

THE TRANS-PACIFIC PARTNERSHIP AGREEMENT IMPLEMENTATION ACT

[DRAFT] STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action (“Statement”) is submitted to the Congress in compliance with section 106 (a)(1)(E)(ii) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (“Trade Priorities Act”) and accompanies the implementing bill for the free trade agreement that the United States has concluded with Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam (collectively “TPP countries”), known as the Trans-Pacific Partnership Agreement (“TPP Agreement”). The bill approves and makes statutory changes strictly necessary or appropriate to implement the Agreement, which the United States Trade Representative signed in Auckland, New Zealand on February 4, 2016.

As is the case with Statements of Administrative Action submitted to the Congress in connection with implementing bills for other free trade agreements approved under trade promotion authority procedures, this Statement represents an authoritative expression by the Administration concerning its views regarding the interpretation and application of the Agreement, both for purposes of U.S. international obligations and domestic law. The Administration understands that it is the expectation of the Congress that future administrations will observe and apply the interpretations and commitments set out in this Statement. In addition, since Congress will approve this Statement when it approves the implementing bill for the Agreement, the interpretation of the TPP Agreement included in this Statement carries particular authority.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the TPP Agreement. In addition, incorporated into this Statement are two other statements required under section 106 of the Trade Priorities Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are strictly necessary or appropriate to carry out the Agreement.

In the TPP Agreement, the TPP countries state their intention for the TPP Agreement to coexist with their existing international agreements. In relation to existing international agreements to which all TPP countries are party, each TPP country affirms its existing rights and obligations with respect to each other. Each TPP country also affirms, in relation to existing international agreements to which it and at least one other TPP country are party, its existing rights and obligations with respect to such other country or countries.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the TPP Agreement

(Chapter 1 and Chapters 26 through 30) at the beginning of the discussion.

For each chapter of the TPP Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are strictly necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are required to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

Chapters:
1 (Initial Provisions and General Definitions)
26 (Transparency and Anti-Corruption)
27 (Administrative and Institutional Provisions)
28 (Dispute Settlement)
29 (Exceptions and General Provisions)
30 (Final Provisions)

1. Implementing Bill

a. Congressional Approval

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 103(b)(3)(B)(i) and 106(a)(1) of the Trade Priorities Act.

b. Entry into Force

Article 30.5 of the TPP Agreement provides that the Agreement enters into force 60 days after the date on which all original signatories have provided the Depository with written notification of the completion of their applicable legal procedures. If not all twelve original signatories have notified the Depository of the completion of their respective legal procedures within a period of two years after the date of signature of the Agreement, the TPP Agreement enters into force 60 days after the expiry of the two-year period, if at least six of the original signatories, which together account for at least 85 percent of the combined gross domestic product of the original signatories in 2013, have provided the Depository with written notification of the completion of their applicable legal procedures within that two-year period. If neither of these scenarios is met, the TPP Agreement enters into force 60 days after the date on which at least six of the original signatories which together account for at least 85 percent of the combined gross domestic product of the original signatories in 2013, have notified the Depository of the completion of their respective legal procedures. At that time, each of those countries becomes a TPP Party and the TPP Agreement enters into force for those Parties. An original signatory not part of that first set of TPP Parties that seeks to become a Party is required to notify the TPP Parties that it has completed its applicable legal procedures and that it intends to become a Party to the TPP Agreement. The Trans-Pacific Partnership Commission (“Commission”), which comprises a representative of each TPP Party, is to determine within 30 days of the notification whether the TPP Agreement shall enter into force for that TPP country.

Section 101(b) of the implementing bill authorizes the President to provide written notification to the Depository that the United States has completed its applicable legal procedures, if the President has determined that each original signatory becoming party to the TPP Agreement at the time that Agreement enters into force, has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into

force, and the President provides written notice of this determination to Congress in accordance with section 106(a)(1)(G) of the Trade Priorities Act. In regard to original signatories that become party to the TPP Agreement after it enters into force, the President will make the determination and provide the written notice to Congress as called for in section 106(a)(1)(G) of the Trade Priorities Act.

Certain provisions of the TPP Agreement become effective after the Agreement enters into force for a Party.

Article 30.4 of the TPP Agreement provides for a process through which a State or separate customs territory may accede to the TPP Agreement after its entry into force. The Administration would note that for the TPP Agreement to enter into force as between an acceding State or separate customs territory and the United States, further implementing legislation would be required. Notification and other requirements of the Trade Priorities Act would also apply to with respect to any accessions.

c. Relationship to Federal Law

Section 102(a) of the bill establishes the relationship between the TPP Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the TPP Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, if permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the TPP Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed or adopted in order to conform with the new U.S. rights and obligations arising from the TPP Agreement. The latter include both regulations resulting from statutory changes made in the bill itself and changes regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders -- other than those specifically indicated in the implementing bill and this Statement -- will be required to implement the new international

obligations that the United States will assume under the TPP Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the TPP Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

d. Relationship to State Law

The TPP Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, such as in the areas of government procurement, labor, environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the TPP Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event of an unresolved conflict between a state law, or the application of a state law, and the TPP Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Agreement (for example, Chapter 11 relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter 11 exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must specifically reference the business of insurance in order for the TPP Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the TPP Agreement.

e. Private Lawsuits

Section 102(c) of the implementing bill precludes any private right of action or remedy against the federal government, a state or local government, or against a private party, based on the provisions of the TPP Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general “public interest” authority under other provisions of law in conformity with the TPP Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the TPP Agreement. Suits of this nature may interfere with the Administration’s conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter 9 (Investment) of the TPP Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the TPP Agreement, although any change in agency action would have to be consistent with domestic law.

f. Implementing Regulations

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the TPP Agreement, as of the date the TPP Agreement enters into force for the United States. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement to implement immediately applicable U.S. obligations under the TPP Agreement are to be developed and promulgated within one year of the Agreement’s entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the TPP Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

g. Dispute Settlement

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 28 (Dispute Settlement) of the TPP Agreement and panels established pursuant to the Appendix between Japan and the United States on Motor Vehicle Trade (Appendix D to the Schedule of the United States to Annex 2-D). This provision enables the United States to implement its obligations under Article 27.6 of the TPP Agreement. This office will not be an “agency” within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement and free trade agreements with Australia, Chile, Singapore, Peru, Colombia, Korea, and Panama. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter 28 are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

h. Effective Dates

Section 107(b) of the bill provides that Title I and the first three sections of the bill go into effect on the date the bill is enacted into law.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date the Agreement enters into force for the United States. While amendments made in section 205, 207, and 401 of the bill go into effect for the United States, they apply to a TPP country only when the Agreement enters into force for that country. Section 107(c) provides that during any period in which a country ceases to be a TPP Party, any provision of the bill (other than section 107(c) itself and section 204) and the amendments made by the bill cease to have effect with respect to that country. Section 107(d) provides that the provisions of the bill and the amendments to other statutes made by the bill will cease to have effect on the date the TPP Agreement ceases to be in force with respect to the United States (other than section 107(d), section 204, and Title V).

