. For new FTA partners, liberalization is assessed by comparing each country's commitments in the GATS with commitments under TPP. The scope for liberalization is limited in some TPP countries, either because prior agreements already establish a liberal environment for trade, or because countries have kept restrictions from existing agreements in TPP. In addition, as for all services sectors, the adoption of a negative list approach in TPP implies eventual wider coverage of the agreement with respect to new services that may be introduced in the future.

Assessment

Five TPP partners have scaled back their exceptions to open trade in professional services, at least to some degree, creating new opportunities for U.S. businesses. The analysis shows that, relative to their GATS commitments, Brunei and Malaysia's TPP commitments represent liberalization across the three professional services categories outlined above.[788] Additionally, relative to preexisting FTAs or GATS commitments, the following countries' TPP commitments signify liberalization: Chile and Japan in legal services; New Zealand in integrated engineering, urban planning and landscape, and architectural services; and Singapore in architectural and engineering services, as well as auditing services.

[786] USITC, hearing transcript, January 13, 2016, 265, 268 (testimony of Peter Allgeier, Coalition of Services Industries); USITC, hearing transcript, January 14, 2016, 647 (testimony of Bob Vastine, Georgetown Center for Business and Public Policy); *Inside U.S. Trade,* "U.S. Financial Firms Worried about TPP Exception," November 3, 2015.

[787] Guida, "Lew Defends Financial Services Data Carveout," February 11, 2016.

[788] See discussion below for more information on which professional services subsectors would be liberalized under TPP.

Summary of Provisions

In practice, foreign suppliers of professional services may face restrictions on international trade that can include residency or establishment requirements, limits on the number or types of entities allowed, and restrictions on entering into partnerships with or employing locally qualified professionals, among others.[789] Restrictions based on qualification, licensing, or authorization, or lack of transparency in regulations, are also prevalent in many countries. The provisions of TPP which address and potentially liberalize these restrictions are constrained by the presence of sector-specific NCMs, which inform the analysis below.

Architectural, Engineering, Integrated Engineering, and Urban Planning and Landscape Architectural Services

Within TPP, certain countries have requirements for residency or local presence in architectural, engineering, and related services (which restrict or set conditions on cross-border trade), as well as limits on form, including partnership requirements (which further regulate trade via commercial presence).[790] However, these NCMs are not viewed as particularly onerous restrictions to trade, and, as outlined below, there are also instances of liberalization due to the agreement. [791]

TPP Parties with Existing U.S. FTAs

- Singapore's TPP commitments represent liberalization relative to the U.S.-Singapore Agreement because there are fewer scheduled NCMs. That agreement contained NCMs that specified registration and residency requirements and licensing requirements for corporations, along with other restrictions for architectural and engineering services, while Singapore's TPP commitment specifies only Singapore's maintenance of a controlling interest in the national engineering company.[792]

[789] On restrictions in legal and accounting services, see Geloso Grosso et al., "Services Trade Restrictiveness Index," 2014, 8–10.
[790] Brunei, Canada, Japan, and Malaysia have such restrictions in one or more industry area. Singapore and Peru also have restrictions in this area, discussed below. For a full list of NCMs, see appendix E.
[791] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015, 10.
[792] U.S.-Singapore FTA, Annex 8A, 10, 15; for TPP sources, see appendix E.

- In the case of Australia, Chile, Peru, Mexico, and Canada, there do not appear to be any substantial or effective changes relative to existing FTAs.[793]

Countries with Which the United States Does Not Currently Have an FTA:

- Brunei's TPP commitments, which specify residency, registration, or other restrictions, represent liberalization across architecture, engineering, and related services relative to the GATS, where no commitments were made.[794]
- Similarly, Malaysia's TPP commitments, which specify registration, residency, and limits on form or ownership, represent liberalization relative to their GATS mode 3 commitments in architectural and engineering services, which specified that such services may be supplied only by a natural person.[795]
- Finally, New Zealand's TPP commitments represent liberalization in integrated engineering and urban planning and landscape architectural services, where there were no previous GATS commitments.
- Japan and Vietnam's TPP commitments do not represent change relative to their GATS commitments.[796]

Accounting and Auditing

In practice, TPP countries' prevailing restrictions on the foreign provision of accounting and auditing services involve limits on activities by non-locally licensed individuals, including on ownership of firms, which are viewed as particularly restricting to trade.[797] Within TPP, NCMs taken by certain countries mainly relate to such local licensing or local qualification restrictions,

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[793] There is no change in commitments under TPP in the case of Australia and Chile, because neither country scheduled NCMs in this area, and their existing FTAs already created a liberal environment (U.S.-Australia FTA; U.S.-Chile FTA). Under NAFTA, Mexico required an address for professional services, a provision which does not appear in TPP (NAFTA, Annex 1, I-M-44); the U.S.-Peru Agreement and TPP both specify higher registration fees for foreign architects, and nonresidents must have contract with residents (TPP also applies the latter to urban planning and landscape architectural services) (U.S.-Peru TPA, Annex 1, 5); under TPP, Canada maintains subnational NCMs related to residency and/or corporate form which were absent in NAFTA. However, U.S. providers would likely benefit from existing commitments under NAFTA.

[794] WTO and World Bank, I-TIP Services database (accessed January 11, 2016-April 11, 2016). See appendix E for full list of Brunei's NCMs in this area.

[795] These appear to be the most significant changes. See WTO and World Bank, I-TIP Services Database (accessed January 11, 2016-April 11, 2016) and appendix E for complete GATS commitments and NCMs in this area. For example, previous GATS commitments included caps on foreign direct investment for certain joint ventures (integrated engineering and landscaping services).

[796] Both Japan's TPP provisions and GATS commitments include a local-presence requirement for architectural services; Vietnam does not list any restrictions in TPP, so its commitments under TPP are essentially the same as its full commitments scheduled under GATS.

[797] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015, 9. See ITAC report for discussion of Mutual Recognition Agreements.

and appear to affect both cross-border trade and trade via commercial presence.[798] Further, several countries have residency or local-presence requirements for auditing services, which serve to restrict cross-border trade.[799] Nevertheless, as outlined below, there are instances where TPP would create new opportunities for U.S. accounting and auditing firms.

TPP Parties with Existing U.S. FTAs

- Singapore's TPP commitments represent liberalization relative to the U.S.-Singapore FTA for auditing services. Under TPP, Singapore does not have any NCMs in this area, where previous restrictions related to registration and residency.[800]
- In the cases of Australia, Canada, Chile, Mexico, and Peru, there do not appear to be any substantial or effective changes relative to existing FTAs.[801]

Countries with Which the United States Does Not Currently Have an FTA

- Brunei's TPP commitments represent liberalization relative to GATS in accounting services, where no commitments were made.[802] Similarly, Malaysia's TPP commitments represent liberalization relative to GATS in accounting, auditing, and bookkeeping, since Malaysia has no NCMs in TPP in these areas, whereas previous GATS mode 3 commitments contained restrictions.
- Japan and New Zealand's TPP provisions do not represent a change relative to their GATS commitments.[803]

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[798] Brunei (authorization/joint venture), Chile (registration), Japan (requalification), and Peru (licensing). These licensing-related issues appear to relate to actual practice. The World Bank's Services Trade Restrictions Database (STRI), which provides information on applied services trade policy for 2008–10, catalogues restrictions specific to trade via commercial presence for auditing and accounting services where one of the prevailing limitations appears to be that firms must be owned by locally licensed professionals or related restrictions/requirements on local licensing, qualification, and representation by a local firm. World Bank, Services Trade Restrictions Database (accessed January 11, 2016-April 11, 2016)); Borchert, Gootiz, and Mattoo, "Guide to the Services Trade Restrictions Database," 2012.

[799] This is the case for five countries (Australia, Canada, Japan, Peru, and Vietnam). This also appears related to certain countries' restrictions in actual practice. World Bank, Services Trade Restrictions Database (accessed January 11, 2016-April 11, 2016).

[800] U.S.-Singapore FTA, Annex 8A, 9.

[801] Australia and Chile's existing FTA restrictions related to registry and/or residency in auditing are similar to those in TPP (U.S.-Australia FTA, Annex 1, 10; U.S.-Chile FTA, Annex 1, 18); Mexico does not have any NCMs in this area in TPP, while under NAFTA, Mexico's restrictions in this area were phased out and only a local address requirement remained (NAFTA, Annex 1, I-M-47). Although Canada and Peru's existing FTA restrictions appear to be more liberal than under TPP, they are unlikely to affect U.S. providers, which are likely afforded commitments in existing agreements. See appendix E for Canada's subnational NCMs across auditing, accounting, and bookkeeping and Peru's NCMs in auditing.

[802]While there are no accounting-specific NCMs in TPP, Brunei's TPP commitments specify joint venture and authorization requirements for auditing, which appear to be similar to its GATS commitments.

