Coalition of Services Industries 2018 Agenda: "Promoting American Competitiveness Through Services and Digitally Enabled Trade"

The Coalition of Services Industries (CSI), established in 1982, is the leading industry association devoted exclusively to helping America's services businesses and workers compete in world markets. CSI member companies represent a broad spectrum of the U.S. services sector, especially digitally enabled services, including distribution services, express delivery, financial services, media and entertainment, telecommunications, information and communication technology services, and professional services.

Introduction: The Importance of Services

You Cannot Grow It, Make It, Move It, Buy It or Sell It without Services

- The services sector employs over 80 percent of the American workforce[1] and accounts for two-thirds of the U.S. Gross Domestic Product (GDP).[2]
- Digitally enabled services are transforming the entire economy across all sectors and companies both large and small. In 2016, information and communication technology (ICT) services exports totaled $66.1 billion and exports of potentially ICT-enabled services totaled $403 billion. The United States now has a $159 billion trade surplus in potentially ICT-enabled services.[3]

Services and Digitally Enabled Trade is a Major Creator of U.S. Jobs

- U.S. services trade generated a $247 billion trade surplus in 2016.[4]
- Nearly 10 million U.S. services sector jobs are directly supported by U.S. services trade and investment, and this does not even include all the U.S. services jobs are integrated into global supply chains and embedded in manufacturing.[5]
- Overall, services companies that export pay higher wages and report higher productivity than those that do not.[6]
- American services exports have untapped potential. Eliminating foreign barriers to trade in services and digitally enabled trade could increase U.S. services exports by as much as $860 billion to $1.4 trillion, creating as many as 3 million new U.S. jobs.[7]
- Overseas investments by U.S. services firms support more than 700,000 American-based jobs and enable American services firms to reach customers in new markets that they could not otherwise serve through their American operations alone. Inbound foreign direct investment in services, totaling $2.2 trillion in 2016, supported 4.4 million U.S. jobs the previous year.[8]

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[1] CSI Jobs Across America Report
[2] U.S. Trade Representative
[3] Bureau of Economic Analysis
[4] Bureau of Economic Analysis
[5] International Trade Administration
[6] International Trade Administration
[7] Peterson Institute for International Economics
[8] Bureau of Economic Analysis

Services as an Important Input to Manufacturing

- Services account on average from 25 to 50 percent of manufacturing input (such as R&D, telecommunications, financial services, distribution), enabling improvements in manufacturing efficiency and product performance through inclusion of smart technologies.
- Services also account for close to 50 percent of inputs for manufacturers in the electronics sector, which means greater efficiency and competitiveness.

Services Promote U.S. Agriculture

- Services help the United States remain a top agricultural exporter, in part because of the supporting services, which includes including transportation, financial services, and information technology, among others, and make up a significant share of value of such exports.[9]

Services Support SMEs

- According to a National Small Business Association survey, 68 percent of U.S. small businesses identify as a services supplier.
- Services enable small and medium enterprises (SMEs) in the United States to compete successfully in the global market, including through logistics, payment processing, and the global reach of digital platforms.
- Services that support SMEs have accounted for 63 percent of net new private sector jobs since 2002, and contributed to 34 percent of U.S. exporting value.[10]
- SME services exporters earn nearly four times as much revenue per firm as SMEs that do not export.[11]

CSI Core Objectives for Advancing the U.S. Services and Digitally Enabled Trade Agenda

CSI has been an active stakeholder on services and investment issues in all U.S. bilateral, regional and multilateral trade and investment negotiations for over thirty years. CSI members have worked with Congress and the Administration to advocate the importance of services and digitally enabled trade and investment in developing its trade agenda and negotiating priorities, particularly in the North American Free Trade Agreement (NAFTA), Asia, "Brexit", and the World Trade Organization (WTO) to help American services companies and their workers compete in global markets. Our core objectives include:

- **Maintaining the U.S. competitive edge:** Maintaining the NAFTA framework while modernizing the agreement, fully implementing and enforcing current U.S. FTAs and the multilateral trading rules and commitments is a cornerstone to maintaining U.S. strength in the global economy. Prospective agreements, with markets in the Asia Pacific and UK as well as in e-commerce in the WTO, present opportunities to further grow U.S. services, digital trade, and investment and the overall American economy. The Administration must ensure that the Unites States maintains its competitive edge and strength in the global trading

[9] International Centre for Trade and Sustainable Development (ICTSD)
[10] Brookings Institute
[11] U.S. International Trade Commission

system by reinforcing commitments made to our current trade partners, while also looking for new opportunities to expand trade ties.