2. Administrative Action

No administrative changes will be necessary to implement Chapters 1 (Initial Provisions), 26 (Transparency and Anti-corruption), 29 (Exceptions and General Provisions), and 30 (Final Provisions). The following administrative actions will be necessary to implement Chapters 27 and 28:

a. Contact Point for the TPP Agreement

Article 27.5 of the TPP Agreement requires each Party to designate an overall contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative (“USTR”) will serve as the U.S. overall contact point for this purpose. In addition, Article 27.1 establishes a Commission to oversee the implementation of the Agreement and the work of committees and other bodies established under the TPP Agreement. The U.S. Trade Representative, or his or her designee, will represent the United States on the Commission.

b. Dispute Settlement: Nominations for Dispute Settlement Panel Chairs and Panelists

Article 28.11 of the TPP Agreement calls for the TPP Parties, within 120 days of entry into force of the Agreement, to establish a roster of independent experts willing to serve as chairs of panels to settle disputes between the Parties that may arise under the Agreement. Each Party may nominate up to two individuals, who may then be appointed to the roster by consensus of all TPP Parties. In addition, at any time after entry into force of the Agreement, a TPP Party may establish a list of individuals who are willing and able to serve as panelists in disputes. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (“Trade Committees”) as it considers nominees for the roster of panel chairs and will provide the Trade Committees with the names of the experts it is considering, and detailed background information on each, at least 30 days before submitting the names of nominees to the roster of panel chairs. USTR will also consult with the Trade Committees and provide names and background information on individuals under consideration as it develops the U.S. list of potential panelists.

Chapter 2 (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter 2 of the Agreement through the application or elimination of customs duties and tariff-rate quotas (“TRQs”). Section 201(a) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 2.4, 2.6, 2.7, 2.8, and 4.2.10 and the U.S. Schedule to Annex 2-D (Tariff Commitments) of the TPP Agreement, including its Appendices. In addition, this authority would also be used to implement the agreement reached by the United States and Singapore, in an exchange dated

February 4, 2016, that materials on the TPP Short Supply List of Products at Appendix 1 to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) shall be deemed to be originating under the United States – Singapore Free Trade Agreement for purposes of determining whether a good is an originating good of Singapore under Chapter 3 of that agreement.

The proclamation authority with respect to Article 2.4 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States to Annex 2-D of the TPP Agreement, of customs duties on imports from TPP Parties that meet the Agreement’s rules of origin.

The proclamation authority with respect to Articles 2.6, 2.7, and 2.8 authorizes the President to provide for the elimination of duties on particular categories of imports from TPP Parties. Article 2.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in a TPP Party; or (ii) sent from a TPP Party for repair or alteration in the United States. Article 2.7 pertains to entry of commercial samples of negligible value and printed advertising material imported from a TPP Party. Article 2.8 pertains to the temporary admission of certain goods, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States.

The proclamation authority with respect to Annex 2-D authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States to Annex 2-D of the TPP Agreement, of customs duties if there are tariff differentials among TPP Parties, that is, in cases that the U.S. Schedule to Annex 2-D (Tariff Commitments) does not require the same continuation, phase-out, or elimination of customs duties for imports from each TPP Party. The proclamation authority with respect to Annex 2-D authorizes the President to provide for rules, as set out in Annex 2-D, in particular Section B of Annex 2-D and Appendix C to the U.S. Schedule to Annex 2-D, to determine the applicable tariff TPP rate in these cases.

The proclamation authority with respect to Annex 2-D authorizes the President to increase duties on goods from Japan, in particular motor vehicles, up to the prevailing U.S. Normal Trade Relations (NTR) (known internationally as most-favoured nation or MFN) duty rate, or to delay the phase-out of duties on those motor vehicles, if a dispute settlement panel determines that Japan has acted inconsistently with or nullified or impaired an obligation under the Agreement and that this action materially affects the sale, offering for sale, purchase, transportation, distribution, or use of U.S. motor vehicles.

The proclamation authority with respect to Annex 2-D authorizes the President to provide for the elimination of customs duties on certain goods from Vietnam classified in HS 6203.42.20, 6203.42.40, 6204.62.20, or 6204.62.40, as provided for in Appendix E to the U.S. Schedule to Annex 2-D.

The proclamation authority with respect to agreement reached between the United States and Singapore on February 4, 2016 authorizes the President to provide for treatment of materials on the TPP Short Supply List of Products at Appendix 1 to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) as originating for the purposes of determining whether a good is considered an originating good of Singapore under Chapter 3 of the U.S.-Singapore Free Trade Agreement.

The Proclamation authority with respect to Article 4.2.10 authorizes the President to provide duty-free treatment for certain textile or apparel products that the United States and the exporting TPP Party agree fall within the categories of: hand-loomed fabrics of a cottage industry; hand printed fabrics with a pattern created with a wax-resistance technique; hand-made cottage industry goods made of such hand-loomed or hand-printed fabrics; or traditional folklore handicraft goods, provided that these goods meet any requirements for such duty-free treatment that the United States and the exporting TPP Party agree.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination set out in the U.S. Schedule to Annex 2-D, pursuant to an agreement with another TPP Party, under Article 2.4 and Annex 2-D paragraph 3;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to a TPP Party provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (established pursuant to section 135 of the Trade Act of 1974) and the U.S. International Trade Commission ("ITC") on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation

cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin in accord with Article 3.32.3 (Committee on Rules of Origin and Origin Procedures) of the TPP Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good).

b. Agricultural Safeguard Measures

Section 202 of the bill implements the agricultural safeguard provisions of Appendix B to the U.S. Schedule to Annex 2-D (Tariff Commitments) of the TPP Agreement. Appendix B permits the United States to impose country-specific safeguard measures in the form of an additional import duty on certain originating agricultural products. Goods subject to these safeguard provisions are Swiss cheese and milk powders from Australia, other cheese and whole milk powder from New Zealand, and condensed and evaporated milk and cheese from Peru.

