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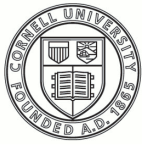

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U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges

Abstract

[Excerpt] This report provides background information and analysis on U.S. foreign trade in services. The focus of the report is an analysis of the policy challenges that the United States confronts, especially the challenge of negotiating a set of international disciplines on trade in services and dealing with the complexity of measuring trade in services. The report also focuses on emerging issues and current negotiations, especially those pertaining to the Trade in Services Agreement (TISA), the Trans-Pacific Partnership (TPP), and the Transatlantic Trade and Investment Partnership (TTIP) agreement.

Keywords

foreign trade, services, United States, Trade in Services Agreement, TISA, Trans-Pacific Partnership, TPP, Transatlantic Trade and Investment Partnership, TTIP

Comments

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U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges

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Committees of Congress

Summary

The term "services" refers to an expanding range of economic activities, such as construction, retail and wholesale sales, e-commerce, financial services, professional services (such as accounting and legal services), transportation, tourism, and telecommunications. They have become an important priority in U.S. foreign trade flows and trade policy and of global trade in general, although their intangibility, the requirement for direct buyer-provider contact, and other characteristics have limited the types and volume of services that can be traded. Congress is expected to consider in the future U.S. trade agreements currently under negotiation that include services as significant components.

Services constitute an important component of U.S. trade flows. The United States is the largest exporter of services (14% of the global total in 2011) and the largest importer (10% of the global total in 2011). In 2012, services accounted for 29% of total U.S. exports and 7% of total imports. Rapid advances in information technology and the related growth of global value or supply chains have reduced barriers to trade in services, making an expanding range of services tradable across national borders.

A number of economists have argued that foreign government barriers prevent U.S. trade in services from expanding to their potential. The United States has negotiated trade agreements to lower these barriers. It has been a leading force in doing so under the General Agreement on Trade in Services (GATS) in the World Trade Organization (WTO) and in free trade agreements, all of which contain significant provisions on market access and rules for liberalizing trade in services. The United States is in the midst of negotiating with 11 other countries the Trans-Pacific Partnership (TPP) agreement and is also one of 23 countries negotiating a possible plurilateral Trade in Services Agreement (TISA). Services trade is also an important component of the recently launched negotiations on the Transatlantic Trade and Investment Partnership (TTIP) agreement between the United States and the European Union (EU), two of the world's largest providers of and traders in services.

The outlook for these trade negotiations remains uncertain. In each case, the participants have difficult issues to overcome. Perhaps one of the most difficult issues is whether regional and plurilateral agreements will support or undermine the pursuit of a more extensive, multilateral agreement in the GATS. A related issue is whether participants in the regional and plurilateral agreements can/should encourage recalcitrant countries, such as the emerging economies—Brazil, China, and India—to join.

Congress and U.S. trade negotiators face other issues, including how to balance the need for effective regulations with the objective of opening markets for trade in services; ensuring adequate and accurate data to measure trade in services to better inform trade policy; and determining whether renewed trade promotion authority is needed to credibly negotiate trade agreements on services.

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Introduction

The term "services" refers to an expanding range of economic activities, such as construction, retail and wholesale sales, e-commerce, financial services, professional services (such as accounting and legal services), transportation, tourism, and telecommunications. Services account for most U.S. economic activity—70% of U.S. gross domestic product (GDP) and 80% of U.S. civilian employment. Services are an important element across the U.S. economy, at the national, state, and local levels. They not only function as end-user products but also act as the "lifeblood" of the rest of the economy with transportation services ensuring that goods reach customers and financial services providing credits for the manufacture of goods.

Services have become an important component in U.S. foreign trade and, therefore, an increasingly important priority of U.S trade policy and of global trade in general. The intangibility of services and other characteristics have limited the types and volume of services that could be traded across national borders. However, rapid advances in information technology and the related growth of global value and supply chains are making an expanding range of services tradable across national borders.

A number of economists have argued that foreign government barriers prevent U.S. trade in services from expanding to their potential.[1] The United States has engaged in trade negotiations on multilateral, plurilateral and bilateral agreements to lower these barriers. These current trade negotiations are occurring within the context of the ongoing policy debate on the value and appropriateness of trade liberalization.

Congress has a significant role to play in negotiating and implementing trade liberalizing agreements, including those on services. In fulfilling its responsibilities for oversight of U.S. trade policymaking and implementation, Congress monitors trade negotiations and the implementation of trade agreements. Members, through consultations with the Administration and the renewal of trade promotion authority (TPA), establish negotiating priorities for trade agreements. More directly, Congress must pass any agreements requiring changes to U.S. law before the agreements can enter into force in the United States.

This report provides background information and analysis on U.S. foreign trade in services. The focus of the report is an analysis of the policy challenges that the United States confronts, especially the challenge of negotiating a set of international disciplines on trade in services and dealing with the complexity of measuring trade in services. The report also focuses on emerging issues and current negotiations, especially those pertaining to the Trade in Services Agreement (TISA), the Trans-Pacific Partnership (TPP), and the Transatlantic Trade and Investment Partnership (TTIP) agreement.

[1] See for example, J. Bradford Jensen, *Global Trade in Services: Fear, Facts, and Offshoring,* Peterson Institute for International Economics, August 2011, p. 7.

U.S. Foreign Trade in Services

Modes of Delivery

Because of the basic characteristics of services (especially compared to goods),including, their intangibility, and their ability to be conveyed via various formats, such as electronically and direct provider-to-consumer contact, the World Trade Organization(WTO) has adopted a system of classifying four modes of delivery for services. These four modes have been used to classify data to measure trade in services and to classify government measures that affect trade in services in international agreements. (**See the text box below**.)

Four Modes of Services Delivery

International agreements on trade in services, including the General Agreement on Trade in Services (GATS), which is administered by the WTO, identify four modes of supply of services:

Mode 1—Cross-border supply: The service is supplied from one country to another. The supplier and consumer remain in their respective countries, while the service crosses the border. Example: A U.S. architectural firm is hired by a client in Mexico to design a building. The U.S. firm does the design in its home country and sends the blueprints to its client in Mexico.

Mode 2—Consumption abroad: The consumer physically travels to another country to obtain the service. Example: A Mexican client travels to the United States to attend training on architecture and stays in a U.S. hotel.

Mode 3—Commercial presence: The supply of a service by a firm in one country via its branch, agency, or wholly-owned subsidiary located in another country. Example: A U.S construction firm establishes a subsidiary in Mexico to sell services to local clients.

Mode 4—Temporary presence of natural persons: individual suppliers travel temporarily to another country to supply services. Example: a U.S. computer programmer travels to Mexico to provide training to an employee.

Identifying the various modes of delivery of services is important for measuring the volume of services trade. Each mode requires a different method of measurement, and the data derived from these measurements are not likely to be compatible across the four modes, that is, one cannot combine the data on services traded via Mode 1 with data derived from services traded via Mode 3 in order to obtain a total. Identifying the modes is also important for policy purposes because issues raised by trade in Mode1can be different from issues raised by trade in another mode. For example, the trade barriers faced by providers in Mode1 are not necessarily the same as those faced by providers in Mode 4. Therefore, knowing the different modes helps to frame policy issues and solutions.

Source: The description and examples of modes of delivery are based on, and adapted from, the description contained in Organization of Economic Cooperation and Development (OECD), GATS: The Case for Open Services Markets, Paris, 2002. p. 60.

Overall Trends

U.S. foreign trade in services plays an important role in overall U.S. foreign trade. "Services" encompass a range of economic activities including passenger fares and other travel and transportation services; royalties and licensing fees for the use of intellectual property rights; express delivery; e-commerce; education services; banking, insurance, and other financial services; accounting, construction, architectural and engineering, legal services, and other professional services.

