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TPP Data Issue Basically 'Resolved,' USTR Says

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June 30, 2016

TPP Data Storage Dispute

Key Development: Froman sees key financial services data issue as being resolved.

What's Next: Text of the proposed fix will be confidentially circulated among industry advisers.

June 30 — A data-related issue in the trans-Pacific trade pact flagged by the financial services industry has basically been resolved, a senior U.S. trade official said.

“There has been a lot of very good work done between Treasury and the regulators on the financial services data flow, data localization issue,” U.S. Trade Representative Michael Froman said in remarks at the Cato Institute. “I think that has basically been resolved in a positive way.”

He was discussing a Treasury Department proposal to address the exclusion of financial services from the 12-nation Trans-Pacific Partnership's general prohibition on local data server requirements.

A Treasury Department proposal would not apply to TPP per se, but proposes to lift the exclusion in the prospective Trade in Services Agreement (TISA) for the eight TPP countries involved in those talks. Froman said his office will work with Brunei, Malaysia, Singapore and Vietnam to address outstanding U.S. concerns in the implementation phase of the agreement. He also said talks were still ongoing with the U.S. industry on the issue.

A summary of the proposal, which could affect financial services companies such as JPMorgan, Citigroup, Liberty Mutual and MetLife, was floated by Treasury in late May ([33 ITR 787, 6/2/16](#)) ([102 International Trade Daily, 5/26/16](#)) (See previous story, [05/26/16](#)).

The U.S. Chamber of Commerce, the American Council of Life Insurers and the American Insurance Association issued statements in support of the Treasury Department's proposal.

Other U.S. companies, however, are waiting for the actual text of the administration's proposed fix to be available for "cleared advisers" to get a better sense of the details.

Peter Matheson, a managing director at Securities Industry and Financial Markets Association (SIFMA), told Bloomberg BNA June 28 that his group appreciates the efforts by USTR and Treasury but cannot yet endorse the plan. Matheson said he is waiting for more details for including this language in TISA and on how USTR will bring the non-TISA countries in the TPP into compliance with the terms outlined by Treasury.

Separately, some industry representatives and lawmakers said they want confirmation that the four TPP countries not included in the TISA would agree to an "enforceable commitment," meaning that countries, such as the U.S., could bring a claim against another country before an international tribunal under the state-to-state dispute settlement mechanism.

House Foreign Affairs Chairman Ed Royce (R-Calif.) said in a May 26 statement that the administration should seek side letters from Brunei, Malaysia, Singapore and Vietnam.

The Treasury proposal would be more meaningful if the U.S. were to make it a formal offer in the TISA negotiations, Robert Vastine, a senior industry and innovation fellow at the Georgetown University Center for Business and Public Policy, told Bloomberg BNA June 30.

"As it is, you have a promise from an outgoing administration that an incoming administration would keep engaging a regulatory agency, the Federal Reserve, that is outside congressional and White House control," said Vastine, who is also a former deputy assistant secretary of treasury for international trade.

The TPP prohibition on governments forcing businesses to set up data storage facilities within national borders is in the Electronic Commerce chapter (Article 14.13), but financial services data are covered separately, in the Financial Services chapter.

The International Trade Commission report on TPP said that the Financial Services chapter's provision on cross-border data flows are new and add protections not included in prior U.S. trade agreements, but these benefits are offset by the exclusion of financial services from the prohibition of data localization measures in the Electronic Commerce chapter.