[803] Under TPP, Japan has licensing and local presence requirements for certified public accountants and tax accountants, while previous GATS commitments required services to be supplied by a natural person or by an audit corporation under Japanese law; under TPP, New Zealand does not have any NCMs in this area. New Zealand also made full commitments under GATS.

- Finally, Vietnam's local-presence NCMs for auditing under TPP are unlikely to represent an effective change relative to Vietnam's GATS commitments.

Legal Services

Internationally traded legal services typically involve foreign lawyers providing legal services involving their home country law, international law, or other countries' laws. Host country law, an increasingly important area of international trade, is normally subject to requalification and other requirements.[804] With the exception of Japan, all other TPP member countries permit cross-border provision of legal services (as it relates to the ability to practice in areas other than host country law), as part of the TPP Agreement and in line with their current practice.[805] Most countries regulate the provision of legal services via commercial presence, especially as it relates to the practice of host country law.[806] Although TPP includes some NCMs that limit market opening,[807] TPP commitments would represent liberalization in certain instances compared with either previous U.S. trade agreements or the GATS.

TPP Parties with Existing U.S. FTAs

- Chile's TPP provisions represent liberalization relative to the U.S.-Chile FTA. Under TPP, Chile's provisions include residency requirements for the giving of advice related to Chilean law, while the U.S.-Chile agreement specified that only Chilean natural persons could be authorized to practice as lawyers (i.e., advising on Chilean law).[808]
- Australia, Canada, Peru, and Singapore's TPP provisions do not represent effective changes relative to previous agreements.[809] Mexico's TPP provisions do not appear directly comparable to those under NAFTA.[810]

[804] Geloso Grosso et al., "Services Trade Restrictiveness Index," 2014, 7.
[805] World Bank, Services Trade Restrictions Database (accessed January 11, 2016-April 11, 2016).
[806] Brunei, Chile, Japan, Malaysia, Mexico, Singapore, and Vietnam have restrictions in TPP, mainly applied to the practice of host country law—for example, related to limits on form or local qualification requirements. Within the World Bank STRI database, several countries' restrictions relate to licensing, ownership, form, or a prohibition on supplying legal services. This discussion minimally covers restrictions on services related to patents, trademarks, or notaries. For details on both, see appendix E.
[807] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015, 20–21.
[808] U.S.-Chile FTA, Annex 1, 19.
[809] Australia, Canada, and Peru's FTA restrictions, related to patent, trademark, or notary services, are carried over to provisions in TPP (U.S.-Australia FTA, Annex 1, 7; NAFTA, Annex 1, I-C-21, I-C-22; U.S.-Peru TPA, Annex 1, 4). Canada appears to be an exception, since there was a phaseout related to these provisions under NAFTA. Singapore maintains "any measure" for the practice of Singapore law; see International Bar Association, "Singapore International Trade in Services," June 2014, for Singapore's laws governing trade in legal services, and U.S.-Singapore FTA, Annex 8A, 12-13, for information on existing FTA commitments.
[810] It is unclear whether TPP represents liberalization in Mexican legal services with respect to NAFTA. NAFTA, Annex 1, I-M-45; Annex 2, II-M-2; Annex VI, VI-M-2.

Countries with Which the United States Does Not Currently Have an FTA

- The TPP provisions for Brunei, Japan, and Malaysia represent liberalization relative to their GATS commitments. Brunei and Japan maintain NCMs in legal services under TPP—including local presence or local qualification requirements (Japan) or partnership requirements and prohibition on the provision of advice on host country law (Brunei). Malaysia outlines conditions under which foreign law firms are allowed to practice Malaysian law. However, these countries' TPP provisions represent liberalization, as there were either no prior GATS commitments or trade in host country law was not allowed under GATS.
- Vietnam and New Zealand's TPP provisions do not appear to represent substantial changes relative to their GATS commitments.

Summary of Views of Interested Parties

The ITAC on Services and Finance Industries (ITAC-10) reported that principal provisions of TPP's Cross-Border Trade in Services chapter, including Article 10.5 (Market Access) and Article 10.6 (Local Presence), address relevant and important concerns in the foreign provision of professional services.[811] Article 10.8 (Domestic Regulation) and Article 10.9 (Recognition) were also reported as important for trade in professional services.[812] Certain provisions of TPP Annex 10-A on Professional Services (which encourages the recognition of professional qualifications, licensing, or registration) were highlighted by ITAC-10 as particularly important or as having a potentially significant impact, including (1) the formation of a Professional Services Working Group, (2) the establishment of temporary or project-specific licensing, and (3) the consideration of specific laws and regulatory issues for legal services.[813]

According to Robert Vastine of Georgetown University, TPP is viewed by industry representatives as having a positive impact on the U.S. services sector, including professional services industries.[814] One participant in the Commission's hearing noted that as U.S. multinational corporations expand their operations abroad, their demand increases for support

[811] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015. See page 10 of this document for information on TPP Chapter 10's relevance for architecture and engineering services, as well as a discussion of technical barriers to trade as they relate to such services. See also pages 20–21 on legal services, including a discussion of TPP Chapters 12 (Temporary Entry for Business Persons), 27 (Administrative and Institutional Provisions), and 28 (Dispute Settlement) as they relate to the provision of legal services.
[812] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015, 9, 21. See page 9 for a discussion of accounting and auditing services, which includes a discussion on Mutual Recognition Agreements and the relevance of Chapter 26 for such services.
[813] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015, 10, 21–22.
[814] USITC, hearing transcript, January 14, 2016, 662–63 (testimony of Robert Vastine, Georgetown University); Vastine, written testimony to the USITC, January 14, 2016, 2. Mr. Vastine noted that the International Trade Advisory Committee (ITAC) for Services and Finance Industries reported gains for accounting, architecture, and engineering services.

from professional services firms at home, such as legal and accounting services.[815] Another hearing participant noted TPP's beneficial impacts in facilitating greater transparency about compliance with rules and regulations (such as meeting requirements that permit professionals to stay in foreign markets for extended periods, as well as tax, financing, and currency exchange-related issues). A lack of transparency in this domain has been a significant barrier to SMEs seeking to export services.[816] An additional hearing participant echoed the opportunities for greater transparency (related to regulation and licensing) that TPP would offer professional services firms, especially in conjunction with increased potential for trade, given the spread of digital technologies. However, also noted were the difficulties involved for certain professional services still subject to stringent regulations.[817]

Express Delivery Services[818]

Assessment

Industry representatives indicate that, in broad terms, the U.S. express delivery industry would benefit from an anticipated expansion in merchandise trade—including growing shipments generated by e-commerce—with TPP partners. Industry representatives also stated that express- and customs-related provisions in the TPP Agreement improve upon similar provisions in previous FTAs. In particular, the treatment of express delivery under the Cross-Border Trade in Services chapter clearly defines the scope of a postal monopoly's universal service obligation (USO) by the price and value of shipments, and specifies that the postal industry regulator must be separate from the monopoly provider.[819] The Customs chapter of TPP removes weight and value limitations on express shipments, although it falls short of requiring countries to specify

[815] USITC, hearing transcript, January 13, 2016, 351 (testimony of Sarah Thorn, Walmart).
[816] USITC, hearing transcript, January 13, 2016, 296–97, 345 (testimony of George Judd, Cask LLC); Judd, written testimony to the USITC, January 13, 2016, 1–2.
[817] USITC, hearing transcript, January 13, 2016, 338–39 (testimony of Peter Allgeier, Coalition of Service Industries).
[818] Express delivery services are the expedited collection, transport, and delivery of time-sensitive documents, parcels, and other goods using air, sea, road, or rail transport services. Express firms maintain electronic control of the items they convey throughout the supply chain, even when a portion of transport and delivery is outsourced to third-party providers. Express firms also supply, on behalf of their customers, the payment of tariffs, customs fees, and taxes on goods that are destined for foreign markets. This definition is adapted from that of the Express Association of America (EAA), which represents four firms in the express delivery industry: DHL (Germany), FedEx (United States), TNT (Netherlands), and UPS (United States). Express services do not include letter delivery provided by postal authorities or commercial transportation services. See USTR, TPP, full text, Annex 10-B, "Express Delivery Services" (accessed November 10, 2015); EAA, "EAA Mission," n.d. (accessed November 10, 2015).
[819] Express industry representatives emphasized that state-owned postal monopolies are the primary competitors of private express delivery providers, rather than other express firms. The state-owned posts may use their monopoly benefits to subsidize package delivery. As a result, provisions that prohibit unfair competition by postal monopolies are especially important to the express industry. Expert panel at "2015–2016 TPP Series Part VI: Services" conference, March 9, 2016.

de minimis levels.[820] In addition, TPP commitments on express delivery are also significant for SME exporters, a growing customer segment of the express delivery industry, and for exporters that ship time- and temperature-sensitive goods such as pharmaceutical and healthcare products.[821]