Section 202(b) authorizes the imposition of additional duties on an originating good that is subject to a country-specific agricultural safeguard measure, if that good is imported in quantities that exceeds the trigger quantity set out in Appendix B to the U.S. Schedule to Annex 2-D (Tariff Commitments).

Section 201(a) sets out general rules, including definitions of terms. Under the safeguard provisions in Appendix B for originating goods of Australia and New Zealand subject to agricultural safeguard measures, the sum of the additional import duty and any other customs duty on the good must not exceed the least of the safeguard duty specified in the Appendix, the NTR/MFN applied rate of duty in effect on the day immediately preceding the day the TPP Agreement entered into force for the United States, or the prevailing NTR/MFN applied rate of duty. For originating goods of Peru subject to an agricultural safeguard measure, the sum of any additional import duty and any other customs duty on the good must not exceed the least of the base tariff rate provided in the Schedule of the United States to Annex 2-D (Tariff Commitments), the NTR/MFN applied duty in effect on the day immediately preceding the day the TPP Agreement entered into force for the United States, or the prevailing NTR/MFN applied rate of duty.

The United States shall apply an agricultural safeguard measure during any calendar year, for the remainder of that calendar year, if the quantity of imports during that year exceeds the trigger quantity specified in Appendix B.

Section 202(d) provides that an agricultural safeguard measure shall not be applied or maintained after the date specified in Appendix B for the relevant country-specific safeguard measure.

Section 201(c) implements Appendix B by directing the Secretary of the Treasury to notify Australia, New Zealand, or Peru, as the case may be, of the application of the safeguard measure and to provide the relevant data regarding the application of the measure as soon as practicable after application of an agricultural safeguard measure on a good.

c. Motor Vehicle Safeguard Measures

Section 331 implements the special safeguard for motor vehicles set out in Annex 2-D of the TPP Agreement. It provides that, for a Japanese motor vehicle article: (1) articles that have previously been the basis for according relief to a domestic industry under Subtitle A of Title III of the bill are not exempt from investigation; (2) relief is not subject to progressive liberalization at regular intervals over the course of its application; (3) the President may extend the effective period of any import relief by up to 2 years (for a total of 4 years) if the requirements for extension set forth in section 313(d) are met; and (4) relief may be provided at any time up to 10 years after the date the relevant duties are eliminated under the Agreement.

d. Merchandise Processing Fee

Under Article 2.14.4 of the TPP Agreement a TPP Party is not permitted to levy fees and charges on or in connection with importation or exportation on an *ad valorem* basis. The United States undertook this commitment only with respect to the merchandise processing fee. Section 204 of the bill implements Article 2.14.4 of the TPP Agreement, regarding the merchandise processing fee, by amending section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

2. Administrative Action

a. Regulations

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.6 (Goods Re-entered after Repair or Alteration), 2.7 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material), and Article 2.8 (Temporary Admission of Goods) of the TPP Agreement, to proclaim the continuation, phase-out, and elimination of customs duties if there are tariff differentials among TPP Parties and the related rules of origin, as set out in Annex 2-D, in particular Section B of Annex 2-D and Appendix C to the U.S. Schedule to Annex 2-D, and to proclaim duty-free treatment for certain goods from Vietnam classified in HS 6204.62.20, 6204.62.40, 6203.42.20, or 6203.42.40 as provided in Appendix E to the U.S. Schedule to Annex 2-D (Tariff Commitments), and to proclaim treatment of materials listed in Appendix 1 to Annex

3-A (Short Supply List of Products) as originating materials for the purposes of the U.S.-Singapore Free Trade Agreement. The Secretary of the Treasury will issue regulations to carry out this portion of the proclamation. In addition, the Secretary of Commerce will issue procedures to establish a program to provide duty-free treatment proclaimed with respect to Appendix E to the U.S. Schedule to Annex 2-D (Tariff Commitments), including to register participating firms, issue credits, and maintain a record of credits used.

b. Agricultural Safeguards

The Administration will be implementing a process to track imports of goods subject to the imposition of agricultural safeguard measures. This process will provide that once the safeguard quantity trigger is met, the duty will be applied.

c. Contact Points

Article 2.9 (*Ad hoc* Discussions) calls for each TPP Party to designate a contact point for trade in goods to facilitate communications among the TPP Parties on any matter covered by Chapter 2. A USTR official in the Office of Small Business, Market Access and Competitiveness will serve as the contact point for this purpose.

Article 2.25 (Committee on Agricultural Trade) establishes a Committee on Agricultural Trade composed of representatives of each Party. A USTR official in the Office of Agricultural Affairs and Commodity Policy will serve as the contact point for this purpose.

Article 2.27 (Trade of Products of Modern Biotechnology) of the Agreement calls for each Party to identify a contact point for sharing information on issues related to low level presence occurrences as specified in the Agreement. A USTR official in the Office of Agricultural Affairs and Commodity Policy will serve as the contact point for this purpose.

Article 2.32 (Transparency) calls for each TPP Party to identify the entity or entities responsible for administering its tariff-rate quotas (TRQs) and to designate a contact point to facilitate communications between the Parties on matters relating to administration of its TRQs. A USTR official in the Office of Agricultural Affairs and Commodity Policy will serve as the contact point for this purpose.

d. Duty-Free Treatment for Certain Textile and Apparel Goods

The President will authorize the Committee for the Implementation of Textile Agreements (“CITA”), to consult with TPP Parties to determine which, if any, textile or apparel goods from a particular TPP Party fall within the categories set out in Article 4.2.10 of the TPP Agreement (Treatment for Certain Handmade or Folkloric Goods). CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies as directed by the President. CITA will be authorized to determine, in agreement with the relevant TPP Party,

the requirements, if any, for these goods to receive duty-free treatment under Article 4.2.10 of the TPP Agreement.

e. Appendix between Japan and the United States on Motor Vehicle Trade

Article 2.4 of the Appendix between Japan and the United States on Motor Vehicle Trade requires the parties to that appendix to endeavor to conduct post-implementation reviews of their respective significant regulations affecting motor vehicles. The United States maintains regulatory review procedures fulfilling this requirement, including section 610 of the Regulatory Flexibility Act or similar measures.