Measurements of trade in services are captured in two types of data: cross-border trade, which includes services sold via Modes 1, 2, and 4, described above.[2] The second set of data measures services sold by an affiliate of a company from one country in the territory and to a consumer of another country (Mode 3).[3]

Regarding cross-border trade, in 2013, services accounted for 30.0% of total U.S. exports (of goods and services) and 16.5% of total U.S. imports (of goods and services). **Table 1** shows that the United States has continually realized surpluses in services trade, which have partially offset large trade deficits in goods trade in the U.S. current account.[4]

Table 1. U.S. Cross-Border Trade in Goods and Services, 1986-2013

(Billions of Dollars)

	Exports		Imports		Balances	
Year	**Goods**	**Services**	**Goods**	**Services**	**Goods**	**Services**
1986	223.3	85.4	368.4	80.1	-145.1	5.3
1991	416.9	163.0	491.0	118.5	-74.1	44.5
1996	612.1	237.7	803.3	150.8	-191.2	86.9
1997	679.7	258.8	876.4	166.9	-196.7	91.9
1998	670.2	263.7	917.2	181.0	-247.0	82.7
1999	684.6	272.8	1030.0	189.2	-345.4	83.6
2000	772.2	293.5	1,224.4	217.0	-452.2	76.5
2007	1,148.5	497.2	1,967.9	378.1	-819.4	119.1
2008	1,037.5	535.2	2,137.6	403.4	-1,100.1	131.8
2009	1,069.7	509.2	1,575.5	382.6	-505.8	126.6
2010	1,288.9	553.6	1,934.0	403.2	-645.1	150.4
2011	1,497.4	606.0	2,235.8	427.4	-738.4	178.6
2012	1,561.2	649.3	2,302.7	442.5	-741.5	206.8
2013(p)	1589.7	681.7	2,293.6	452.7	-703.9	229.0

Source: U.S. Department of Commerce. Bureau of Economic Analysis.

Note: p=preliminary.

Many services require direct contact between supplier and consumer and, therefore, service providers often need to establish a presence in the country of the consumer through foreign direct investment. For example, providers of legal, accounting, and construction services usually prefer

[2] For example, the purchases by a foreign visitor of a hotel and of other services in the United States are counted as U.S. exports and such purchases by a U.S. visitor to a foreign country are counted as U.S. imports from that country.

[3] Affiliates are enterprises that are directly or indirectly owned or controlled by an entity in another country to the extent of 10 percent or more ownership of the voting stock for an incorporated business, or an equivalent interest for an unincorporated business.

[4] The current account includes trade in goods and services as well as income earned on foreign investments and unilateral transfers.

a direct presence because they need access to expert knowledge of the laws and regulations of the country in which they are doing business and they require proximity to clients.

In 2011 (the latest year for which published data are available), U.S. firms sold $1,287.0 billion in services to foreigners through their majority-owned foreign affiliates. In 2011, foreign firms sold $754.0 billion in services to U.S. residents through their majority-owned foreign affiliates located in the United States.[5] The data for cross-border trade and for sales by majority-owned affiliates are not directly compatible. Nevertheless, the data presented in **Table 2** indicate that in terms of magnitude, most sales of services occur through the commercial presence of companies in foreign markets.

Table 2. Services Supplied to Foreign and U.S. Markets through Cross-Border Trade and Affiliates, 2009-2011

	To Foreign Markets		To the U.S. Market	
	Cross-Border Trade	Through U.S. Affiliates	Cross-Border Trade	Through Foreign Affiliates
2009	492.1	1,071.6	347.7	669.3
2010	537.7	1,130.5	368.0	696.0
2011	606.0	1,287.0	427.4	754.0

Source: Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business, October 2013,* p. 62.

Conventional trade data do not capture the portion of the total value of exports and imports of manufactured goods and agricultural products attributed to services. For example, data measure exports and imports of goods based on the value of the final product. Included in that measurement, but not disaggregated, is the value of such services as research and development, design, transportation costs, finance, among others, that are imbedded in the final product. However, the Organization of Economic Cooperation and Development (OECD) and the WTO have undertaken a project to measure trade flows based on value-added rather than final cost. They have estimated that in 2009, close to 50% of the value of U.S. exports of manufactured goods was attributable to services inputs.[6] This finding suggests a larger role for services in foreign trade than is reflected in conventional trade data.

Geographical Distribution

The United States conducts trade in services (both via cross border trade and foreign direct investment) with many different regions of the world. (**See Figures 1 and 2.**) Much of the U.S. cross-border trade in services in 2012 occurred with EU-member countries. In 2012, 32% of U.S. exports of services went to the 28 member-countries of the EU, while 35% of U.S. imports of services came from those countries.[7] Japan accounted for 8% of U.S. services exports and 7% of U.S. services imports, while other Asian and Pacific countries accounted for 12% and 10% of

[5] *Survey of Current Business*, October 2013, p. 64.

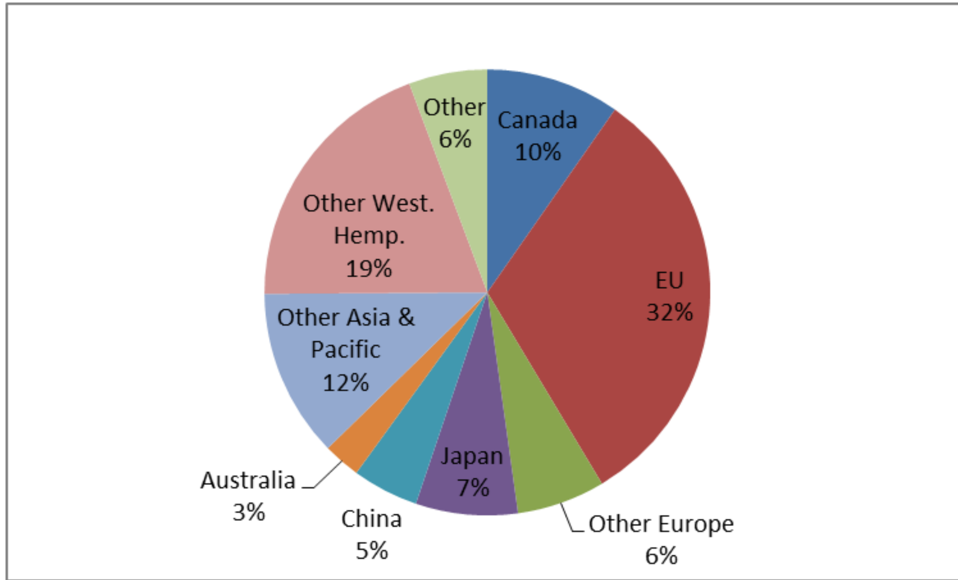
[6] OECD, *Interconnected Economies: Benefitting from Global Value Chains,* Paris, p. 58.

[7] As of July 30, 2013, the EU consists of 28 countries with the addition of Croatia.