Express delivery firms may also benefit from other provisions in the agreement, including those found in the chapters on Investment (TPP Chapter 9); E-commerce (TPP Chapter 14); Competitiveness and Business Facilitation (TPP Chapter 22); Small and Medium-Sized Businesses (TPP Chapter 24); Regulatory Coherence (TPP Chapter 25); and Transparency and Anti-Corruption (TPP Chapter 26). Together, these chapters include commitments that strengthen FTA disciplines on investment, Internet access, data privacy protection, supply chains, and regulatory transparency. These disciplines are also designed to help SMEs engage more effectively in international trade, and they establish best practices for supply chain performance. As a result, industry representatives suggest that TPP could have potentially significant and far-reaching effects on U.S. express delivery firms and their customers.[822]

Summary of Provisions

TPP contains two areas of provisions that directly affect express delivery firms. These are the Annex on Express Delivery Services within the Cross-Border Trade in Services chapter (Annex 10-B) and the chapter on Customs Administration and Trade Facilitation (TPP Chapter 5). The agreement also includes other provisions that may affect the ability of express firms to operate in TPP countries, such as those related to e-commerce, SMEs, competition policy, and supply chain performance.[823]

Annex on Express Delivery Services

The Annex on Express Delivery Services promotes fair competition between express firms and postal providers in TPP countries and prohibits postal authorities from abusing their monopoly position. Specifically, the annex requires that TPP countries (1) clearly define the scope of their postal monopolies using objective, quantitative criteria, such as price and weight limitations; (2)

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[820] For the purposes of this section, de minimis refers to a threshold monetary value beneath which a shipment may clear customs without needing to pay tariffs, customs fees, and taxes; submit manifest information (i.e., the description of a good that is being brought into a country); or undergo formal customs procedures. Industry representatives, interview by USITC staff, September 21, 2015; industry representative, telephone interview by USITC staff, December 11, 2015. Industry representatives stated that the TPP would provide a platform for parties to continue to look at the issue of establishing a baseline for de minimis levels, even as an agreement may be reached under other international forums, such as APEC. Expert panel at "2015–2016 TPP Series Part VI: Services" conference, March 9, 2016.
[821] UPS, written submission to the USITC, December 29, 2015.
[822] Allgeier, written submission to the USITC, January 11, 2016, 8-9; industry representative, telephone interview by USITC staff, December 11, 2015.
[823] Industry representative, telephone interview by USITC staff, December 11, 2015.

agree to maintain a level of market openness in express delivery services that is no less than at the time of the signing of the agreement; (3) prohibit their postal authorities from subsidizing their commercial services with funds from their universal service obligation of letter and mail delivery;[824] (4) prohibit postal authorities from either requiring private express firms to supply universal postal service or assessing discriminatory fees on them; and (5) establish an independent regulator for express delivery services that is separate from the monopoly postal provider, and whose decisions and procedures are "impartial, non-discriminatory, and transparent."[825]

For each of these provisions, industry representatives have indicated that the language in TPP is both clearer and stronger than in previous FTAs, and helps to promote a level playing field for private express firms that compete with state-owned postal authorities.[826] An example of a country where these provisions would be particularly important is Japan, where competition in express delivery services between private firms and the country's monopoly provider, Japan Post, is limited.[827]

The Cross-Border Trade in Services chapter also contains market access and national treatment provisions that are important to the express delivery industry. Market access provisions remove joint venture and equity requirements on express firms, permitting them to set up new facilities or expand existing ones (e.g., through the acquisition of a joint venture partner) as demand for their services grows.[828] In addition to opening express markets in current TPP parties, industry representatives suggest that these provisions would establish an important baseline for

[824] This provision would not apply to Vietnam until 3 years from the date that the agreement enters into force. USTR, TPP, full text, Annex 10-B, "Express Delivery Services," footnote 13 (accessed January 8, 2016).
[825] USTR, TPP, full text, Annex 10-B, "Express Delivery Services" (accessed January 8, 2016).
[826] Industry representative, telephone interview by USITC staff, December 11, 2015; UPS, written submission to the USITC, December 29, 2015.
[827] USITC, hearing transcript, January 13, 2016, 131 (testimony of James Fatheree, U.S.-Japan Business Council).
[828] Industry representative, telephone interview by USITC staff, December 11, 2015. In addition, investment provisions under Chapter 9 of the agreement encourage U.S. companies to invest in TPP countries, and these companies, in turn, will likely bring their express delivery service providers with them. Investment activity will therefore increase the "footprint" of U.S. firms in TPP countries in terms of employment and ancillary services providers. USITC, hearing transcript, January 13, 2016, 192 (testimony of Vanessa Sciarra, Emergency Committee for American Trade). Investment provisions also protect foreign express firms from government expropriation and contain dispute settlement mechanisms for foreign investors. Industry representatives, interview by USITC staff, Washington DC, September 21, 2015.

potential signatories to the agreement, such as Indonesia, that maintain joint venture or equity requirements on foreign express firms.[829]

For both Malaysia and Vietnam, two countries with which the United States does not currently have FTAs, market access commitments under TPP would be expected to lead to liberalization of services ancillary to express delivery. Malaysia would be expected to change existing laws/regulations limiting foreign participation in customs clearance services. Vietnam would be expected to eliminate foreign equity restrictions on customs clearance, freight agency, and warehousing services, thereby enabling foreign express providers to keep the “end-to-end” control of the items they transport in these markets.[830] Furthermore, national treatment provisions, applicable to all signatories, would protect foreign express firms from unfair or discriminatory treatment when competing against private express firms in TPP countries.[831]

Customs Administration and Trade Facilitation: Express Shipments[832]

Article 5.7 in TPP Chapter 5 (Customs Administration and Trade Facilitation) outlines customs procedures that facilitate the clearance of express items.[833] These procedures would apply to all express shipments regardless of weight or value. In addition, they would (1) allow manifest information to be submitted in advance of a shipment’s arrival;[834] (2) be designed to expedite the release of certain express shipments with a minimum of customs paperwork; (3) permit a single electronic submission of manifest information for all goods contained within an express shipment; (4) provide for the release of express items within six hours after the submission of

[829] Industry representative, telephone interview by USITC staff, December 11, 2015. Indonesia requires foreign express delivery providers to enter into joint ventures (limited to a 49-percent equity stake) with Indonesian firms. Since the conclusion of the TPP, Indonesia has indicated interest in joining the agreement, as have South Korea, the Philippines, Taiwan, and Thailand. USITC, hearing transcript, January 13, 2016, 48, 60 (testimonies of Ambassador Ashok Kumar Mirpuri of Singapore and Ambassador Kenichiro Sasae of Japan).
[830] UPS, written submission to the USITC, December 29, 2015. These commitments pertain broadly to logistics services. They are implied rather than explicitly stated in the TPP text (because of the negative list approach of the agreement's NCM Annex, which identifies only sectors where restrictions are in place). Rather, they are expected to be codified in these countries' domestic laws and become binding commitments once the agreement enters into force. Industry representative, email message to USITC staff, February 19, 2016; USTR representative, email message to USITC staff, February 23, 2016.
[831] Industry representative, telephone interview by USITC staff, December 11, 2015. National treatment obligations, defined under Article XVII of GATS, address the discriminatory treatment of foreign firms in host countries. These obligations concern competition between private entities. USITC, transcript of the Ninth Annual Services Roundtable, November 5, 2015, 38; WTO, “Guide to Reading the GATS Schedules,” n.d. (accessed December 2, 2015).
[832] See chapter 6 for detailed discussion of customs administration and trade facilitation provisions in TPP.
[833] For a full discussion of the TPP's provisions on Customs Administration and Trade Facilitation, see chapter 6, “Assessment of Cross-cutting and Procedural Provisions and Other Provisions Addressing Rules and Nontariff Measures.”
[834] Manifest information includes a full description of merchandise being brought into a country, its country of origin, the shipper's and recipient's name and address, and the customs value and destination of the merchandise. Hufbauer and Wang, “Logistics Reform for Low-Value Shipments,” June 2011, 2.

customs documentation (as long as the shipment has reached its destination); and (5) eliminate customs duties on express shipments valued at or below de minimis levels.[835]

Industry representatives indicated that the customs provisions in TPP are intended to simplify and modernize customs processing related to express shipments, and would promote the advance electronic submission of customs documentation—an important deterrent to corruption by customs officials.[836] These provisions would also be more transparent than in prior FTAs and would represent a notable improvement in expediting customs procedures in Malaysia and Vietnam. Overall, the efficiency of customs procedures is an important factor in the ability of express firms to provide timely service, as supply chain globalization, and increasing consumer demand for "borderless" transactions, have enhanced the role that express firms play in international commerce.[837]

Industry sources state that TPP does not require countries to specify de minimis levels in the agreement (as the U.S.-Korea FTA does, for example) and thus falls short of this benchmark.[838] Countries have reportedly refrained from specifying de minimis levels in TPP due largely to the sharp growth in e-commerce shipments. These shipments, though small in value, represent potential revenue sources for customs authorities that they may not wish to forgo.[839]

Other Provisions

Industry representatives indicate that provisions in other chapters of the agreement would likely have a positive impact on express delivery firms. For example, Chapter 14 on Electronic Commerce would expand opportunities for consumers to buy goods online, while at the same time removing restrictions on the movement of data across borders. Better consumer access to online commerce would likely increase U.S. merchandise trade and stimulate growth in the

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[835] Industry representatives, interview by USITC staff, Washington, DC, September 21, 2015.