Chapter 3 (Rules of Origin and Origin Procedures)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter 3 of the TPP Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of, or import from, a TPP Party for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of a TPP Party to qualify as an “originating” good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is “originating” if it is wholly obtained or produced entirely in the territory of one or more TPP Parties as established in Article 3.3 of the Agreement and defined in section 203(n)(5) of the bill. This includes, for example, minerals extracted from the territory of one or more TPP Parties, animals born and raised in the territory of one or more TPP Parties, and waste and scrap derived from production of goods that takes place in the territory of one or more of the TPP Parties or derived from used goods collected there that are fit only for the recovery of raw materials.

Second, the general rules of origin provide that a good is “originating” if the good is produced entirely in the territory of one or more TPP Parties, using non-originating materials, provided that the resulting good satisfies all applicable requirements of Annex 3-D (Product-Specific Rules of Origin) or Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin). Such requirements include, for example, non-originating materials meeting change in tariff classification requirement, or the good meeting a regional value content or processing requirement. Some product-specific rules in those Annexes have multiple requirements.

Third, the general rules of origin provide that a good is “originating” if the good is

produced entirely in the territory of one or more TPP Parties exclusively from materials that themselves qualify as originating.

Article 3.4 of the Agreement provides that a recovered material qualifies as “originating” for the purposes of determining whether a remanufactured good is originating if it is derived in the territory of one or more TPP Parties and it is used in the production of and incorporated into the remanufactured good. A recovered material is one or more parts resulting from the disassembly of used goods that are brought into sound working condition through necessary cleaning, inspecting, testing or other processing. A remanufactured good is an originating good only if it satisfies the applicable product-specific rule of origin. The term “remanufactured good” is separately defined in section 202(n)(21) to mean a good falling within Chapters 84 through 90 of the Harmonized Tariff Schedule or heading 94.02 (except goods classified under certain headings and subheadings in chapters 84, 85, or 87) that is entirely or partially composed of recovered materials, has a similar life expectancy and performs the same as or similar to such a good when new and has a factory warranty similar to such a good when new.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement’s requirements to qualify as an originating good. For example, section 203(c) implements provisions in Annex 3-D of the TPP Agreement. Appendix 1 to that Annex provides a mechanism to calculate the “regional value content” requirement for certain automotive goods to qualify as originating. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo an applicable change in tariff classification. Other provisions in section 203 address exceptions to the *de minimis* provisions for certain agricultural goods, how materials are to be valued when calculating “regional value content,” and how to determine whether fungible goods and materials qualify as originating.

Section 203(l) allows an originating good to be shipped through a non-Party without losing its status as an originating good, provided certain conditions are met. While in a non-Party, the good may not undergo further operations except operations like unloading, reloading, storing, or labeling and marking required by a TPP Party, necessary to preserve the good in good condition or transport the good to the importing TPP Party. The good must also remain under customs control while in that non-Party.

Section 203(l) recognizes that, in modern commerce, a good may not be directly shipped from another TPP country to the United States or vice versa; for example, shipments may be consolidated at an interim port. At the same time, in order to ensure that the preferential tariff treatment under the Agreement inures to producers in TPP Parties, rather than producers in third countries, the TPP limits the operations on the good that are permitted in non-Parties for it to retain its originating status and requires that the good remain under customs control while in the non-Party.

b. Proclamation Authority

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 3-D (Product Specific Rules of Origin), Appendix 1 to Annex 3-D (Provisions related to Product-Specific Rules of Origin for Certain Vehicles and Parts of Vehicles) and Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) of the Agreement, and any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(2) gives authority to the President to modify certain specific origin rules in the Agreement by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a under the discussion of Chapter 2, above).

Various provisions of the TPP Agreement contemplate that the TPP Parties may agree to modify the Agreement's rules of origin. Article 3.32 (Committee on Rules of Origin and Origin Procedures) calls for the Committee to consult regularly after the Agreement enters into force to discuss, *inter alia*, possible amendments or modifications to Chapter 3 and its Annex. The Committee on Textile and Apparel Trade Matters is responsible for matters, including product-specific rules of origin, relating to textile and apparel goods.

Section 203(o)(2) of the bill limits the President's authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (that is, goods identified in Annex 4-A of the TPP Agreement). Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors.

c. Disclosure of Incorrect Information and Suspension of Preferential Treatment

Article 3.24 of the TPP Agreement (Obligations Relating to Importation) provides that a TPP Party shall not penalize an importer that invalidly claims preferential tariff treatment under the Agreement if the importer on becoming aware that such claim is not valid and prior to the Government's discovery of the error voluntarily corrects the claim and pays any customs duty owing, subject to exceptions provided for in the Party's law. Pursuant to Article 3.27 of the Agreement (Verification of Origin), if verifications of identical goods indicate a pattern of conduct by an importer, exporter or producer of false or unsupported representations relevant to a claim that a good imported into its territory qualifies as an originating good, the importing Party may withhold preferential tariff treatment to identical goods imported, exported or produced by that person until that person demonstrates that the identical goods qualify as originating.

Section 205(a) of the bill implements Article 3.24 for the United States by amending section 592(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1592(c)). Section 205(b) of the

bill implements Article 3.27 for the United States by amending section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

d. Claims for Preferential Tariff Treatment

Article 3.29 of the TPP Agreement (Refunds and Claims for Preferential Tariff Treatment after Importation) provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if a claim was not made at the time of importation, provided that the good would have qualified for preferential tariff treatment at the time of importation. In seeking a refund for excess duties paid, the importer may be asked to provide to the customs authorities a certification of origin and any other information substantiating that the good was in fact an originating good at the time of importation.