U.S. exports and imports of services, respectively, in 2012. Canada accounted for 10% and 7% of U.S. services exports and imports, respectively, in 2012. Of note is India's emergence as an important source of services. In 2001, India accounted for 1% of total U.S. imports of services, and in 2012, it accounted for 5% of total U.S. services imports.[8]

Figure 1. U.S. Exports of Private Services by Area, 2012

(Cross-border Trade in Percentages of Total)

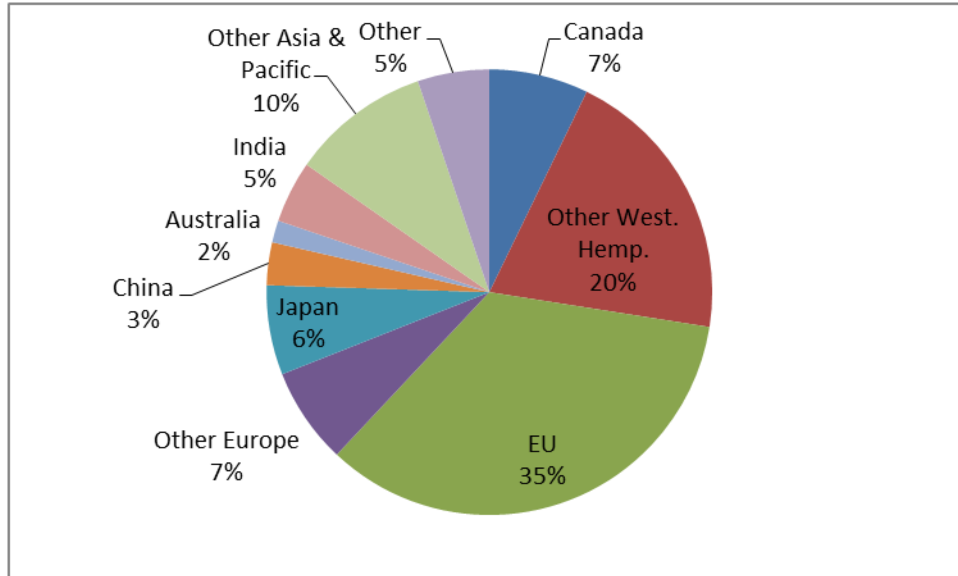


Source: CRS based on data from the Department of Commerce, Bureau of Economic Analysis.

[8] *Survey of Current Business,* October 2012, pp. 36-37.

Figure 2. U.S. Imports of Private Services by Area, 2012

(Cross-border Trade in Percentages of Total)



Source: CRS based on data from the Department of Commerce, Bureau of Economic Analysis.

The EU's dominance in U.S. services trade is even more apparent when taking into account services that are provided through multinational corporations (MNCs). In 2011 (latest data available), 43.1% of services supplied by U.S. MNCs were to foreign persons located in EU-member countries, 25.4% to foreign persons located in Asian countries, and 9.8% to foreign persons located in Canada. In 2011, 54.4% of sales of services by U.S. affiliates of foreign-owned MNCs to U.S. persons were by MNCs based in EU-member countries, 20.4% by MNCs based in Asia, and 9.9% by MNCs based in Canada.[9]

Trade by Services Type

In 2013, business and professional services (accounting, computer services, accounting and legal services, among others) accounted for 23.8% of U.S. exports and 28.0% of U.S. imports of services, and insurance and other financial services accounted for 14.6% of U.S. services exports and for 16.0% of U.S. imports of services. Travel and related services have also played a significant role in U.S. cross-border services trade, accounting for 21.2% and 20.2% of U.S. services exports and imports, respectively, in 2013. Passenger fares accounted for another 6.2% and 8.7% and other transportation services accounted for an additional 6.9% and 13.7% of U.S. services exports and imports. (See **Table 3**.)

[9] *Survey of Current Business,* October 2013, p. 62.

Table 3. U.S. Cross-Border Trade in Services by Type, 2013

(Percentages of Total)

	U.S. Exports	U.S. Imports
Travel	21.2%	20.2%
Passenger Fares	6.2%	8.7%
Other Transportation	6.9%	13.7%
Royalties & Fees	19.6%	9.7%
Education	4.0%	1.5%
Insurance & Other Financial	14.6%	16.0%
Telecommunications	2.1%	1.8%
Business & Professional	23.8%	28.0%
Other	1.6%	0.4%

Source: CRS based on data from the Department of Commerce, Bureau of Economic Analysis.

Sales of services by MNCs include a broader range of industries. In 2011 (latest data available), 25.8% of sales in terms of value of services to foreign persons by U.S.-owned MNCs were accounted for by wholesale and retail trade services. Another 19.6% were accounted for by financial services, while 14.1% were attributable to sales of professional services, including computer systems and design, architectural, engineering, and related services, and other professional services. Another 21.7% of these sales were accounted for in an "other industries" category that includes mining, utilities, and transportation services.[10] Similarly, in 2011, 22.5% of sales of services to U.S. persons by U.S. affiliates of foreign MNCs were accounted for by wholesale and retail trade, with another 20.9% accounted for by financial services providers and 23.5% by providers from "other industries."[11]

The United States and World Trade in Services

The United States is a major power in world trade in services. According to the WTO, if the EU countries are treated separately, the United States was the largest single-country exporter (14.1%) and importer (9.9%) of global commercial services in 2012. (See

[10] Ibid., p. 34.

[11] Ibid., p. 66.

Table 4.) The United States was the second largest exporter (18.3%) and second largest importer (12.7%) in 2012, if the EU is treated as a single entity and intra-EU trade in services is excluded. (See **Table 5**.)[12]

[12] World Trade Organization, *World Trade Report 2012,* Geneva, pp. 32-33.

Table 4. Top Ten Country Exporters and Importers of Services in 2012
(EU Members treated separately)

Country	Share of World Exports of Services	Country	Share of World Imports of Services
United States	14.1%	United States	9.9%
United Kingdom	6.4%	Germany	6.9%
Germany	5.9%	China	6.8%
France	4.8%	United Kingdom	4.3%
China	4.4%	Japan	4.2%
India	3.4%	France	4.2%
Japan	3.2%	India	3.0%
Spain	3.2%	Singapore	2.8%
Singapore	3.1%	Netherlands	2.8%
Netherlands	2.9%	Ireland	2.8%

Source: World Trade Organization, World Trade Report 2012, Geneva, p. 36.

Note: These data do not cumulate data for EU-27 countries.

Table 5. Top Ten Exporters and Importers of Services in 2012
(EU-27 treated as a single entity)

Country	Share of World Exports of Services	Country	Share of World Imports of Services
EU27	24.6%	EU27	20.0%
United States	18.3%	United States	12.7%
China	5.7%	China	8.8%
India	4.4%	Japan	5.4%
Japan	4.2%	India	3.9%
Singapore	4.0%	Singapore	3.7%
Hong Kong	3.8%	Canada	3.3%
South Korea	3.3%	South Korea	3.3%
Switzerland	2.6%	Russia	3.2%
Canada	2.6%	Brazil	2.4%

Source: World Trade Organization, World Trade Report 2012, Geneva, p. 37.

Note: These data exclude intra-EU trade.

Barriers to Trade in Services

Because of the fundamental differences between goods and services, the impediments that service providers face are often different from those faced by goods suppliers. Many impediments in goods trade—tariffs and quotas, for example—are at the border.

Restrictions on services trade occur largely within the borders of the importing country. Some of these restrictions are in the form of government regulations. The right of governments to regulate some service industries is widely recognized as prudent and necessary to protect consumers from harmful or unqualified providers. For example, doctors and other medical personnel must be licensed by government-appointed boards; lawyers, financial services providers, and many other professional service providers must be also certified in some manner. In addition, governments apply prudential capital requirements on banks to ensure their solvency. The question in foreign trade is whether these regulations are applied in a discriminatory and unnecessarily trade restrictive manner to foreign services providers. Because services transactions more often require direct contact between consumer and provider than is the case with goods trade, many of the "trade barriers" that foreign companies face pertain to the establishment of a commercial presence in the consumers' country in the form of direct investment (Mode 3) or to the temporary movement of providers and consumers across borders (Modes 2 and 4).