[836] The electronic submission of customs documentation would also assist in increasing cargo security and reducing the costs of customs processing. Remarks by expert panel at "2015–2016 TPP Series Part VI: Services" conference, Washington International Trade Association, Washington, DC, March 9, 2016.

[837] Frontier Economics and the Global Express Association, "Express Delivery and Trade Facilitation: Impacts," January 2015, 12; Oxford Economics, "The Impact of the Express Delivery Industry on the Global Economy," September 2009, 17.

[838] Allgeier, written submission to the USITC, January 11, 2016, 9. The agreement states that "no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law." TPP countries will be given the opportunity to revise de minimis levels based on factors such as inflation, the costs associated with customs collection, and the provision's impact on trade facilitation and SMEs. See USTR, TPP, full text, Article 5.7, "Express Shipments," paragraph 1 (f), n.d. (accessed January 13, 2016). In certain TPA partners, de minimis levels remain quite low. For example, in Canada the de minimis is $20, and in Mexico, it is $50. Expert panel at "2015–2016 TPP Series Part VI: Services" conference, March 9, 2016.

[839] Industry representative, telephone interview by USITC staff, December 11, 2015. Industry sources note that the recently passed Trade Facilitation and Trade Enforcement Act of 2015 (H.R. 664 and S. 1269) sets a de minimis level of $800 for U.S. imports. Congress.gov, "H.R.644—Trade Facilitation and Trade Enforcement Act of 2015" (accessed January 19, 2016).

demand for express delivery services. The removal of data localization requirements (along with guarantees on data privacy protection) would make it easier for express firms to do business in foreign markets and to ensure the protection of express firms' customer and company data.[840]

Separately, TPP's dedicated chapter on Small and Medium-sized Businesses (TPP Chapter 22) would require governments to create websites that provide SMEs with access to the text of the agreement and summarize its main provisions. The chapter would also require governments to establish "SME committees" that provide guidance on exporting to TPP countries.[841] As noted, SMEs are an important and growing customer segment of the express delivery industry, and bolstering their participation in merchandise trade would lead to higher demand for express services.

TPP Chapter 22 on Competitiveness and Business Facilitation contains new language, not included in previous FTAs, which would require TPP signatories to develop best practices for supply chain performance and which encourages SME participation in regional supply chains.[842] Among other things, provisions on supply chain performance would address the goal of moving goods more efficiently through customs checkpoints. They would also address the need for better implementation of "behind-the-border" measures, such as product testing, which could delay the delivery of express items.[843]

Finally, industry representatives noted that the agreement's provisions on Regulatory Coherence (TPP Chapter 25) and Transparency and Anti-Corruption (TPP Chapter 26) aim to ensure the integrity of regulatory processes (including customs) in TPP countries. They would also give express firms the opportunity to review and comment on proposed regulatory changes that may affect their business.[844]

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[840] Industry representative, telephone interview by USITC staff, December 11, 2015. Industry representatives note that large global express delivery firms are indeed "data firms." For instance, express firms process millions of daily customer requests to track packages before and after their final delivery. Expert panel at "2015–2016 TPP Series Part VI: Services" conference, March 9, 2016.
[841] USTR, TPP, full text, Article 24.1: "Information Sharing," and Article 24.2: "Committee on SMEs."
[842] USTR, TPP, full text, Article 22.3: Supply Chains."
[843] Industry representative, telephone interview by USITC staff, December 11, 2015.
[844] Ibid.

Nonconforming measures (NCMs) and Chile and Japan Side Letters

Four TPP countries would maintain NCMs on postal and/or express delivery services, including Brunei, Japan, Mexico, and Singapore.[845] Among these, Mexico would maintain the right to place restrictions on foreign equity participation in postal services;[846] however, Mexico would exclude courier and parcel services from foreign investment limitations on domestic road freight transport services.[847]

In addition to the above NCMs, the United States signed a side letter with Chile about the regulation of Chile's postal monopoly, and with Japan about competition in express delivery services.[848] Japan's side letter is particularly important to U.S. and other foreign express providers, as it commits the government of Japan to providing an annual revenue and expense statement for Japan Post's Express Mail Service. The statement is aimed at addressing the potential for unfair cross-subsidization between Japan's postal and express services.[849]

Overview of U.S. Trade in Express Delivery Services

In 2014, the value of U.S. exports of air freight services to TPP countries (used here as a proxy for express delivery services) was $2.6 billion, whereas U.S. imports totaled $1.2 billion, leading

[845] Brunei states that foreign firms are not permitted to supply domestic courier or express delivery services except in the form of a joint venture with a Bruneian entity. Japan maintains a reservation on the supply of postal services, but this reservation does not apply to the delivery of packages, parcels, goods, direct mail, or periodicals. Singapore requires all providers of basic letter services to be incorporated under Singapore's Companies Act. USTR, TPP, full text, Annex I, Schedule of Brunei Darussalam, I-BN-29; Annex II, Schedule of Japan, 4; Annex II, Schedule of Mexico, 9; and Annex I: Singapore's Reservations to Chapter 9 (Investment) and Chapter 10 (Cross-border Trade in Services), 13. For a full list of NCMs in the TPP, see appendix E.
[846] USTR, TPP, full text, Annex II, Schedule of Mexico, 9, n.d. (accessed January 15, 2016).
[847] USTR, TPP, full text, Annex I, Schedule of Mexico, 62–63; USTR, email message to USITC staff, November 10, 2015. Specifically, the agreement states: "Investors of another Party or their investments may not own, directly or indirectly, an ownership interest in an enterprise established or to be established in the territory of Mexico, engaged in transportation services of domestic cargo between points in the territory of Mexico, except for parcel and courier services."
[848] Chile's side letter confirms that the government (1) does not include express delivery services within the scope of its postal monopoly and (2) is not required to maintain detailed financial accounts on its monopoly postal provider, Correos de Chile, pursuant to provisions in paragraph 5, Annex 10-B of the agreement. USTR, TPP, full text, Related Instruments, U.S.-Chile Side Letter Exchange Regarding Express Delivery Services. Paragraph 5, Annex 10-B, of the agreement states: "No Party shall allow a supplier of services covered by a postal monopoly to cross-subsidize its own or any other competitive supplier's express delivery services with revenues derived from monopoly postal services." USTR, TPP, full text, Annex 10-B, "Express Delivery Services."
[849] Japan's side letter also requires both the United States and Japan to supply advance electronic customs data on postal items, including express shipments, in order to enhance customs efficiency and supply chain security. This requirement is established under Article 9 of the Universal Postal Convention ("Security and Violations") and is to be adopted by all members of the Universal Postal Union. The U.S. Postal Service and Japan Post will participate in a pilot program that aims to jump-start the implementation of such requirements on international postal items, including outbound express shipments. USTR, TPP, full text, Related Instruments, U.S.-Japan Side Letter Exchange on Non-Tariff Measures.

to a U.S. surplus of $1.4 billion.[850] The top five U.S. export markets for air freight services in 2014 were Japan ($1.2 billion), Mexico ($398 million), Singapore ($382 million), Australia ($284 million), and Canada ($194 million). By contrast, the five largest U.S. import markets were Japan ($611 million), Singapore ($306 million), Australia ($132 million), Chile ($56 million), and New Zealand ($45 million).[851] Among TPP partner countries, the list of the top five U.S. export and import markets in air freight services remained relatively stable during the 2005–14 period, with Australia, Japan, and Singapore consistently ranking among the top three.[852]

Impact of TPP on Express Delivery Services

According to the Commission's economic analysis, the TPP could potentially lead to an increase in U.S. exports of air freight transport services of $550 million. This increase would result from an estimated rise in merchandise trade among TPP partners of $119 billion through the year 2032 which, in turn, would stimulate additional demand for transportation services among TPP parties.[853] As such, the analysis suggests that the TPP would likely have a positive impact on the business of U.S. express delivery firms.

