

**Report on Proposals Advanced in Negotiations on a  
Trans-Pacific Partnership Agreement That May Require Amendments to U.S. Trade  
Remedy Laws**

Section 2104(d)(3)(A) of the Trade Act of 2002 (the “Trade Act”) requires a report on:

- 1) the range of proposals advanced in negotiations to conclude a free trade agreement (the “Trans-Pacific Partnership Agreement” or “TPP”) with Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam (“TPP countries”) that may be in the final agreement, and that could require amendments to title VII of the Tariff Act of 1930 (“Title VII”) or to chapter 1 of title II of the Trade Act of 1974 (“Section 201”); and
- 2) how these proposals relate to the objectives described in section 2102(b)(14) of the Trade Act.

Title VII

During the negotiations, another TPP participant submitted substantive proposals on antidumping and countervailing duty issues that would have been binding on all the TPP Parties, including the United States. The United States repeatedly objected to these proposals. As the negotiations progressed, this delegation attempted to withdraw its proposals from the negotiations; however, other TPP countries sought to keep the proposals in the text. After engaging in consultations with Congressional staff from the middle of 2012 through the end of that year, the United States tabled a proposal with the TPP countries that addressed certain transparency and procedural aspects of antidumping and countervailing duty proceedings that were referenced in the other TPP participant’s proposal.

The proposal covers five specific areas: (1) notification of the receipt of a petition; (2) verification; (3) maintaining a public file; (4) addressing deficiencies in questionnaire responses and supplemental questionnaires; and (5) disclosure of essential facts. The proposal is non-binding and will not be subject to dispute settlement. This proposal that the TPP countries are considering, and that may be in the final agreement, will not require any amendment to Title VII. The text will also specify that no provision of the TPP Agreement, including its dispute settlement chapter, shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty proceedings or measures.

## Section 201

### 1. TPP Safeguard

The TPP Agreement will likely include a safeguard provision similar to those in recent U.S. free trade agreements. Under the current proposal, a TPP Party would be free to increase its tariffs temporarily up to normal trade relations/most-favored-nation rates on an originating good of another TPP Party, individually or of two or more Parties, if, as a result of reducing or eliminating a duty on the originating good as required under the TPP Agreement, imports of that originating good have increased and have seriously injured or threaten to seriously injure domestic producers. Under the current proposal, a Party that imposed a safeguard measure would have to provide trade compensation to the affected Party or Parties. Absent acceptable compensation, the affected Party or Parties could suspend TPP benefits of equivalent trade effect.

No substantive amendment to Section 201 would be needed to implement the safeguard provision that TPP countries are currently considering. As with similar provisions of other U.S. free trade agreements, implementing legislation could include an amendment to section 202(a)(8) of the Trade Act of 1974 to authorize the U.S. International Trade Commission to release confidential business information to interested parties under administrative protective order. This would be a purely administrative matter and would not affect the substantive operation of Section 201.

### 2. Global Safeguard

As with similar provisions in other U.S. free trade agreements, the TPP Agreement will specify that no provision of the TPP Agreement shall affect the rights and obligations of or confer any additional rights or obligations on the TPP Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards. One additional provision that the United States is considering that may be in the final agreement would require a TPP Party that is initiating a global safeguard investigation to provide electronically to the other TPP Parties a copy of the notification given to the WTO Committee on Safeguards under Article 12.1(a) of the WTO Agreement on Safeguards. This electronic notification would be a purely administrative matter and would not affect the substantive operation of Section 201.

### 3. Consistency with Trade Promotion Authority Objectives

The Administration will ensure that the TPP Agreement's provisions related to Title VII and safeguards are fully consistent with the objectives in section 2102(b)(14) of the Trade Act. The TPP Agreement's provisions related to Title VII are non-binding and not subject to dispute settlement under the Agreement; therefore, if adopted, the United States would continue to maintain its ability to enforce vigorously its antidumping and countervailing duty laws, and the Agreement would not lessen the effectiveness of domestic and international disciplines on unfair trade. The transitional safeguard mechanism will strengthen U.S. trade laws by establishing an

avenue for responding to any injurious imports from the TPP Parties that result from the phase-out and elimination of tariffs under the TPP. Thus, if adopted, the proposal would not lessen the effectiveness of existing U.S. safeguard provisions. Finally, under the global safeguard provisions, the United States would maintain its ability to enforce vigorously its safeguard laws, and the Agreement would not lessen the effectiveness of domestic and international safeguard provisions.

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