The GATS under the WTO identifies specific "market access" restrictions as proscribed under its provisions. These include limits on: the number of foreign service suppliers; the total value of service transactions or assets; the number of transactions or value of output; the type of legal entity or joint venture through which services may be supplied; and the share of foreign capital or total value of foreign direct investment.

In many cases the impediments are government regulations or rules that are ostensibly legitimate but may intentionally or unintentionally discriminate against foreign providers and impede trade. Examples of such barriers include

- restrictions on international payments, including repatriation of profits, mandatory currency conversions, and restrictions on current account transactions;
- restrictions on the movement of personnel, including visa and work permit restrictions;
- requirements that foreign professionals pass certification exams or obtain extra training that is not required for local nationals;
- mandatory hiring of local labor;
- restrictions on information transfer imposed to protect data and maintain privacy—"data localization;"
- "buy national" requirements in government procurement;
- lack of national treatment in taxation policy or protection from double taxation;
- government-owned monopoly service providers and requirements that foreign service providers use a monopoly's network access or communications connection providers;
- government subsidization of domestic service suppliers;
- discriminatory licensing and certification of foreign professional services providers; and
- limitations on foreign direct investment, such as:
    - equity ceilings;

- restrictions on the form of investment, that is, a branch, subsidiary, joint venture, etc.; and
- requirements that the chief executive officer or other high-level company officials be local nationals or that a certain proportion of a company's directors be local nationals.[13]

The Economic Effects of Barriers to Services Trade

Measuring the effects of trade barriers in general, and barriers to trade in services, in particular, is challenging. This challenge occurs because the most significant barriers to trade in services are nontariff measures that are not readily quantifiable. Economists have constructed methods to at least estimate the effects, which can help to inform trade policy.

Economists at the Peterson Institute for International Economics (PIIE) recently published the results of one such method in several related studies. They first determined that U.S. trade in "business services"—a broad category that includes such activities as information; finance and insurance; real estate; professional, scientific, and technical services; and management services—is lower than one might expect given U.S. comparative advantage in those services. To come to this conclusion, the PIIE economists first determined that many business services are tradable, that is, capable of being sold from one region to another because many of them are "traded" between regions within the United States. They then compared the trade profiles of manufacturing firms and those of service firms and concluded that while about 27% of U.S. manufacturing firms export, only 5% of U.S. firms providing business services engage in exporting, even though the United States has a comparative advantage in business services. The PIIE study concludes that foreign government trade barriers are a major factor in the relatively low participation of U.S. service providers in trade. It also calculated the export/total sales ratios of manufacturing firms compared to business services firms, with the former being 0.20 and the latter 0.04. The study argues that if the ratio of business services could be raised to 0.1 or half of the manufacturers' ratio, it would increase total U.S. goods and services exports by 15%.[14] Presumably, U.S. imports of services would also increase.

Most economists would argue that by reducing barriers to trade in services, economies can more efficiently allocate resources, increasing general economic welfare. Opponents of liberalization in trade in services argue, however, that the United States would be forced to relinquish some regulatory control that could affect the viability of service sectors.

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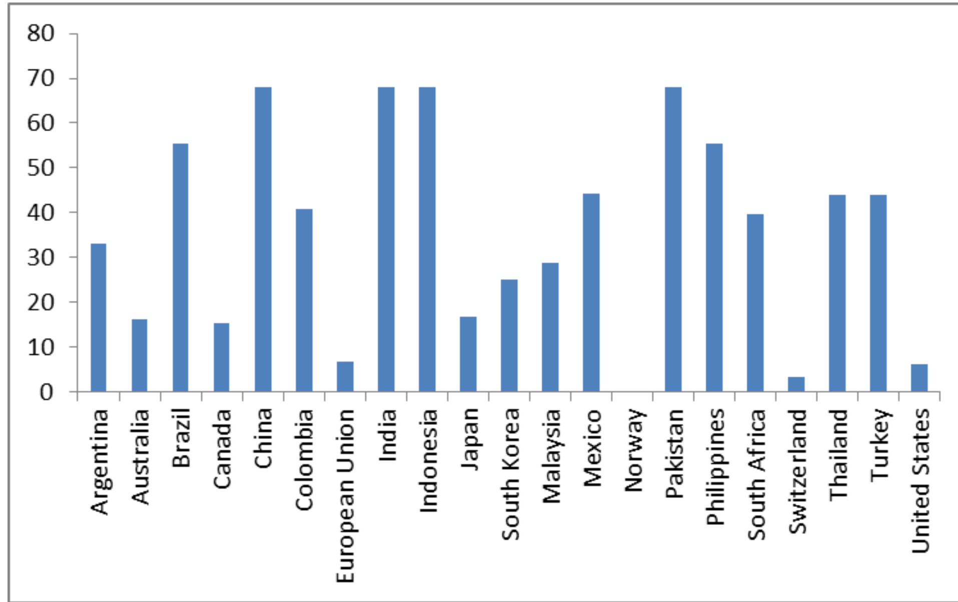
[13] OECD, Working Party of the Trade Committee *Assessing Barriers to Trade in Services—Revised Consolidated List of Cross-Sectoral Barrier,* Paris, February 28, 2001.

[14] Gary Hufbauer, J. Bradford Jensen, and Sherry Stephenson, *Framework for the International Services Agreement,* Peterson Institute for International Economics, Policy Brief, Number PB12-10, April 2012, p. 19.

Figure 3. Tariff Equivalents of Services Barriers

(Average Ad Valorem Equivalents)



Source: Hufbauer, Schott, and Wong in J. Bradforn Jensen,*Global Trade in Service: Fears, Facts, and Offshoring*,Peterson Institute for International Economics, August 2011, p. 152.

A number of economists have developed methods to quantify the impact of barriers on services trade. **Figure 3** shows the results of one method by PIIE economists. The graph measures barriers to services as average tariff equivalents for each of 21 countries representing a range of levels of development. The graph shows that Norway and Switzerland, with 0% and 3% rates, respectively, and United States and the EU each with 6% rates, are among the least restrictive and the most open markets in terms of trade in services. Japan and South Korea, which are also developed economies, are more restrictive with 17% and 25% rates ad valorem equivalent rates, respectively. Other less developed economies are even more restrictive.

Establishing Rules on Services Trade

The United States has been working with trading partners to develop and implement rules on several fronts in order to reduce barriers and facilitate trade in services without infringing on the sovereign rights of governments to regulate services for prudential and sound regulatory reasons. The broadest and most challenging in terms of the number of countries involved are the multilateral rules contained in the GATS that entered into force in 1995 and is administered by the 159-member World Trade Organization (WTO). The United States has also sought to go beyond the GATS (WTO-plus) under more comprehensive rules in the free trade agreements (FTAs) it has in force and in ongoing negotiations on the TISA, the TPP, and the TTIP with the EU. The U.S. overall objective in each of these fora has been to establish a more open, rules-based trade regime that is flexible enough to increase the flow of services and to take into account the expansion of types of services, but clear enough to not impede the ability of governments to regulate the sectors.

The WTO and GATS

The seeds for multilateral negotiations in services trade were planted more than a quarter century ago. In the Trade Act of 1974, Congress instructed the Administration to push for an agreement on trade in services under the General Agreement on Tariffs and Trade (GATT) during the Tokyo Round negotiations. While the Tokyo Round concluded in 1979 without a services agreement, the industrialized countries, led by the United States, continued to press for its inclusion in later negotiations. Developing countries, whose service sectors are less advanced than those of the industrialized countries, were reluctant to have services included. Eventually services were included as part of the Uruguay Round negotiations launched in 1986.[15] At the end of the round, countries agreed to a new set of rules for services, the GATS, and a new multilateral body, the WTO, to administer the GATS, the GATT, and the other agreements reached.