Audiovisual Services[854]

Assessment

TPP's Cross-border Trade in Services chapter would generally offer U.S. audiovisual services firms increased levels of market access and national treatment by reducing or freezing most local-content quotas and liberalizing foreign ownership restrictions in parties' respective broadcasting and film industries. Moreover, the Intellectual Property chapter (TPP Chapter 18) strengthens copyright protection and enforcement for U.S. audiovisual services providers in the

[850] USDOC, BEA, *Survey of Current Business,* table 2.2: U.S. Trade in Services, by Type of Service and by Country or Affiliation, release date October 15, 2015. Air freight services refer to the transport of goods on dedicated air cargo planes or in the cargo hold of passenger aircraft. U.S. exports of air freight services pertain to the transport of U.S. merchandise exports and express items by U.S. carriers to foreign countries or between two foreign destinations, whereas U.S. imports pertain to the transport of U.S. merchandise imports and express items by foreign carriers to the United States. BEA representative, email message to USITC staff, February 2, 2016.
[851] USDOC, BEA, *Survey of Current Business,* table 2.2: U.S. Trade in Services, by Type of Service and by Country or Affiliation, release date October 15, 2015. U.S. export and import rankings by country are calculated based on available country-specific data from BEA for 2014, the latest year for which such data are available. BEA does not capture country-level data on Brunei, Peru, or Vietnam.
[852] USDOC, BEA, Interactive Data, October 15, 2015.
[853] The economic model estimates that the TPP Agreement would result in an increase in merchandise trade among TPP partners. The model calculates that a total of $5.8 billion of additional transportation services could be required to transport this higher volume of merchandise trade. Of this total, $1.1 billion of air transport services could be demanded. The model does not specify which TPP partners would supply the additional air transport services, but ITC staff estimate that the United States would likely provide at least 50 percent.
[854] Audiovisual services refer to terrestrial, cable, satellite, and digital/pay television broadcasting and motion picture production and distribution.

parties. The effect of TPP provisions on U.S. cross-border exports of audiovisual services, however, is likely to be moderate in the short term. Nonetheless, TPP parties, particularly Canada and Japan,[855] with large and established television and film markets will likely provide U.S. audiovisual services suppliers with the largest benefits in the longer term.[856] Moreover, TPP would likely have minimal impact on cross-border imports of audiovisual services to the United States, largely due to the market predominance of (or consumer preferences for) domestic U.S. television programs and films in this country.

Although the general provisions of the TPP Cross-border Trade in Services and Intellectual Property chapters, as noted above, apply to audiovisual services, the TPP commitments that impact the industry most directly are found in Annexes I and II under Non-Conforming Measures (NCMs), as is the case for other services industries. For parties without an existing U.S. FTA (Brunei, Japan, Malaysia, New Zealand, and Vietnam), TPP would switch commitments from a “positive list” under the GATS to a generally more liberal “negative list” schedule of services commitments. This is of particular importance to the audiovisual services industry, as a negative list approach would imply that any new services (e.g., digital content distribution) developed as a result of innovation or technological advancement would automatically be subject to disciplines established under TPP.[857]

Overall, in the longer term, improvement in U.S. firms’ access to TPP audiovisual services markets would be the most significant for Canada, Japan, Malaysia, and Vietnam. For Canada and Japan, this is due to market size. Notably, Canada and Japan made specific commitments in TPP to relax existing or future limitations on online content and on-demand television services, respectively, recognizing the growing importance of digital media services. Malaysia and Vietnam represent significant participants in the burgeoning Southeast Asian film market. [858] Although Vietnam listed the most NCMs in audiovisual services of all partner countries, it is already among the world’s biggest consumers of digital content.[859] Moreover, the Vietnamese government has set concerted national policies to encourage greater e-commerce and

[855] U.S. cross-border exports of film and television and tape for Canada and Japan reached $1.45 billion and $768 million in 2014, respectively, and were the United States’ two largest TPP export markets for audiovisual services. U.S. cross-border imports of film and television and tape from Canada and Japan reached $142 million and $8 million in 2014, respectively. USDOC, BEA, *Survey of Current Business,* October 2015.
[856] Zhang, “Global Cinema Exhibition Market,” October 2013, 4–5.
[857] Low and Mattoo, “Is There a Better Way?” 1999, 22.
[858] Pinewood Iskandar Malaysia, completed in December 2013, is the largest independent integrated studio facility in Southeast Asia. The RM550 million (about $132 million) facility offers filmmakers 100,000 square feet of film stages, 24,000 square feet of television studios, postproduction facilities, and complete support services. The studio, with state-of-the art equipment, is set to position itself as the regional hub for film and television production. The Weinstein Company has shot part of the television series *Marco Polo* at the facility. Prensario International, “Malaysia: Pinewood Iskandar Malaysia Studios Opens,” June 16, 2014.
[859] Thanh Nien News, “Vietnam among the World's Biggest Consumers,” April 2, 2015.

digitization in general, which will likely benefit U.S. audiovisual content providers in the future.[860]

Summary of Provisions

For TPP parties that are already U.S. FTA partners, gains from TPP will reflect the difference between the NCMs that those countries listed in their FTAs and those listed in TPP. For new FTA partners, existing audiovisual services commitments are defined by each country's commitments in the GATS, compared with commitments under TPP.

Existing U.S. FTA Partners

Australia: Under TPP, Australia has shifted many of its detailed Annex I NCMs (current measures) to broader Annex II NCMs (potential measures). This shift represents a gradual liberalization compared to its prior FTA with the United States.

For example, in the U.S.-Australia FTA, Annex I specified that transmission quotas for local content on television broadcasting could not exceed 55 percent of the programming transmitted annually between 6 a.m. and midnight and that transmission quotas for local content imposed on advertising broadcasts could not exceed 80 percent annually (Annex I, p. 15). In TPP, Annex I mentions no specific audiovisual services measures, but Annex II reserves Australia's right to maintain unspecified measures relating to transmission quotas for television broadcasting; nondiscriminatory expenditure requirements for Australian production; other audiovisual services transmitted electronically; spectrum management; and subsidies and grants for investment in Australian cultural activity, among others. However, the annex notes that this entry does not apply to foreign investment restrictions in the broadcasting and audiovisual services sector (Annex II, p. 8). Under the previous and current agreements, Australia reserved the right in Annex II to adopt or maintain preferential international coproduction arrangements[861] for film and television productions (Annex II, p. 9/Annex II, p. 10).

Canada: Under TPP, Canada would liberalize its NCMs to exclude certain carve-outs relating to cultural businesses previously found in NAFTA. It notably excludes online content from potential discrimination (Annex II, no. 14).

[860] Vietnam's ministerial targets include creating an online presence for 60 percent of the country's businesses by the year 2020 ("Vision 2020"). Hoang, "Vietnam Rolling Out Digital Economy Strategy," September 24, 2015; Bloomberg BNA Conference, "The Trans-Pacific Partnership," December 2, 2015.
[861] International coproduction arrangements refer to television programs or films whose production companies are from at least two different countries. In most coproduction agreements, certain incentives are offered to partnering foreign producers, such as tax rebates and expedited visas for foreign workers.

Chile: Chile's TPP NCMs would largely remain unchanged from its U.S.-Chile FTA NCMs, maintaining residency and nationality requirements for media owners; local-content quotas of up to 40 percent for television broadcasts (Annex I, p.3/Annex I p. 4); and reservations that accord differential treatment measures for cultural industries, including audiovisual cooperation agreements and government-supported subsidies (Annex II, p. 11-12).

Mexico: Mexico, under TPP, would make selected improvements from its NCMs under NAFTA. First, under TPP Mexico would maintain a 49 percent foreign equity ownership cap on television broadcasting that was previously established under NAFTA (Annex I, no. 8 and no. 9), but eliminate its Spanish-language requirements. Mexico would also reduce the total annual screen time dedicated to the projection of national films to 10 percent, down from 30 percent under NAFTA (Annex I, no. 46). Finally, under Annex II of TPP, Mexico lists detailed local-content quotas for the number of channels and hours for television broadcasts and advertising and other film screening authorizations (Annex II, no. 9), providing greater specificity to commitments compared to language in NAFTA.

Peru: Peru's NCMs for TPP and its prior FTA would remain very similar, but include notable liberalization in foreign equity ownership in broadcasting. Under Annex I for both agreements, Peru maintains residency and nationality requirements for broadcasters (Annex I, p. 2/Annex I, no. 3); it also limits foreign shareholders from holding a broadcasting authorization in a zone bordering that foreign national's country of origin (Annex I, p. 2/Annex I, no. 5). Further, it indicates that at least 30 percent, on average, of the total weekly programs by free-to-air television broadcasters be dedicated to Peruvian-produced content and aired between the hours of 5 a.m. and midnight (Annex I, p. 3/Annex I, no. 4). Moreover, broadcast companies must allocate at least 10 percent of their daily programming to Peruvian cultural content, such as history, literature, and folklore (Annex I, p. 8/Annex I, no. 15). On the other hand, in Annex I of TPP, Peru drops the 40 percent foreign equity ownership cap in broadcasting enterprises that was designated in its previous FTA (Annex I/no. 3).

Singapore: Singapore's TPP NCMs would offer more detailed measures than does the existing U.S.-Singapore FTA. However, both solely consist of Annex II (potential measures) relating to broadcasting services—namely, expenditure requirements for local content, measures relating to spectrum management and licensing of broadcasts, and investment subsidies and grants for Singaporean content (8B, 8/Annex II, no. 7). Notably, in the TPP NCMs, Singapore states that non-scheduled broadcasting services (e.g., streaming content) are not subject to Annex II reservations (Annex II, no. 7).