Section 206 of the bill implements U.S. obligations under Article 3.29 of the TPP Agreement by amending section 520(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

e. Certifications of Origin

Article 3.20 of the TPP Agreement (Claims for Preferential Treatment) provides that an importer may base a claim for preferential tariff treatment on a certification of origin completed by the importer, exporter, or producer. As an exception, under Article 3.23 (Waiver of Certification of Origin), a TPP Party cannot require a certification of origin if the customs value of the importation does not exceed \$1,000 (or the equivalent amount in domestic currency) or it is a good for which the TPP Party has waived or does not require a certification.

Article 3.21 (Basis of a Certification of Origin) sets out the basis of a certification. If the producer completes a certification of origin of a good, the certification is completed on the basis of the producer having information that the good is originating. If an exporter completes a certification of origin, it must either be based on the person's knowledge that the good is originating or reasonable reliance on the producer's information that the good is originating. If the importer completes a certification of origin, it must be on the basis of the importer having documentation that the good is originating or reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

Article 3.25 (Obligations Relating to Exportation) sets out rules governing incorrect certifications of origin issued by exporters or producers. If an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly notify in writing every person and every Party to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification.

Section 205(a) of the bill implements U.S. obligations under Article 3.25 by amending section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592). New subsection (m) of section 592, as added by section 205(a), imposes penalties on exporters and producers that issue false TPP certifications of origin through fraud, gross negligence, or negligence.

f. Recordkeeping Requirements

Article 3.26 of the TPP Agreement (Record Keeping Requirements) sets forth record keeping requirements that each TPP Party must apply to its importers. U.S. obligations under Article 3.26 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508).

Article 3.26 also sets forth record keeping requirements that each Party must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 206 of the bill implements Article 3.26 as it relates to exporters and producers for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 207 of the bill, subsection (l) of section 508 of the Tariff Act of 1930, as amended defines the terms “TPP certification of origin” and “records and supporting documents.” It then provides that a U.S. exporter or producer that issues a TPP certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. Section 508 of the Tariff Act of 1930 also sets forth penalties for violations of this record keeping requirement, which will appear in renumbered subsection (m).

g. Determinations on Claims for Preferential Treatment

Under Article 3.28 (Determinations on Claims for Preferential Tariff Treatment), the importing Party must grant a claim for preferential tariff treatment made in accordance with Chapter 3 of the Agreement, or for a textile or apparel good in accordance with Chapters 3 and 4 of the Agreement, except in the instances set forth in Article 3.28.2 or Article 4.7 (Determinations) of the TPP Agreement, and if an importing Party denies a claim for preferential tariff treatment, it must issue a determination setting out the reasons for the determination. Articles 3.28 and 4.7 provide the circumstances when an importing Party may deny a claim for preferential tariff treatment. Such circumstances include when the importing Party determines that the good does not satisfy the rules of origin or the information is not sufficient to make a positive determination, when the importer, exporter, or producer does not respond to a request for information or the exporter or producer does not consent to a visit, and when the importer, exporter, or producer fails to comply with any requirement of the Rules of Origin Chapter.

Section 208 implements these obligations.

2. Administrative Action

The rules of origin in Chapter 3 of the TPP Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in TPP Parties. The rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in the territory of one or more TPP Parties, or (ii) undergoes substantial processing in the territory of one or more TPP Parties as set out in the TPP Agreement, including the product-specific rules of origin.

a. Claims for Preferential Treatment

Section 209 of the bill authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment.

As noted above, Article 3.21 of the TPP Agreement (Basis of a Certification of Origin) sets out the basis on which an importer, exporter, or producer may complete a certification of origin. A certification need not be in a prescribed format, but must include the elements set out in Annex 3-B to the Chapter. Under Article 3.22 (Discrepancies), a Party may not reject a certification of origin based on minor errors or discrepancies in the certification of origin. Article 3.28.4 (Determinations on Claims for Preferential Tariff Treatment) provides that a Party must require that a certification of origin must be separate from the invoice if the invoice is issued in a non-Party.

b. Verification

Under Article 3.27 (Verification of Origin) of the TPP Agreement, an importing TPP Party may use a variety of methods to verify claims that goods imported from another TPP Party satisfy the TPP Agreement's rules of origin. The importing TPP Party may request information from the importer, exporter, or producer of the good, conduct a visit to the premises of the exporter or producer, or use other methods as may be decided by the importing Party and the Party where the exporter or producer is located. Section 208 of the bill implements U.S. obligations under Article 3.27.3 and 4.6.9 (Verification) providing that U.S. Customs and Border Protection must seek information from the exporter or producer before denying a claim for preferential tariff treatment when conducting a verification through an importer that based the claim on a certification of origin completed by the exporter or producer. In addition, Article 4.6 sets out special procedures for verifying claims that textile or apparel goods imported from another TPP Party meet the Agreement's origin rules or conducting a visit to an exporter or producer with respect to customs offenses. U.S. officials will carry out verifications under

Articles 3.27 and 4.6 of the TPP Agreement pursuant to authorities under current law, including inquiries and visits to U.S. importers, exporters, and producers. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

Chapter 4 (Textiles and Apparel)

1. Implementing Bill

a. Textile or Apparel Safeguard

Article 4.3 (Emergency Actions) of the TPP Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. It also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the TPP Agreement will result in injurious increases in textile or apparel imports from TPP Parties. Nevertheless, the TPP Agreement's textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods benefitting from preferential treatment under the TPP Agreement are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 4.3 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. Normal Trade Relations (NTR/MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect on the day immediately preceding the date the Agreement entered into force for the United States.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile or apparel safeguard.

Section 321(a) establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce's International Trade Administration website.

Section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a textile or apparel article benefitting from preferential tariff treatment under the TPP Agreement (“TPP textile or apparel article”) is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(3) of the bill defines “TPP textile or apparel good” to mean a good listed in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) of the Agreement that qualifies as an originating good under section 202(b) of the bill. The President’s determination corresponds to the determination required under Article 4.3 of the TPP Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 4.3.3 of the Agreement.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force for the United States.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be four years in the aggregate. The initial period of import relief may be up to two years. The President may extend the relief for up to two years, however, if he determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if: (i) relief previously has been granted to that article under the textile or apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Six of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile or apparel safeguard with respect to a TPP textile or apparel article will expire five years after the date on which duties on the article are eliminated pursuant to the Agreement.