The GATS

The GATS provides the first and only multilateral framework of principles and rules for government policies and regulations affecting trade in services among the 159 WTO countries representing many levels of economic development. In so doing, it provides the foundation or floor on which rules in other agreements on services are based. As with the rest of the WTO, the GATS has remained a work in progress. The agreement is divided into six parts.[16]

Part I (Article I) defines the scope of the GATS. It provides that the GATS applies—

- to all services, except those supplied in the routine exercise of government authority;
- to all government barriers to trade in services at all levels of government—national, regional, and local; and
- to all four modes of delivery of services.

Part II (Articles II-XV) presents the "principles and obligations," some of which mirror those contained in the GATT for trade in goods, while others are specific to services. They include

- unconditional *most-favored-nation (MFN), non-discriminatory treatment* – services imported from one member country cannot be treated any less favorably than the services imported from another member country;[17]
- *transparency*—governments must publish rules and regulations;
- *reasonable, impartial and objective* administration of government rules and regulations that apply to covered services;

[15] Geza Feketekuty, *International Trade in Services: An Overview and Blueprint for Negotiations,* American Enterprise Institute,. Ballinger Publishers. 1988. p. 194.

[16] This description of the GATS is based on WTO Secretariat—Trade in Services Division. *An Introduction to the GATS,* October 1999, available at http://www.wto.org. Not all services issues were resolved when the Uruguay Round was completed in 1993.

[17] The GATS differs from the GATT in that it has allowed members to take temporary exemptions to MFN treatment. The exemptions are listed in a special annex to the GATS. The GATS allows only these one-time exemptions. The GATS (as is the case of the GATT) also allows MFN exemptions in the cases of regional agreements.

- *monopoly suppliers* must act consistently with obligations under the GATS in covered services;
- a member incurring *balance of payments difficulties* may temporarily restrict trade in services covered by the agreement; and
- a member may circumvent GATS obligations for *national security purposes*.

Part III (Articles XVI-XVIII) of the GATS establishes market access and national treatment obligations for members. The GATS—

- binds each member to its commitments once it has made them, that is, a member country may not impose less favorable treatment than what it has committed to;
- prohibits member-country governments from placing limits on suppliers of services from other member countries regarding: the number of foreign service suppliers; the total value of service transactions or assets; the number of transactions or value of output; the type of legal entity or joint venture through which services may be supplied; and the share of foreign capital or total value of foreign direct investment;
- requires that member governments accord service suppliers from other member countries *national treatment*, that is, a foreign service or service provider may not be treated any less favorably than a domestic provider of the service; and
- allows members to negotiate further reductions in barriers to trade in services.

Importantly, unlike MFN treatment and the other principles listed in Part II, which apply to all service providers more or less unconditionally, the obligations under Part III are restricted. They apply only to those services and modes of delivery listed in each member's schedule of commitments. Thus, unless a member country has specifically committed to open its market to service suppliers in a particular service that is provided via one or more of the four modes of delivery, the national treatment and market access obligations do not apply. This is often referred to as the *positive list* approach to trade commitments. Each member country's schedule of commitments is contained in an annex to the GATS.[18] The schedules of market access commitments are, in essence, the core of the GATS.

Parts IV-VI (Articles XIX-XXIX) are technical elements of the agreement. Among other things, they require that, no later than 2000, the GATS members start new negotiations (which they did) to expand coverage of the agreement and that conflicts between members involving implementation of the GATS are to be handled in the WTO's dispute settlement mechanism. The GATS also includes eight annexes, including one on MFN exemptions. Another annex provides a "prudential carve out," that is, a recognition that governments take "prudent" actions to protect investors or otherwise maintain the integrity of the national financial system. These prudent actions are allowed, even if they conflict with obligations under the GATS.

Not all of the issues in services were resolved when the Uruguay Round negotiations ended in 1994. Fifty-six WTO members, mostly developed economies, negotiated and concluded an agreement in 1997 in which they made commitments on financial services. The schedules of

[18] See out-of-print CRS Report 95-1051, *Services Trade and the Uruguay Round*, by Arlene Wilson, p. 17 (available from author).

commitments largely reflected national regimes already in place.[19] Furthermore, 69 WTO members negotiated and concluded an agreement in 1997 on telecommunications services. That agreement laid out principles on competition safeguards, interconnection policies, regulatory transparency and the independence of regulatory agencies. Both agreements were added to the GATS as protocols.[20]

Services and the Doha Development Agenda (DDA)

Article XIX of the GATS required WTO members to begin a new set of negotiations on services in 2000 as part of the so-called WTO "built-in agenda" to complete what was unfinished during the Uruguay Round and to expand the coverage of the GATS. However, because no agreement was reached, the services negotiations were folded—along with agriculture and non-agriculture negotiations—into the agenda of the Doha Development Agenda (DDA) round that was launched in December 2001. By most accounts, the DDA negotiations, which are officially in their 12th year, are at a standstill at best. At the December 2005 biennial WTO Ministerial meeting in Hong Kong, WTO members expressed widespread disappointment with the offers that member-countries had made in the services negotiation, because they failed to reflect even current levels of market openness.

WTO leaders and member countries have attempted to re-start momentum in the DDA process in general and in the services negotiations in particular. Initially, the service negotiations were conducted in a country-by-country, "request-offer" format, where members would first indicate what they wanted from the negotiations and then follow-up with concessions on openness they were willing to offer. At the Hong Kong ministerial, the members agreed to shift tactics and try a "plurilateral" offer process whereby like-minded members would group in clusters to develop offers in more than 20 specific sectors. While some offers emerged, the services negotiations, along with the other elements of the DDA round, have largely been considered of limited success at best and have been relatively inactive since 2011.

U.S. priorities in the services negotiations included the following areas:

- removing unnecessary restrictions on foreign providers establishing a commercial presence;
- improving the quality of commitments from what was established originally in the GATS;
- regulatory transparency so that foreign services providers are better informed about host country regulations that may affect them; and
- expanding market access in financial services, telecommunication services, express delivery, energy services, environmental services, distribution services, education and training services, professional services, computer and related services, and audiovisual and advertising services.

[19] Marchetti, Juan A., *Financial Services Liberalization in the WTO and PTAs*, in Juan A. Marchetti, Juan A. and Martin Roy, (eds), *Opening Markets for Trade in Services: Countries and Sectors in Bilateral WTO Negotiations,* World Trade Organization, Cambridge University, 2008, p. 323.

[20] Tuthill, L. Lee and Laura B. Sherman, *Telecommunications: an Trade Agreements Keep Up with Technology?,* in Marchetti, Juan A. and martin Roy, (eds), *Opening Markets for Trade in Services: Countries and Sectors in Bilateral WTO Negotiations,* World Trade Organization, Cambridge University, 2008

Several possible reasons can be cited for the lack of progress. One is the division between developed countries that have advanced services sectors employing highly-skilled labor and developing countries with less-developed service industries. The former group, including the United States and the EU, seeks market opportunities for its services providers and has been more willing to open its markets to competition. The latter group, which includes China, India, and Malaysia, has been more protective of its domestic services providers.[21]

The lack of progress in the agriculture and non-agriculture market access (NAMA) negotiations in the DDA has also affected the services negotiations. Some developing countries asserted that they would not improve their offers until the United States and the EU commit to reduce their agriculture subsidies. In addition, the "single undertaking" principle, under which the members conducted the DDA round, meant success in one area of the negotiations required success in all areas.