New U.S. FTA Partners

For TPP parties that are not already U.S. FTA partners (Brunei, Japan, Malaysia, New Zealand, and Vietnam), existing commitments for audiovisual services are found in the GATS, so the following section compares GATS commitments to TPP. Overall, by virtue of the negative list format, commitments in audiovisual services would be significantly more extensive in TPP for these countries than is the case under the GATS. Each country would schedule different NCMs under TPP, however, as discussed below.

Brunei: Under TPP, Brunei would reserve the right to adopt or maintain any measure relating to licensable free-to-air or subscription broadcasting (Annex II, no. 12). Since Brunei listed no commitments for audiovisual services in its GATS schedule, the entire sector was previously "unbound," meaning that Brunei was free to introduce or maintain any measures inconsistent with market access or national treatment. Switching from its GATS schedule to TPP would thus be a significant liberalization.

Japan: Japan's existing GATS commitments broadly liberalize audiovisual services for both market access and national treatment measures. Nonetheless, TPP would again offer greater liberalization, given the agreement's negative list approach to services commitments. Japan's sole NCM for audiovisual services under TPP would relate to the supply of or investment in the broadcasting industry. The NCM's expanded language states that on-demand services, including such services provided over the Internet, are not subject to potential reservations (Annex II, no. 6). However, Japan does include a broader NCM across all cross-border trade in services that allows for the carve-out of any measure in which those services were not technically feasible at the time of entry into force (Annex II, no. 3).

Malaysia: In adopting TPP, U.S. audiovisual services providers in Malaysia would generally see improvement in commitments, as the new agreement would freeze Malaysian broadcasting quotas. However, Malaysia's TPP NCMs would limit the granting of certain broadcasting licenses (Annex I, no. 9), and Malaysia reserves the right to adopt or maintain differential treatment to countries under any international agreement with regard to broadcasting (Annex II, no. 6). Malaysia also reserves the right to review products following their importation and distribution to ensure decency standards (e.g., programming licensed for broadcasting on television, cable, and satellite stations) (Annex II, no. 10).

Malaysia's commitments under its GATS schedule, by comparison to its TPP commitments, are difficult to assess side by side, since the TPP language is much broader compared to its more specific GATS commitments. For instance, Malaysia's GATS includes a requirement for a commercial presence for motion picture and videotape production and distribution services. Market access is made available only through joint venture agreements, in which foreign shareholding must not exceed 30 percent. Further, Malaysia, in GATS, requires that 20 percent of total broadcasting screening be dedicated to local content, including language dubbing requirements. These precise GATS measures are not detailed or addressed directly in Malaysia's TPP NCMs, and therefore should be considered either frozen at current levels or liberalized.

New Zealand: Under TPP, New Zealand would reserve the right to adopt or maintain preferential coproduction arrangements for film and television production, including the promotion of local content (Annex II, 18–19). New Zealand's GATS commitments also note no major restrictions for market access and national treatment except for the funding of certain indigenous programming. Although New Zealand's audiovisual services industry was already relatively liberalized under the GATS, improvements would be seen in switching to TPP's negative list format.

Vietnam: For Vietnam, the NCMs under TPP would be the most extensive of all TPP parties. Under Annex I, investment in Vietnam's motion picture distribution and projection service industries are allowed only through a business cooperation contract or a joint venture with an authorized Vietnamese partner. In the case of a joint venture, foreign equity ownership would not be allowed to exceed 51 percent (Annex I, 9). Further, the screening of Vietnamese films must be not less than 20 percent of total films on an annual basis, with cinemas showing at least one Vietnamese film between 6 p.m. and 10 p.m. (Annex I, 10).

Under Annex II, Vietnam reserves the right to adopt or maintain any measures to protect "cultural heritage" (Annex II, 17) and to regulate broadcasting activities in any form according to Vietnamese law (Annex II, 18). Vietnam also reserves the right to adopt or maintain any future measures in respect of investment, production, and distribution of video records on any medium (Annex II, 19), including subsidies for audiovisual services and preferential treatment to television programs and cinematographic works produced under coproduction agreements (Annex II, 20).

Vietnam's GATS commitments note similarly strong measures. Vietnam states that all films must have their content censored by Vietnamese authorities. Again, market access for motion picture production and distribution is allowed only through a business cooperation contract or a joint venture with an authorized Vietnamese partner—echoing the foreign equity ownership cap of 51 percent.

Even though Vietnam details more NCMs than any other party, TPP would establish a base level of liberalization where listed quotas and other limitations would be locked in and would not be subject to future policy changes that would increase discrimination.

Summary of Views of Interested Parties

U.S. industry representatives are generally satisfied with the TPP provisions on audiovisual services.[862] The ITAC on Services and Finance Industries (ITAC-10) reported that the agreement creates the foundation for expanded commercial opportunities in the TPP region. [863] In terms of market access, however, ITAC-10 noted that existing FTA partners have essentially reiterated their previous FTA commitments on audiovisual services, leading the committee to state its disappointment about the extent to which broadcast and cable television remain subject to restrictions on ownership, program nationality and quantity, and the potential for governments to provide broad cultural support to domestic broadcasters.[864] Similarly, the Motion Picture Association of America (MPAA) noted that unlike the theatrical and online markets, TPP does very little to open up the television market. In particular, according to the MPAA, some of the TPP parties would be able to maintain discriminatory policies in pay TV, which is especially important in countries with low broadband penetration.[865]

Nonetheless, ITAC-10 and the MPAA agreed that TPP parties have made meaningful new market access commitments in the developing online, on-demand marketplace for audiovisual services. In TPP, they note important new online commitments from Canada, Singapore, and Japan, specifically:[866]

- Canada would exclude "measures restricting the access to online foreign audiovisual content."
- Singapore makes a commitment allowing nondiscriminatory access for video streaming.
- Japan notes that on-demand and online services are not subject to reservation; however, Japan would reserve the right to discriminate in the case of new services not yet technically feasible when TPP enters into force. The MPAA indicated that this right to discriminate in new services not technically feasible would appear to undercut one of the fundamental benefits of the agreement's negative list structure.[867]

Many commenters agreed that the Intellectual Property chapter (TPP Chapter 18) is quite strong in patents, trademarks, and copyrights, and stated that the U.S. audiovisual sector is very

[862] USITC, hearing transcript, January 14, 2016, 645 (testimony of Robert Vastine, Georgetown University).
[863] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015, 10–12.
[864] Ibid., 11.
[865] MPAA, written submission to the USITC, February 16, 2016, 3–5; USITC, hearing transcript, January 13, 2016, 265 (testimony of Peter Allgeier, Coalition of Service Industries).
[866] ITAC-10, *The Trans-Pacific Partnership Trade Agreement (TPP)*, December 3, 2015, 11–12; MPAA, written submission to the USITC, February 16, 2016, 3–5.
[867] MPAA, written submission to the USITC, February 16, 2016, 3.

pleased with the outcome there.[868] Specifically, ITAC-15 (Intellectual Property Rights) and the International Intellectual Property Alliance approvingly highlight the fact that the substantive text adds a provision requiring criminal penalties for unauthorized "camcording."[869] Moreover, the MPAA points out the importance of TPP's extending the term of copyright protection to the global minimum standard of life plus 70 years. This, according to the MPAA, directly benefits creators and is also important in facilitating global trade in creative networks. [870] Finally, the Copyright Alliance noted that the same rules for enforcement against infringement of physical goods should apply online. Although it softens or qualifies certain provisions found in prior FTAs, TPP includes requirements to adopt legal remedies for online infringement, establishes a notice-takedown-counternotice regime,[871] and creates judicial procedures under which a rights holder can obtain the identity of the alleged infringer, among others.[872]

Telecommunications

Assessment

For more than a decade, U.S. telecommunications carriers have largely avoided, with few exceptions,[873] making investments in retail telecom services markets abroad.[874] In a likely continuation of this trend, and notwithstanding the provisions of the TPP telecommunications chapter, U.S. telecom carriers are unlikely to enter into the retail markets of most TPP partner countries.[875] Largely this is because the retail sectors of most such countries are mature, highly competitive markets characterized by multiple service providers, high levels of service penetration, and declining average revenue per user, all factors that limit the likelihood of