Under Article 4.3.7 of the TPP Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide the exporting TPP Party or Parties “mutually agreed trade liberalising compensation in the form of concessions

having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard] action.” Those concessions are to be limited to textile and apparel goods unless the United States and the exporting Party or Parties otherwise agree. If the United States and the exporting TPP Party or Parties are unable to agree on trade liberalizing compensation, the exporting TPP Party or Parties may increase tariffs equivalently on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the TPP Agreement’s textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

b. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to trade in textile and apparel goods, the TPP Agreement includes verification provisions designed to ensure the accuracy of claims of origin and to detect and address violations of the Agreement and of customs laws and regulations. In addition to the general verification provisions in Chapter 3 (Rules of Origin Procedures), Article 4.6 of the Agreement (Verification) provides for verifications and in particular visits to exporters and producers of textile and apparel goods, to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with customs laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Article 4.6, the United States may conduct a verification of whether a textile or apparel good qualifies for preferential tariff treatment pursuant to Article 3.27.1(a) (written request for information from an importer), 3.27.1(b) (written request for information from the exporter or producer of the good), or 3.27.1(e) (other procedures as may be decided by the United States and the TPP Party where an exporter or producer of the good is located) and the related procedures set out in Article 3.27. The United States may also request a site visit from an exporter or producer under Article 4.6 to verify whether a textile or apparel good qualifies for preferential tariff treatment or customs offences are occurring or have occurred.

Under Article 4.6.11 of the TPP Agreement, the United States may take appropriate action during a verification, including suspending or denying the application of preferential treatment to textile or apparel goods exported or produced by the person subject to the verification. Under Article 4.6.12, if verifications of identical goods indicate a pattern of

conduct by an exporter or producer of making false or unsupported representations that a good imported into the United States qualifies for preferential tariff treatment, the United States may withhold that preferential treatment for identical textile or apparel goods imported, exported or produced by that person until it is demonstrated to the United States that the identical goods qualify for preferential tariff treatment. In addition, under Article 4.7 of the TPP Agreement (Determinations), the United States may deny a claim for preferential tariff treatment for a textile or apparel good: (i) for the reasons listed in Article 3.28.2 (see description above); (ii) if it has not received sufficient information to determine that the good qualifies as originating; or (iii) if access or permission for a site visit is denied, U.S. officials are prevented from completing the visit on the proposed date and an acceptable alternative is not provided, or the exporter or producer does not provide access to the relevant records or facilities during a site visit.

Section 208 of the bill implements Articles 3.27, 3.28, 4.6, and 4.7 of the Agreement. Section 208(a) authorizes the President to direct the Secretary to take “appropriate action” while a verification is being conducted. The purpose of a verification for goods other than textiles and apparel is to determine the accuracy of a claim for preferential treatment under the Agreement. During a verification a good may be released only upon payment of duties or provision of a security. For textile and apparel goods, the purpose of a verification is to determine the accuracy of a claim for preferential tariff treatment under the Agreement or compliance with applicable customs law. Under section 208(a)(4), appropriate action for a textile and apparel good may include, but is not limited to, suspension of liquidation of entries of textile or apparel goods exported or produced by the person that is the subject of the verification.

Under section 208(b), “action” based on a determination that the good does not qualify for preferential treatment would include denying preferential treatment under the Agreement for the goods subject to the verification.

2. Administrative Action

a. Textile or Apparel Safeguard

The Committee for the Implementation of Textile Agreements (“CITA”) will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b). CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b). CITA will perform these functions pursuant to a delegation of the President’s authority under the bill.

b. Enforcement of Textile and Apparel Rules of Origin

Section 208 of the bill provides that, for the purposes of verifying whether claims that a good imported into the United States is an originating textile or apparel good under the TPP Agreement, the Secretary of the Treasury may: (i) request information from the importer, exporter or producer of the good; (ii) conduct a verification visit to the premises of the exporter or producer of the good; (iii) or apply other procedures as decided by the United States and the TPP Party where the exporter or producer of the goods is located. Further, the Secretary of the Treasury may request from an exporter or producer of textile or apparel goods to visit its premises to determine whether customs offenses are occurring or have occurred. The President will delegate to CITA his authority under the bill to direct appropriate U.S. officials to take an action described in section 208 (a)(4) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 208(b) in the case of an adverse determination, if sufficient information has not been received to determine if the good qualifies as originating, or if access to exporter or producer sites or relevant information is not made available. If CITA decides that it is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to CBP.

Section 208 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 4.6 of the Agreement.

c. Short Supply List

Under Article 4.2.7 (Rules of Origin and Related Matters), for the purposes of determining whether a textile or apparel good is an originating good under Chapter 3, a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A is originating, regardless of where it was produced, provided the material meets any requirement set out in Appendix 1. Appendix 1 includes descriptions with respect to materials and their required end uses, if applicable, which are specific to use for purposes of the TPP Agreement and may differ from descriptions of similar goods for other purposes. Further, for a good that incorporates a material on the Short Supply List of Products to be originating, in addition to meeting the requirements of Appendix 1, the good must meet all other requirements of the applicable product-specific rule, including any Chapter notes. In the case of a good that relies on incorporation of a material listed in Appendix 1 to Annex 4-A to qualify as an originating textile or apparel good, under Article 4.2.8, the United States may require that the number or description of the material in Appendix 1 to Annex 4-A of the TPP Agreement be stated in the importation documentation. The Secretary of the Treasury will issue regulations necessary to implement the requirement for identification of material listed in Appendix 1 to Annex 4-A, that is incorporated into a textile or apparel good claiming to be an originating good under the TPP Agreement.

d. Contact Point for Textile and Apparel Matters

Article 4.4 (Cooperation) calls for each TPP Party to establish or maintain a contact point for cooperation with regard to matters under the Textiles and Apparel Chapter. USTR's Office of Textiles and Apparel will be designated as the U.S. contact point.

Chapter 5 (Customs Administration and Trade Facilitation)

1. Implementing Bill

No statutory changes are required to implement Chapter 5. U.S. laws are already in conformity with the obligations assumed under the Agreement.