Another reason for the lack of progress could be the complexity of the agenda of the services negotiations and the number of players involved. The term "services" includes a broad range of economic activities many with few characteristics in common except that they are not goods. The trade barriers that exporters face differ across service sectors making the formulation of trade rules a significant challenge. For example, licensing regulations are especially important to professional service providers, such as lawyers and medical professionals, while data transfer regulations are important to financial services providers. Furthermore, services negotiations include many participants. In addition to trade ministers, they include representatives of finance ministries and regulatory agencies many of whom do not consider trade liberalization a primary part of their mission. In addition, negotiators have found it difficult to formulate mechanisms that distinguish between government regulations that are purely protectionist and those that have legitimate purposes.[22]

Frustration with the DDA negotiations has likely contributed to the proliferation of bilateral and regional trade agreements that include provisions on services and services-related activities (for example, foreign direct investment) and for alternative frameworks.

Services in U.S. FTAs

The United States has made services a priority in each of the 15 FTAs it has negotiated that cover trade with 20 countries (including the U.S.-Canada FTA which was overtaken by the entry into force of the North American Free Trade Agreement (NAFTA) on January 1, 1994). While the specific treatment of services differs among the FTAs because of the status of U.S. trade relations with the partner(s) involved, the FTAs share some characteristics that define a framework of U.S. policy priorities. Some of the major characteristics are examined below. Some of these aspects reaffirm adherence to principles embedded in the GATS, while other go beyond the GATS.

[21] J.Bradford Jensen, *Global Trade in Services: Fear, Facts, and Offshoring,* Peterson Institute for International Economics, August 2011, pp. 150-151.

[22] Bernard Hoekman, and Aaditya Mattoo, *Regulatory Cooperation and the General Agreement on Trade in Services,* Cordell Hull Institute, Trade Policy Roundtable, October 1, 2007, p. 9.

Negative List

Each of the U.S. FTAs uses a negative list in determining market access and national treatment coverage and commitments from each partner. Therefore, the FTA provisions for market access and national treatment apply to all categories and subcategories of services in all modes of delivery unless a party to the agreement has listed a service or mode of delivery as an exception. The negative list also implies that a newly-created or domestically-provided service is automatically covered under the FTA unless it is specifically listed as an exception in an annex to the agreement. The negative list approach is widely considered to be more comprehensive and flexible than the positive list which is used in the GATS and which some other countries use in their bilateral and regional FTAs.

Rules of Origin

Under FTAs in which the United States is a party, any service provider is eligible irrespective of ownership nationality as long as that provider is an enterprise organized under the laws of either the United States or the other party(ies) or is a branch conducting business in the territory of a party. Such criteria potentially expand the benefits of the FTA to service providers from other countries that are not direct parties to the FTA. For example, a U.S. subsidiary of a Canadian-owned insurance company would be covered by the U.S.-South Korea FTA. The FTAs do allow one party to deny benefits to a provider located in the territory of another party, if that provider is owned or controlled by a person from a non-party country and does not conduct substantial business in the territory of the other party, or if the party denying the benefits does not otherwise conduct normal economic relations with the non-party country.[23]

Multiple Chapters on Services

In many of the U.S. FTAs, trade in services spans several chapters indicating their prominence in U.S. trade policy and the specificity of U.S. policy negotiating objectives. Each of the FTAs has a specific chapter on cross-border trade in services—trade by all modes except commercial presence (Mode 3). This chapter requires the United States and the FTA partner(s) to accord non-discriminatory treatment—both MFN treatment and national treatment—to services originating in each other's territory. The agreement prohibits the FTA partner-governments from imposing restrictions on: the number of service providers; the total value of service transactions that can be provided; the total number of service operations or the total quantity of services output; or the total number of natural persons that can be employed in a services operation. In addition, the governments cannot require a service provider from the other FTA-partner to have a presence in its territory in order to provide services. The FTA partners may exclude categories or subcategory of services from the agreement, which they designate in annexes.

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[23] These rules of origin are discussed in the context of the U.S.-Australian FTA in United States International Trade Commission, *U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects,* Investigation No. TA-2104-11, May 2004, p. 87, and in Centre for International Economics (Australia), *Economic Analysis of the AUSFTA: Impact of the Bilateral Trade Agreement with the United States,* April 2004, p. 16. Under the U.S.-Australian FTA, for example, a relevant provision is contained in Chapter 10 which applies to cross-border services. **An enterprise of a Party** is defined as "an enterprise organized or constituted under the laws of a Party; and a branch located in the territory of a Party and carrying out business activities there ... " (Article 10.14(2)). The exceptions are contained in Article 10.11 (Denial of Benefits). Similar provisions are contained in other U.S. FTAs.

Each U.S. FTA also contains a chapter on foreign direct investment, including service providers that have a commercial presence (Mode 3) in the territory of a FTA partner and a chapter on intellectual property rights (IPR), which is also relevant to services trade.[24] In addition, many of the U.S. FTAs contain separate provisions or chapters on specific service categories which have been priority areas in U.S. trade policy. They include the following:

- **Financial Services:** The FTAs define financial services to "include all insurance and insurance-related services, and all banking and other financial services, as well as services incidental or auxiliary to a service of a financial nature." Among other things, the financial services chapter allows governments to apply restrictions for prudential reasons and allows financial service providers from an FTA partner to sell a new financial service without additional legislative authority, if local service providers are allowed to provide the same service.
- **Telecommunication Services:** The United States and trading partners agree that enterprises from each other's territory are to have nondiscriminatory access to public telecommunications services. For example, both countries will ensure that domestic suppliers of telecommunications services who dominate the market do not engage in anticompetitive practices. They also ensure that public telecommunications suppliers provide enterprises based in the territory of the FTA-partner with interconnection, number portability, dialing parity, and access to underwater cable systems.
- **e-commerce:** The FTAs include provisions to ensure that electronically supplied services are treated no less favorably than services supplied by other modes of delivery and that customs duties are not to be applied to digital products whether they are conveyed electronically or via a tangible medium such as a disk.

Regulatory Transparency

Many of the U.S. FTAs require the FTA partners to practice transparency when implementing and developing domestic regulations that affect services. In particular, the FTAs require the partner countries to provide notice of impending investigations that might affect service providers from the other partner(s). The FTAs go beyond the transparency provisions in the GATS by providing mechanisms for interested parties to comment on proposed regulations and appeal adverse decisions.

A Recent Case Study: The U.S.-South Korea FTA (KORUS FTA)

On March 15, 2012, the U.S.-South Korean FTA (KORUS FTA) entered into force. It was one of the three most recent FTAs—along with Colombia and Panama—that Congress approved in October 2011. Industry representatives have referred to the services-related provisions of the agreement as "the gold standard" for the treatment of services, particularly financial services, in FTAs. Examining some of its provisions may provide an indication of trends for U.S. objectives in trade in services in future agreements.

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[24] Services are also indirectly covered in U.S. bilateral investment treaties (BITs). For more information on BITS, see CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss

For example, for the first time in any trade agreement, the KORUS FTA contains in the financial services annex a specific reference to data transfer, enabling U.S. companies to freely transfer customer data into and out of a partner country. The provision is to be fully implemented within two years after entry into force (2014).[25] Data transfer has become a significant U.S. objective in current trade agreement negotiations as globalization has fragmented business operations across borders, and multinational firms want to be able to maintain central locations for data storage and avoid having to locate servers in multiple locations. In doing so, the multinational companies confront some governments' privacy concerns and localization requirements. Data transfer is an issue in the TPP negotiations and will likely be an issue in the negotiations on the TTIP and the TISA (discussed below).