[868] USITC, hearing transcript, January 13, 2016, 225 (testimony of John Murphy, U.S. Chamber of Commerce). For further discussion of the Intellectual Property chapter (TPP Chapter 18), see chapter 6 of this report.
[869] ITAC-15, *The Trans-Pacific Partnership Agreement*, December 3, 2015, 21; IIPA, written submission to the USITC, December 29, 2015.
[870] MPAA, written submission to the USITC, February 16, 2016, 4.
[871] "Notice-takedown-counternotice" refers to the process of removing copyright infringing content from websites (notice-takedown) and, when necessary, countering false infringement claims (counternotice). DCMA.com, "What is a DMCA Takedown?" n.d. (accessed May 9, 2016).
[872] Copyright Alliance, written submission to the USITC, February 12, 2016. For additional discussion of how TPP addresses copyright infringement, see the discussion of Intellectual Property Rights in chapter 6 of this report.
[873] In recent years, one of the few notable examples of a U.S. carrier entering a retail market is AT&T's acquisition of two companies in Mexico, lusacell and Nextel Mexico, in 2015. AT&T, "AT&T Closes Acquisitions of Mexican Wireless Provider," January 16, 2015; AT&T, "AT&T Completes Acquisition of Nextel Mexico," April 30, 2015.
[874] Industry representative, interview by USITC staff, Washington, DC, February 2, 2016; industry representative, interview by USITC staff, Washington, DC, March 10, 2016. Retail telecom services entail the delivery of telecommunication services to individual consumers, typically voice, text, and Internet services.
[875] Commission model results, specifically for the telecommunications sector, including projected levels of exports and imports, are not available, as this sector is included in the broader communications sector in the GTAP database. (The GTAP "communications" category includes post and courier services, Internet services providers, and TV and radio broadcasting, as well as telecommunications services.

establishing (or maintaining) profitable operations.[876] Several TPP partners—notably Brunei,[877] Canada,[878] and Vietnam[879]—also maintain foreign equity caps, restrictions that are likely to deter U.S. carriers from establishing or expanding their operations in those countries.[880] Moreover, in the cases of Australia, Chile, Peru, and Singapore, the nearly identical nature of the TPP telecom chapter and each country's respective FTA telecom chapter means that these provisions have been in place for more than 10 years, with the effect of such provisions, if any, already having impacted the market.[881]

Over the past decade, U.S. telecom carriers have moved into foreign markets largely by focusing on offering enterprise services. Enterprise services comprise the delivery of telecom services—typically setting up and maintaining corporate networks connecting offices in different countries—to multinational corporations. Common enterprise services, most of which involve setting up corporate networks, include dedicated Internet access, virtual private network, Ethernet private line, and long-haul private line services.[882] The main U.S. providers of enterprise services in TPP foreign countries are AT&T, CenturyLink, GTT Communications, Level

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[876] Industry representative, interview by USITC staff, Washington, DC, February 2, 2016; BMI, Telecommunications Reports for TPP Countries (except Brunei), Q4 2015 or Q1 2016; Evans, *Brunei Darussalam*, December 15, 2015.
[877] Brunei's Annex 1, Non-conforming Measures, require that foreign nationals and enterprises provide telecommunications services through a commercial agreement with a licensed operator in Brunei. Foreign nationals and enterprises may not own more than 51 percent equity shareholding in all telecommunications enterprises.
[878] Canada's Annex 1, Non-conforming Measures, stipulates that foreign investors are restricted to a maximum, cumulative voting interest of 46.7 percent in facilities-based telecom operators, based on 20 percent direct investment and 33.3 percent indirect (portfolio) investment. However, foreign investment is allowed up to 100 percent in facilities-based telecommunications services firms that have revenues, including those of affiliates, from the provision of telecommunication services in Canada representing less than 10 percent of the total telecommunications services annual revenues in Canada. After entering the market, foreign investors may exceed the 10 percent market share restriction if the increase in revenues above the threshold does not result from the acquisition of another facilities-based supplier. There are also no foreign equity caps for suppliers conducting operations under a submarine cable license or a satellite authorization.
[879] Vietnam's Annex 1, Non-conforming Measures, includes several provisions. Facilities-based basic services are permitted only through a joint venture (or purchase of share in a Vietnamese enterprise), with foreign equity limited to 49 percent; facilities-based value-added services are permitted only through a joint venture (or purchase of shares in a Vietnamese enterprise with foreign equity limited to 51 percent), and foreign equity of up to 65 percent will be allowed no later than 5 years of the TPP's entry into force; non-facilities-based basic and value-added services are permitted only through a joint venture (or purchase of shares in a Vietnamese enterprise) with foreign equity limited to 65 percent, or 70 percent for virtual private networks. (Foreign equity limitations and joint venture requirements will be eliminated no later than 5 years after the TPP's entry into force.) Facilities-based carriers own and operate the network(s) over which they offer telecom services, whereas non-facilities-based carriers lease such networks.
[880] Industry representative, interview by USITC staff, Washington, DC, June 18, 2015; industry representative, interview by USITC staff, Washington, DC, February 2, 2016; industry representative, telephone interview by USITC staff, March 18, 2016.
[881] Industry representative, interview by USITC staff, Washington, DC, March 10, 2016.
[882] TeleGeography, *Global Enterprise Networks* (executive summary), 2015, 1–12.

3 Communications, Sprint, and Verizon.[883] Currently, most U.S. enterprise services providers have established operations in at least some TPP countries. Verizon, for example, offers at least some services in all TPP countries (including Brunei), followed by AT&T (11 TPP countries), Sprint (11 TPP countries), Level 3 (10 TTP countries), CenturyLink (5 TPP countries), and GTT (4 TPP countries).[884]

As their clients expand into new countries, enterprise carriers are required to expand their global networks to unserved (or underserved) countries and cities, activities which require them to invest in new network points of presence (POPs), deploy telecom equipment, and connect those POPs to their global network.[885] The provisions of Chapter 13 would likely benefit U.S. enterprise carriers that are seeking to establish POPs in unserved TPP countries. They would do so largely by making it easier to not only offer telecommunication services (and establish a legal entity), but also to negotiate with local telecom carriers.

The use of the negative list would be particularly helpful in this context. First, the negative list approach would allow carriers to offer the telecommunication services of their choice in TPP markets, a benefit that would be useful over time as new services are developed and deployed.[886] Similarly, unless a party stipulates a certain type of business entity in the NCMs (frequently a joint venture), the negative list approach would allow U.S. carriers to adopt the business entity that best suits their needs in each country.[887] These negative list benefits, combined with provisions requiring transparent licensing criteria and processes, might also enable U.S. carriers to offer higher-value-added services in some countries.[888]

At an operational level, once an enterprise carrier has established itself in a TPP market, the obligations imposed by Article 13.12 (Colocation by Major Suppliers) would make it easier to

[883] TeleGeography, *Global Enterprise Networks* (list of company profiles), 2015, 1–5; global network maps of AT&T, CenturyLink, GTT Communications, Level 3 Communication, Sprint, and Verizon. Maps are available online as follows: AT&T, http://www.corp.att.com/spectrumnewsletter/WHOLESALE_MAP.pdf (accessed April 13, 2016); CenturyLink, http://www.centurylink.com/business/asset/network-map/international-long-distance-map-nm090926.pdf (accessed April 13, 2016); GTT Communications, http://www.gtt.net/our-network/network-maps/ (accessed April 13, 2016); Level 3 Communications, http://maps.level3.com/default/#.Vw57wv72bcs (accessed April 13, 2016); Sprint Communications, https://www.sprint.net/network_maps.php (accessed April 13, 2016); Verizon Communications, http://www.verizonenterprise.com/resources/brochures/br_verizon-global-network-map_en_xg.pdf (accessed April 13, 2016).
[884] AT&T, http://www.corp.att.com/ap/about/where/ (accessed March 25, 2016); AT&T, http://www.corp.att.com/latin_america/where/ (accessed March 25, 2016); and the global network maps found on the websites of CenturyLink, GTT, Level 3, Sprint, and Verizon (accessed March 24, 2016). Some maps may not be up to date. Verizon appears to be the only U.S. enterprise carrier offering services in Brunei.
[885] TeleGeography, *Global Enterprise Networks*, 2015, 1.
[886] Industry representative, interview by USITC staff, Washington, DC, March 10, 2016.
[887] Industry representative, telephone interview by USITC staff, March 18, 2016.
[888] Industry representative, interview by USITC staff, Washington, DC, March 10, 2016.

establish a POP,[889] which involves being able to locate telecommunications equipment in (or near) established Internet exchange points, network access points, local offices, undersea cable landing stations, and other premises where in-country telecommunications providers place routers, switches, bridges, multiplexers, and other telecommunications equipment. Once a POP is established, U.S. carriers also need to connect business customers to the POP, often by using the existing local network(s) and, ultimately, connect the POP to their international network, typically at a submarine cable landing station.[890]

The obligations imposed by the provisions in TPP related to network facilities would improve the climate in which U.S. carriers negotiate with their foreign counterparts to carry out these functions. Specifically, such beneficial provisions might include requirements for in-country carriers to connect with U.S. enterprise carriers (Article 13.5: Obligations Relating to Suppliers of Public Telecommunication Services, specifically the Interconnection provisions; Article 13.11: Interconnection with Major Suppliers);[891] provisions allowing U.S. carriers to access and utilize local and long-distance networks (Article 13.9: Resale; Article 13.10: Unbundling of Network Elements by Major Suppliers; Article 13.12: Provisioning and Pricing of Leased Circuits Services by Major Suppliers); provisions allowing U.S. carriers to construct in-country networks (Article 13.14: Access to Poles, Ducts, Conduits); and provisions allowing U.S. carriers to access submarine cable stations (Article 13.15: International Submarine Cable Systems).[892]