2. Administrative Action

a. Advance Rulings

No regulatory action is required to implement the TPP provisions on advance rulings as the Treasury regulations for advance rulings under Article 5.3 of the Agreement (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the CBP Regulations (19 C.F.R. Part 177) for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the TPP Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

e. Contact Point

Article 5.11 (Publication) requires each government to designate or maintain an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.11, CBP will post information on the Internet at www.cbp.gov on how interested persons can make customs-related inquiries.

Chapter 6 (Trade Remedies)

1. Implementing Bill

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter 6 of the Agreement. Subtitle D of Title III of the bill implements the global safeguard provisions set out in Chapter 6 of the Agreement.

a. Safeguard Measures under Chapter 6

Subtitle A of Title III of the bill, sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or increase duties temporarily up to the lesser of the NTR (MFN) applied rates on an “article” in effect at the time the measure is applied or the NTR (MFN) applied rates of duty an “article” immediately preceding the date of entry into force of the TPP Agreement for the United States. This action may be taken, if, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States from one or more TPP Parties in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The ITC may base an affirmative determination on imports of an originating good from one Party or two or more TPP Parties if imports of the originating good from the one Party individually or two or more Parties collectively have increased in absolute terms or relative to domestic production, since the date of entry into force of the TPP Agreement for the relevant TPP Parties. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 - 2254). A safeguard applied under Chapter 6 does not apply to any article imported under a TRQ set out in the U.S. Schedule to Annex-2-D (Tariff Elimination). (But see discussion of agricultural safeguards above). In addition, a safeguard under Chapter 6 cannot be applied to any article that is subject to a global safeguard measure, a safeguard measure under Appendix B of the U.S. Schedule to Annex 2-D, emergency action under Chapter 4 (Textiles and Apparel Goods), or a motor vehicle safeguard measure under Appendix D to the U.S. Schedule to Annex 2-D.

Section 301(2) defines the term “TPP article” to mean a good that qualifies as an originating good under section 203(b) of the bill.

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a)(1) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is “representative of an industry.” As under section 202(a)(1) of the Trade Act of 1974, the term “entity” is defined to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of “substantial cause” in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section TPP articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC’s report must include: (i) the ITC’s determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to make public its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative

determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- (a) a suspension of further reductions in the rate of duty to be applied to the articles in question; or
- (b) an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force for the United States.

Under section 313(c), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the period for import relief under a Subtitle A safeguard may not exceed three years in the aggregate. The initial period of import relief may be of up to two years. The President may extend the period of import relief provided by up to one year, however, if he determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) specifies that the duty rate to be applied to TPP articles after import relief under Subtitle A terminates is the rate that would have been in effect for those articles but for the provision of such relief.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974), (ii) subject to import relief under the textile and apparel safeguard in Subtitle B or a motor vehicle safeguard measure under Subtitle C, (iii) subject to a safeguard measure in Appendix B to the Schedule of the United States to Annex 2-D, or (iv) imported under a TRQ established in Appendix A to the U.S. Schedule to Annex 2-D.

Section 314 provides that the President's authority to take action under Subtitle A in relation to a particular good expires three years after the date on which the Agreement enters into

force for the United States and the Party against which the action is taken, unless the period for elimination of duties on the article exceeds three years. In such case, relief with respect to the article may be provided until the Agreement calls for tariffs on the article to be eliminated.

Section 315 allows the President to provide trade compensation to TPP Parties, as required under Article 6.7 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 13256.

b. Global Safeguard Measures

Section 341 of the bill implements the global safeguard provisions of Article 6.2.4 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles under a TRQ established in the U.S schedule to Annex 2-D (Tariff Elimination) from the relief provided that certain conditions are present.

Specifically, section 341(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether imports from a TPP Party of an article under a TPP TRQ that qualify as originating goods under section 202(b) considered individually are a substantial cause of serious injury or threat thereof. Under section 341(b), if the ITC makes a negative finding under section 341(a) with respect to one or more TPP Parties, the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

2. Administrative Action

No administrative action is necessary to implement Chapter 6.

Chapter 7 (Sanitary and Phytosanitary Measures)

1. Implementing Bill

No statutory changes are required to implement Chapter 7. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 7.6 (Competent Authorities and Contact Points) calls for each Party to provide contact points within each of its authorities responsible for sanitary and phytosanitary matters and to identify its primary representative. The United States will provide this information as specified in the TPP Agreement. USTR's Office of Agricultural Affairs will serve as the primary representative for the United States.

Chapter 8 (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter 8. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 8.11 (Committee on Technical Barriers to Trade) establishes an inter-governmental Committee on Technical Barriers to Trade ("TBT") composed of government representatives of each Party. A USTR official responsible for TBT matters will serve as the U.S. representative to the committee.

Chapter 9 (Investment)

1. Implementing Bill

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of a TPP Party under Article 9.19.1(a)(i)(C) or Article 9.19.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 9.19. Provisions allowing arbitration of certain contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, as well as in U.S. free trade agreements with Chile, Singapore, Morocco, Central America and the

Dominican Republic, Oman, Korea, Peru, Colombia, and Panama.

Otherwise, U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

No administrative changes will be required to implement Chapter 9.

Chapter 10 (Cross-Border Trade in Services)

No statutory or administrative changes will be required to implement Chapter 10. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 11 (Financial Services)

1. Implementing Bill

No statutory changes will be required to implement Chapter 11. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 11.20 (Consultations) calls for each Party to establish a contact point to respond to requests for information on any non-conforming measure at the regional level of government, which for the United States is a state government, the District of Columbia and Puerto Rico, and to facilitate the exchange of information regarding the operation of these measures. USTR's Office of Intergovernmental Affairs and Public Engagement will serve as the contact point for this purpose.

Chapter 12 (Temporary Entry for Business Persons)

No statutory or administrative changes will be required to implement Chapter 12. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 13 (Telecommunications)

No statutory or administrative changes will be required to implement Chapter 13. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 14 (Electronic Commerce)

No statutory or administrative changes will be required to implement Chapter 14. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 15 (Government Procurement)

1. Implementing Bill

Chapter 15 of the Agreement establishes rules that certain government entities listed in Annex 15-A will apply whenever these entities undertake procurements of covered goods and services valued above thresholds specified in Annex 15-A.

Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive for eligible products of foreign countries that the President designates under section 301(b) of that Act the application of certain federal laws, regulations, procedures, and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers.