The role of state-owned enterprises (SOEs) in services trade is another U.S. trade policy issue addressed in the KORUS FTA making it a possible model for other U.S. FTAs.[26] U.S. insurance companies have been concerned that the state-owned Korea Post and the cooperative insurance providers—the National Agricultural Cooperative Federation and the National Federation of Fisheries Cooperative—are not regulated by the Korean Financial Supervisory Commission or by the Financial Supervisory Service, while both private sector foreign and domestic providers are so regulated. Under the KORUS FTA, South Korea agreed that those entities will be subject to an independent state regulator as opposed to being self-regulated. In addition, Korea Post will not be allowed to offer new insurance products.

The United States sought greater reciprocity and market openness in the treatment of professional services and thereby gain increased access to the South Korean market for U.S. providers. The United States and South Korea agreed to form a professional services working group to develop methods to recognize mutual standards and criteria for the licensing of professional service providers. Under the KORUS FTA, South Korea has allowed U.S. law firms and U.S. licensed attorneys to provide advisory services on U.S. and international law since the KORUS FTA entered into force. South Korea will also permit U.S. legal representative offices to establish cooperative operations with a South Korean firm to handle matters pertaining to domestic and foreign legal matters, and, no later than five years after the agreement's entry into force, will allow U.S. law firms to form joint ventures with South Korean firms. However, South Korea will still reserve the right to restrict the activities of foreign lawyers.

In telecommunications services, South Korea will reduce government restrictions on foreign ownership of South Korean telecommunications companies. Two years after the KORUS FTA has entered into force (2014), U.S. companies will be able to own up to 100% of voting shares in domestic South Korean telecommunications companies, and those companies will be able to own up to 100% of a facilities-based licensee. These provisions do not apply to KT Corporation or to SK Telecom Co. for which a 49% foreign ownership limit remains in place.

The Proposed Trade in Services Agreement (TISA)

Largely because of the lack of progress in the DDA round of negotiations in the WTO, a group of 23 WTO members—the "Really Good Friends of Services" (RGFS)—have been engaging in

[25] Office of the United States Trade Representative, *Report of the Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10),* April 2007.

[26] State-owned enterprises (SOEs) are businesses that are directly or indirectly controlled by the government. U.S. SOEs include the U.S. postal system.

discussions on a possible sector-specific, plurilateral agreement to liberalize trade in services among them.[27] The group accounted for around 70% of world trade in services in 2012.[28] The United States and Australia have been at the forefront of the effort, with other WTO members, including some developing countries, becoming increasingly active as the discussions progress.

While not directly linked currently to the WTO, TISA participants are taking as their guide the "Elements of Political Guidance" issued at the end of the 8th WTO ministerial in December 2011. It stipulated that members could pursue negotiations outside of the single undertaking in order to accomplish the objectives of the DDA.[29]

For proponents of services trade liberalization, the plurilateral approach offers some advantages:

- progress in the services negotiations would no longer be tied to progress in other negotiations as has been in the case under the "single-undertaking" rule in the DDA;
- the RGFS members include those countries that account for a major share of global services trade;
- since negotiations are confined to countries willing to negotiate, prospects for a successful conclusion may be enhanced;
- the coverage of the agreement can be expanded as countries accede to its provisions; and
- the RGFS are likely to be more willing to commit to reducing barriers to trade and services beyond the limited commitments under the GATS and the offers made during the DDA round.

However, the approach may have some drawbacks:

- the RGFS members do not as a group currently include some of the economically significant emerging economies, such as Brazil, India, and China, which present the largest potential market opportunities for services but also impose significant impediments to trade and investment in services;
- breaking from the single-undertaking framework could undermine the opportunity for concessions in other areas, including agriculture and manufactured goods, that result from the "give-and-take" of negotiations; and
- a plurilateral services pact might diminish the credibility of the multilateral trade negotiation framework at a time its credibility has already been weakened by the setback, if not demise, of the DDA.

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[27] Contrary to the WTO MFN principle, a plurilateral agreement applies only to those countries that have signed it. The WTO has allowed such exceptions to MFN, such as the WTO Government Procurement Agreement. The RGFS members are: Australia; Canada; Chile; Taiwan (Chinese Taipei); Colombia; Costa Rica; EU; Hong Kong; Iceland; Israel; Japan; Korea; Liechtenstein; Mexico; New Zealand; Norway; Pakistan; Panama; Paraguay; Peru; Switzerland; the United States; and Turkey.

[28] Swiss National Center for Competence in Research: *A Plurilateral Agenda for Services?: Assessing the Case for a Trade in Services Agreement*, Working Paper No. 2013/29, May 2013, p. 10.

[29] European Parliament, Directorate-General for External Policies, Policy Department, *The Plurilateral Agreement on Services: at the Starting Gate.*

Informal discussions began in early 2012 and continued throughout the year. These discussions were designed to develop a basic framework and principles under which the negotiations would be conducted. On January 15, 2013, then-United States Trade Representative (USTR) Ron Kirk notified congressional leaders that the United States would formally engage in negotiations with the other RGFS members to reach an agreement trade in services, now dubbed the Trade in Services Agreement (TISA). In so doing, the Obama Administration adhered to the notification requirements under trade promotion authority (TPA), even though the latest authority expired on June 30, 2007.[30] The TPA required that the President notify Congress of his intention to enter into negotiations 90 calendar-days prior to doing so. (For the TISA this was April 15, 2013.)

The RGFS group has agreed to a framework of five basic objectives on which the negotiations are to be conducted.[31] The agreement should:

> (1) be compatible with the GATS, that would attract broad participation and that could be brought within the WTO framework in the future;
>
> (2) be comprehensive in scope, with no exclusions of any sector or mode of supply;
>
> (3) include commitments that correspond as closely as possible to applied practices and provide opportunities for improved market access;
>
> (4) include new and enhanced disciplines to be developed on the basis of proposals brought forward by participants during the negotiations; and
>
> (5) be open to new participants who share the objectives of the RGFS but also should take into account the development objectives of least developed countries (LDCs).

Among other issues that the RGFS countries addressed was whether to schedule trade liberalization commitments according to a negative list or positive list. Because of disagreements within the group, its members decided to use a "hybrid" approach—national treatment obligations would be negotiated under a negative list and market access obligations would be negotiated under a positive list.[32]

Another issue was the application of the TISA commitments to non-participants. The RGFS agreed to conduct the negotiations on a non-MFN basis, that is, the benefits of the commitments made by the participants in the TISA would apply to only those countries that have signed on to the agreement thereby avoiding "free-riders." This exception to the general WTO MFN principle is consistent with Article V of the GATS which allows WTO members to form preferential agreements to liberalize trade in services as long as the agreement has substantial service sectoral coverage and provides for the absence or elimination of substantially all discrimination.

On January 24, 2013, the USTR issued a Federal Register notice inviting stakeholder to submit comments on a potential TISA and provide testimony for a hearing on March 12, 2013. While

[30] TPA is authority that Congress grants the President to negotiate reciprocal trade agreements to liberalize trade for which the implementing legislation would receive expedited legislative consideration (no amendments, timely committee consideration, mandatory floor consideration, and time-limited debate).

[31] *International Trade Daily*, February 19, 2013.

[32] *World Trade Online,* January 17, 2013.

directed at consideration of the TISA, the submissions can also be considered the views of their authors on services trade agreements in general.

Many members of the U.S. business community, especially service providers and related industries, strongly support the formation of a TISA. This group views a TISA as an opportunity to strengthen multi-party rules on trade in services beyond what are contained in the GATS—which are largely considered to be pretty weak.