More generally, provisions in TPP that help to establish a benign investment climate would make it easier for U.S. carriers to operate in TPP markets. Such provisions include the requirements for an independent regulator (Article 13.16: Independent Regulatory Bodies and Government Ownership); dispute resolution procedures (Article 13.21: Resolution of Telecommunications Disputes); transparency requirements (Article 13.22: Transparency), technological neutrality (Article 13.23: Flexibility in the Choice of Technology); and regulatory oversight (Article 13.26: Committee on Telecommunications).[893]

Due to changes in the telecommunications industry over the past few years, particularly the growing use of data and cloud computing centers, the E-commerce chapter (TPP Chapter 14) has become critically important to the U.S. telecom industry.[894] Specifically, Article 14.10 (Principles on Access to and Use of the Internet for Electronic Commerce) contains a firm commitment requiring the parties to allow the cross-border flow of data. This is of crucial importance to U.S. carriers, as cross-border data flows are integral to offering cloud computing

[889] Industry representative, telephone interview by USITC staff, March 18, 2016.
[890] Industry representative, interview by USITC staff, Washington, DC, February 2, 2016.
[891] Industry representative, telephone interview by USITC staff, March 18, 2016.
[892] Ibid.
[893] Ibid.
[894] Industry representatives, interviews by USITC staff, Washington, DC, February 2, 2016, and March 10, 2016.

services and/or migrating to software-defined networks (SDN).[895] The growing emphasis on such services also requires that U.S. carriers be able to establish data and network operating centers in locations of their choosing. As a consequence, Article 14.13 (Location of Computer Facilities) of the E-commerce chapter, which stipulates that no party shall require a covered person to use or locate computing facilities in that party's territory as a condition for conducting business in that territory, is of major importance. Indeed, according to industry participants, it is absolutely essential to U.S. carriers seeking to take advantage of the cost and network efficiencies derived from managing data processing and network management functions from a centralized location.[896]

Certain provisions in the TPP's State-Owned Enterprises (SOEs) chapter are also relevant to U.S. enterprise services providers, particularly those interested in entering Brunei or Vietnam, as the telecom services markets of both countries are dominated by state-owned telecom services providers. Beneficial provisions include those that require telecom sector SOEs to compete on the basis of quality and price, rather than through commercial and regulatory discrimination, subsidies, and favoritism. The chapter's provisions will also allow U.S. telecom companies to bring enforcement actions against SOEs that engage in discriminatory behavior.[897]

Another important benefit of TPP to U.S. enterprise carriers is simply that its provisions benefit their multinational corporate clients across a wide set of industries, allowing such clients to enter new markets and/or increase sales in existing markets. These expanded activities, in turn, typically lead to increased sales of enterprise services.[898] In addition, the inclusion of several commercially significant partner countries with which the U.S. did not previously have an FTA—notably Japan, Malaysia, and Vietnam—is also an important benefit to U.S. enterprise carriers.[899]

Summary of Provisions

Most of the provisions in the telecom chapter—which are based upon the United States' Telecommunications Act of 1996[900]—were introduced in the U.S.-Singapore FTA[901] and have been repeated more or less verbatim in all subsequent FTA telecom chapters. As a result, the

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[895] See additional discussion of TPP and the computer services industry earlier in this chapter. Industry representative, interview by USITC staff, Washington, DC, February 2, 2016; ITAC-8, *The Trans-Pacific Partnership Trade Agreement*, December 3, 2015.
[896] Industry representatives, interviews by USITC staff, Washington, DC, February 2, 2016, and March 10, 2016; ITAC-8, *The Trans-Pacific Partnership Trade Agreement*, December 3, 2015.
[897] ITAC-8, *The Trans-Pacific Partnership Trade Agreement*, December 3, 2015.
[898] Industry representative, interview by USITC staff, Washington, DC, June 18, 2015; industry representative, telephone interview by USITC staff, March 18, 2016.
[899] Industry representative, interview by USITC staff, Washington, DC, March 10, 2016.
[900] See 47 U.S.C. Sections 251/252.
[901] The U.S.-Singapore FTA was signed in 2003.

TPP telecom provisions apply for the first time only to the TPP parties that do not have a post-Singapore FTA with the United States, namely Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, and Vietnam.[902]

The provisions of the telecom chapter would require each party to ensure that enterprises of the other parties have access to and use of any public telecommunications service offered in its territory and/or across its borders on reasonable and nondiscriminatory terms and conditions. The chapter also obligates suppliers of public telecommunications services to provide network interconnection, number portability, and access to telephone numbers to suppliers of the other parties on reasonable and nondiscriminatory terms and conditions. In addition, major suppliers[903] of each party are required to offer telecommunication services to suppliers of the other parties on terms and conditions no less favorable than those accorded to their own subsidiaries, affiliates, and nonaffiliated service suppliers, particularly regarding the availability, provisioning, rates, and quality of such services. Major suppliers are also subject to specific additional obligations related to competitive safeguards, services resale, network unbundling, interconnection, leased circuits, colocation, and access to rights-of-way and submarine cable landing stations.

The telecom chapter also commits the parties to ensure the independence of their respective telecommunications regulatory bodies, including the requirement that all regulatory decisions and procedures made by such bodies be impartial with respect to all market participants. The parties would also be required to give their telecommunications regulatory bodies the authority to enforce measures relating to the obligations set out in the telecom chapter, including the ability to impose effective sanctions. Parties must also give these bodies the authority to maintain transparent and nondiscriminatory procedures related to licensing, allocation and use of scarce resources, and dispute resolution.

For the first time in a U.S. FTA, the telecom chapter extends network access rules to mobile telecommunications services suppliers. This marks a significant development, since past FTAs excluded mobile services from such obligations. TPP is also the first FTA to address the issue of mobile roaming, with provisions that require the parties to cooperate on promoting transparent and reasonable rates for international mobile roaming and/or minimize impediments to roaming alternatives.[904] Last, TPP establishes a Committee on

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902 ITAC-8, *The Trans-Pacific Partnership Trade Agreement*, December 3, 2015.
903 "Major supplier" is defined as a supplier of public telecommunication services that has the ability to materially affect the terms of participation (regarding price and supply) in the relevant market for public telecommunication services due to (1) control over essential facilities or (2) use of its position in the market.
904 For example, an alternative to mobile roaming services might be using Voice over Internet Protocol (VoIP) services via a smartphone.

Telecommunications, which is tasked with reviewing and monitoring the implementation and operation of the TPP Telecommunications chapter.

Several footnotes in the TPP Telecommunications chapter contain minor exclusions for several parties—notably Chile and Vietnam—from certain obligations. Annex 13-A and 13-B to the telecommunications chapter exclude rural telephone suppliers in the United States and Peru, respectively, from certain obligations. Telecommunications is subject to the NCM exceptions laid out in Annexes 1 and 2 of TPP. These annexes contain a number of provisions affecting telecommunication services providers, with foreign equity caps being the most common measure. More detail on these NCMs is provided in appendix E of this report.

Summary of Views of Interested Parties

The TPP telecom chapter has attracted very little public comment or analysis, either positive or negative, with most discussions confined to either listing or describing the provisions. To date, the main analytical assessments of the telecommunications chapter have been offered by the American Enterprise Institute (AEI) and the Industry Trade Advisory Committee for Information and Communications Technologies, Services, and Electronic Commerce (ITAC-8). In its report *Grading the Trans-Pacific Partnership on Trade*, AEI gave the telecommunication chapter a grade of C+, with stated concerns including the chapter's provision on independent regulators ("Chapter 13 repeats a standing mistake in pretending that public telecom providers can be separated from the telecom regulator in most countries").[905]

By contrast, ITAC-8 calls for the approval and implementation of the TPP Agreement overall, stating that it meets industry objectives, promotes the economic interests of the United States, and provides equity and reciprocity for the U.S. ICT, services, and e-commerce sectors. Regarding the telecom chapter, ITAC-8 states that numerous commitments in the chapter will foster opportunities for market access and trade for U.S. providers in TPP telecom markets, making special note of provisions related to mobile roaming, regulatory forbearance, and technological neutrality.[906]

[905] Scissors, *Grading the Trans-Pacific Partnership on Trade*, December 2015, 7.

[906] ITAC-8, *The Trans-Pacific Partnership Trade Agreement*, December 3, 2015. ITAC-8 does not address AEI's concern about public telecom regulators. The ITAC-8 report's only discussion of regulatory independence consists of a description of the relevant TPP provisions.

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