The term “eligible product” in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act to mean, among other things, goods and services of a country that is a party to the WTO Agreement on Government Procurement (“GPA”) that are covered under the GPA for procurements by the United States. Canada, Japan, New Zealand, and Singapore are parties to the GPA and U.S. agencies covered under the GPA must currently treat goods and services from these countries as “eligible products” for procurements above specified dollar thresholds. Section 308(4)(A) further defines “eligible product” to cover goods and services from a country that is a party to certain free trade agreements (FTAs) specified in that section. Those countries include Australia, Canada, Chile, Mexico, Peru, and Singapore. U.S. agencies covered under these FTAs must currently treat goods and services from these countries as “eligible products” for procurements above the dollar thresholds specified in the relevant FTA.

Section 401 of the bill implements U.S. obligations under Chapter 15 by amending the definition of “eligible product” in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for a TPP Party, an “eligible product” means a product or service of that TPP Party that is covered under the TPP Agreement for procurement by the

United States. This amended definition, coupled with the President’s exercise of his waiver authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase on non-discriminatory terms covered products and services from a TPP Party for procurements that fall above the thresholds established under the Agreement.

2. Administrative Action

As noted above, Annex 15-A of the Agreement provides that U.S. government entities subject to Chapter 15 must apply the chapter’s rules to covered goods and services from a TPP Party when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council (“FAR Council”) of the entry into force of the TPP Agreement for each Party and the thresholds that pertain to TPP Parties under the Agreement. The FAR Council will then incorporate TPP thresholds and those TPP Parties that are not already covered into the Federal Acquisition Regulation (“FAR regulation”) in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

Article 15.12 of the TPP Agreement (Technical Specifications) clarifies that a procuring entity is not precluded from preparing, adopting, or applying “technical specifications” to promote the conservation of natural resources or protect the environment. In addition, Article 15.8.5 (Conditions for Participation) clarifies that a procuring entity is not precluded from promoting compliance with laws in the territory in which a good is produced or the service is performed relating to the fundamental principles and rights at work and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. Thus, for example, a procuring entity is permitted to require a foreign producer to comply with laws guaranteeing freedom of association and protecting collective bargaining rights that generally apply in the territory in which the good is produced.

Finally, neither this provision nor any other provision of Chapter 15 will affect application of the Davis-Bacon Act and related Acts (40 U.S.C. 3141 - 48 and 29 C.F.R. 5.1).

Chapter 16 (Competition-Policy)

No statutory or administrative changes will be required to implement Chapter 16. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 17 (State-Owned Enterprises and Designated Monopolies)

No statutory or administrative changes will be required to implement Chapter 17. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 18 (Intellectual Property)

1. Implementing Bill

No statutory changes will be required to implement Chapter 18. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 18.12 of the Agreement (Contact Points for Cooperation) permits a TPP party to designate one or more contact points for the purpose of cooperation under Section B of the intellectual property chapter. USTR's Intellectual Property and Innovation Office will serve as the contact point for this purpose.

Chapter 19 (Labour)

1. Implementing Bill

No statutory changes will be required to implement Chapter 19. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 19.12 (Labor Council) of the Agreement establishes a Labor Council, composed of senior officials at the Ministerial or other level, as designated by each Party. Article 19.13 (Contact Points) calls for each TPP Party to designate contact points for other governments and the public on matters related to TPP's Labor Chapter. The Department of Labor's Bureau of International Labor Affairs (ILAB) will serve as the U.S. contact point for these purposes, along with the Office of the U.S. Trade Representative's Office of Labor Affairs.

Chapter 20 (Environment)

1. Implementing Bill

No statutory changes will be required to implement Chapter 20. U.S. laws and

regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 20.12 (Cooperation Frameworks) calls for each TPP Party to designate a contact point on matters that relate to coordination of cooperation activities in regard to matters arising under the Environment chapter. The Department of State (Bureau of Oceans and International Environmental and Scientific Affairs), in consultation with USTR's Office of Environment and Natural Resources, will serve as the U.S. contact point for this purpose. In addition, Article 20.19 (Environment Committee and Contact Points) of the Agreement establishes an Environment Committee, composed of senior government representatives from the relevant trade and environment agencies of each Party. The Assistant U.S. Trade Representative for Environment and Natural Resources and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs will serve as the U.S. representatives on the Environment Committee. Article 20.19 also provides that each Party will designate a contact point to facilitate communication between the Parties in the implementation of the Environment chapter. USTR's Office of Environment and Natural Resources and the Department of State (Bureau of Oceans and International Environmental and Scientific Affairs) will serve as the U.S. contact point for this purpose.

Chapter 21 (Cooperation and Capacity Building)

1. Implementing Bill

No statutory changes will be required to implement Chapter 21. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 21.3 (Contact Points for Cooperation and Capacity Building) calls for each Party to designate a contact point for matters relating to the coordination of cooperation and capacity building activities under the Chapter. USTR's Office of Southeast Asia and the Pacific will serve as the U.S. contact point for this purpose.

USTR has been working and will continue to work with the Department of State, USAID, the Labor Department, and other agencies to develop a multi-year program of trade capacity building to support the effective implementation of TPP commitments by our developing country TPP partners, especially Vietnam. Consistent with the requirements of TPA and subject to available resources, the program includes activities related to implementation of TPP commitments on intellectual property rights, sanitary and phytosanitary measures, labor, the environment, regulatory coherence, and other issues.

Chapter 22 (Competitiveness and Business Facilitation)

No statutory or administrative changes will be required to implement Chapter 22. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 23 (Development)

No statutory or administrative changes will be required to implement Chapter 23. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 24 (Small and Medium-Sized Enterprises)

No statutory or administrative changes will be required to implement Chapter 24. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

Chapter 25 (Regulatory Coherence)

1. Implementing Bill

No statutory changes will be required to implement Chapter 25. U.S. laws and regulations are already in conformity with the obligations assumed under the Chapter.

2. Administrative Action

Article 25.6 (Committee on Regulatory Coherence) of the TPP Agreement calls for each TPP Party to designate a contact point to provide information, on request by another Party, regarding the implementation of this Chapter. USTR's Office of Southeast Asia and the Pacific will serve as the U.S. contact point for this purpose.