In their comments, TISA advocates stated their overall goals:[33]

- strive for a comprehensive agreement that covers all services sectors and all modes of delivery;
- ensure uninhibited cross-border data flows and eschew data storage localization requirements;
- use the negative list approach to commitments and strive for flexibility to allow for coverage of new technologies as they emerge;
- ensure market access for "suites" of clusters of services that tend to operate in tandem in an increasingly digitally-based market place, for example—financial, retail, communications, transportation and computer-related services;
- provide for accession of new participants;
- eliminate equity ceilings on foreign investment in service providers;
- prohibit performance requirements, such as local sourcing and local content requirements;
- ensure that state-owned enterprises (SOEs) and state-supported enterprises (SSEs), such as national postal companies, that provide commercial services, are not accorded preferential treatment over domestic and foreign privately-owned and operated service providers in terms of regulations, subsidies, other means;
- limit prudential carve-outs to those that are necessary to maintain the integrity of the financial sector and avoid their use as disguised protectionism;
- allow service providers to choose the legal form (subsidiary, branch, etc.) for doing business;
- provide for transparency in development and implementation of regulations;
- avoid standards that unnecessarily distort trade; and
- establish a dispute settlement mechanism.

Some opponents of trade in services liberalization, such as labor unions and some civil society groups, argue that, rather than employing TISA as a means to expand on the GATS, it should be used to reverse what they consider to be infringements of GATS provisions on the authority of

[33] These examples were largely taken from submissions by the National Foreign Trade Council, Inc., February 26, 2013, and the Coalition of Services Industries. For the complete set of submissions, see http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=USTR-2013-0001.

national, state, and local governments to regulate services. Therefore, they argue that a proposed TISA should:[34]

- use the positive list approach to scheduling commitments to ensure that sensitive services, such as those traditionally provided by government-supported entities (water and energy) are not subject to foreign competition;
- include a comprehensive "carve-out" for publically-provided services;
- exclude an "investor-state" dispute settlement mechanism that would undermine the ability of states to impose and maintain regulations on services;
- include a stronger prudential measures exception to ensure that governments can preserve the integrity of domestic financial systems; and
- exclude Mode4 measures which should remain under federal statutes pertaining to immigration policies.

During a July 2013 House Ways and Means Committee hearing on U.S. trade policy, USTR Ambassador Michael Froman stated that the United States would seek to conclude a "high standard services agreement" that would allow already competitive U.S. service suppliers to compete "on a more level playing field."

The TISA participants completed the sixth round of negotiations (April 28-May 2, 2014) in Geneva. By the end of the sixth round, all of the participants, except Paraguay and Pakistan, had submitted their initial market access offers. These offers apparently had spanned the gambit of types of services and issues. The participants reportedly will begin the process of indicating what each participant expects the others to offer during the next round of negotiations which is expected to begin in late June.[35]

Another issue that has emerged concerns China's expressed interest in joining the TISA. While the issue is still pending, it has generated differences among the participants. Reportedly, the United States has expressed concerns about China's readiness to undertake the commitments that TISA would require, while the European Union has argued for China's participation.[36]

TPP and TTIP

The TISA is arguably a significant focal point of trade policy on services for the United States and other major trade powers. If successful, it could form the basis of multilateral rules on trade in services for the 21st century. However, the United States is engaged in two other sets of negotiations—the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP)—in which trade in services is playing an important role and where U.S. objectives could overlap into U.S. objectives in the TISA.

The TPP partners—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam—envision the TPP to be a comprehensive, high-standard agreement. The agreement is to include not only standard provisions to reduce or

[34] These points were taken largely from submissions by Public Citizens, Inc. and the AFL-CIO.

[35] *International Trade Daily,* May 7, 2014.

[36] Ibid.

eliminate barriers to trade in investment but also provisions to address cross-cutting issues that are coming to define the 21st Century trade agenda—regulatory coherence, supply chains, digital trade, state-owned enterprises, and the role of small- and medium-sized enterprises.[37]

Because the negotiations are ongoing and classified, draft texts of agreement are unavailable publicly. However, the negotiating partners announced a framework for the agreement at the sidelines of the Asia-Pacific Economic Cooperation (APEC) Ministerial in Honolulu, Hawaii, November 8-13, 2011. The proposed structure of the TPP regarding services reflects the template the United States has used in is previous FTAs: separate sections on cross-border services, financial services, telecommunications trade and foreign investment. The TPP would also use the full negative list approach for both market access and national treatment. Eight of the 12 TPP partners—Australia, Canada, Chile, Japan, Mexico, New Zealand, Peru, and the United States—are also negotiating the TISA.

Given the importance of services in U.S. and EU negotiations, as noted in the earlier discussion of U.S. foreign trade flows in services, the TTIP will likely include provisions to address barriers in bilateral trade in services. Some of the issues that have been present in U.S.-EU economic relations for some time and that would likely be part of the TTIP negotiations include; cross-border data flows; data privacy; and the coordination of financial regulations.[38] The United States is currently opposed to discussing financial regulation. The TTIP negotiations are in their early stages and are still evolving.[39]

Outlook

To date, the record on liberalization of trade in services through reciprocal trade agreements is mixed. The 159 members of the WTO negotiated and have maintained a basic set of multilateral rules in the form of the GATS. However, the GATS is largely viewed as limited in scope and in need of expansion, if it is to be an effective instrument of trade liberalization. The efforts of the WTO members to expand on these rules have floundered with little prospect of success at least in the foreseeable future.

The United States and other countries have pursued other avenues to reduce barriers to trade in services either as alternatives to the GATS or as catalysts to encourage progress in the GATS negotiations. The United States has made services an important component of the FTAs it has negotiated over the past two decades. While these agreements have gone beyond the GATS in terms of coverage, they apply to a limited number of countries accounting for small shares of U.S. trade in services. As a possible remedy, the United States is pursuing the proposed plurilateral TISA which includes the 28-member EU and Japan—two of the most important U.S. trade partners—and 20 other participating countries. Services will likely be important issue in the TPP and TTIP negotiations as well.

[37] For more information on the TPP, see CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by Ian F. Fergusson.

[38] For more information on the TTIP negotiations, see CRS Report R43158, *Proposed Transatlantic Trade and Investment Partnership (TTIP): In Brief*, by Shayerah Ilias Akhtar and Vivian C. Jones.

[39] For more information on TTIP, see CRS Report R43158, *Proposed Transatlantic Trade and Investment Partnership (TTIP): In Brief*, by Shayerah Ilias Akhtar and Vivian C. Jones.

The outlook for these negotiations remains uncertain. In each case, the participants have difficult issues to overcome. Perhaps one of the most difficult issues is whether the pursuit of regional and plurilateral agreements will support or undermine the pursuit of more extensive multilateral rules in the GATS. A related issue is whether participants in regional and plurilateral agreements can/should encourage other countries, such as the emerging economies—Brazil, China, and India—to join. (China has expressed interest in joining.)

Other potential policy issues for Congress and negotiators to address include the following:

- How should policymakers balance the responsibility of sovereign governments to regulate services to ensure the safety and privacy of their citizens against the objective of expanding markets in order to increase economic efficiency?
- Available data measure only a portion of foreign trade in services. To the degree that data help to determine policies, should Congress consider requiring the executive branch to collect more complete data where possible?
- Advancements in information technology expand the number and types of services that can be traded help to create new types of services. Is it possible to develop a trade arrangement that is clear enough to be effective and flexible enough to take into account rapid changes in the services sector?
- The United States has negotiated a number of FTAs with substantial services components. Can/should these FTAs be a template for U.S. positions in the TISA and other future agreements on services?
- What role might renewed trade promotion authority, including the establishment of trade negotiating objectives, play in the pursuit of U.S. interests in trade in services?

FTAs to which the United States is not a member, including a number in Asia, have emerged or are being negotiated. What affect might they have on U.S. trade and trade policy regarding services?

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