- **Eliminating services trade and investment barriers:** The elimination of specific barriers to entry and to cross-border services trade and investment, coupled with high standard investment protections enforced by investor-state dispute settlement, is essential to helping U.S. services companies compete in foreign markets, especially emerging markets. Trade and investment agreements have been and will continue to be the single best approach to achieving this goal. CSI will also continue to advocate for the maintenance of open U.S. investment policies with strong enforcement mechanisms.
- **Ensuring forward-looking trade commitments on digital trade:** Recent trade and investment agreements set rules to accommodate technological advances in the supply of services and the overall transformation that is occurring across sectors in the digital economy. These new rules are critical to enable services to support sectors across the economy in firms both large and small through the digitally interconnected world, whether it is through the data that flows through mobile devices, information processed or stored in data servers, neutral and transparent cybersecurity frameworks, and enabling environments to make safe and effective use of artificial intelligence. In order to further support these efforts, CSI opposes any exemptions for "new services" in trade commitments, as these would limit the ability of any agreement to accommodate technological advances and the modernization of economies and efforts to discriminate against U.S. content in the online market.
- **Ensuring free flow of data and reversing the forced localization trend**: CSI is concerned at the growth of government policies to limit the free flow of data and to require server or data localization -- which often create prohibitive barriers for U.S. companies and small businesses seeking access to foreign markets. Countries that otherwise limit companies' ability to provide digital services or require servers within their borders undermine the competitiveness of their own companies and limit the opportunity of their own consumers to access modern and efficient digital services. Doing business on a global scale requires fair and transparent rules for digital trade. Governments may achieve legitimate privacy and consumer protection objectives using non-discriminatory and non-trade-restrictive means. The United States should continue to push for modern rules to ensure the free flow of data across borders, prohibit the forced localization of data storage facilities, enable open internet platforms to facilitate transactions and communications among millions of businesses and consumers, and foster trust in technology for all services sectors. Consistent with the direction of the U.S. Congress, American negotiators should continue to press to include 21st century provisions in trade agreements to achieve these goals.
- **Providing greater regulatory transparency, due process, and non-discrimination:** Strong regulatory transparency and due process are part of U.S. core values that we need to continue to promote worldwide. The United States must ensure that our trading partners do not use discriminatory or unduly burdensome rules and regulations to unfairly delay or prevent U.S. companies from competing globally.
- **Strengthening the U.S. role in global value chains:** In today's globalized economy, one service or good may cross multiple countries' borders before the final product is complete. Facilitating trade digitally and physically across borders by eliminating unnecessary rules or simplifying burdensome procedures will ensure services and goods are delivered efficiently to customers across the globe.

- **Ensuring State-Owned /State-Supported Entities (SOE/SSEs) compete fairly:** When engaging in commercial activities, SOE/SSEs should be subject to the same disciplines, on the same basis, as other domestic and foreign enterprises, including parity of treatment with respect to regulation, licensing, transparency, business operations, and public procurement. Subsidies for SOE/SSEs, where they exist, should also be subject to disciplines.

Importance of Trade and Investment Agreements

- The potential for U.S. services sector growth and job creation can only be realized with new market opportunities. Trade and investment agreements, coupled with strong enforcement, are effective tools to prevent discriminatory treatment and to break down foreign trade, investment and regulatory barriers. Trade and investment agreements that put in place rules to level the playing field enable American service suppliers and their workers an opportunity to compete in foreign markets.
- Credibility and efficacy of current and prospective trade and investment agreements depend on strong enforcement and implementation. As major competitors in many foreign markets, CSI members experience uneven implementation of the commitments secured in negotiations to date.
- The Administration and Congress continue to face challenges on multiple fronts in developing new policies to enhance U.S. competitiveness. CSI believes that in crafting responses to those challenges, it is critically important to consider any potential collateral damage that may be inflicted on a particular sector or sectors of the U.S. economy, as a result of foreign retaliatory action in response to the enactment of a U.S. measure or implementation of a U.S. action. CSI continues to expand its outreach to both branches of government and will undertake outreach to local (or "grassroots") level officials and associations.
- An important part of moving ahead on a new American competitiveness agenda is investing in the future of our workers as well as business. Where gaps in skill and education remain, CSI supports efforts to help workers train and adapt to new industries with high potential for growth.

Potential Opportunities to Pursue Services and Digital Trade Core Objectives

There are multiple opportunities for the United States to lead the way in strengthening the rules based trading system and providing greater services and investment market access to promote American competitiveness.

TPA Renewal

- The Administration has a variety of tools at its disposal, which CSI worked hard to help create. These tools include negotiating authority passed in 2015 under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA), which ensures that the United States will pursue the most comprehensive and innovative set of rules regarding services, including specific chapters on cross-border services, financial services, telecommunications, digital trade, investment, and government procurement. TPA, or "fast track", provides for automatic introduction of the implementing bill submitted by the President, which ensures that both chambers will consider and vote on the bill, prohibit amendment, and eliminate any need to resolve bicameral differences before sending the measure to the President. TPA will expire on July 1, 2018.CSI will engage the Administration and Congress to drive efforts for a potential TPA renewal, as well as ensure that TPA objectives adequately reflect the needs and ambitions of the U.S. services industries in promoting U.S. exports and sector growth.

NAFTA Modernization

- The United States, Canada, and Mexico began NAFTA renegotiations in early 2017, initiated by the Trump Administration, with the principle objective to modernize the agreement. Through the negotiations, CSI maintains the goals of 1) raising awareness of services in the Administration's NAFTA priorities; 2) educating Congress and the Administration on the importance of services in NAFTA and beyond; and 3) ensuring continued positive progress in the negotiations. Maintaining these goals, CSI has actively engaged the U.S. Congress and Administration, as well as the governments of Canada and Mexico and their respective services industries, to ensure that a high standard agreement is reached that the business community is able to support.
- Canada and Mexico remain hugely important trading partners for the United States. In 2015, the United States invested over $220 billion and $61 billion in services in Canada and Mexico, respectively, while inbound investment totaled $269 and $16.6 billion. The same year the United States also exported $56 billion/$32 billion and imported $29 billion/$22 billion in services from Canada/Mexico. U.S. services exports to Canada and Mexico also supports nearly 600,000 American jobs that could be jeopardized if a positive outcome is not achieved in the renegotiations.[12]
- NAFTA contains important rules and market access commitments that guarantee non-discriminatory treatment, transparency, and investor protections for U.S. services firms and provides significant government procurement opportunities. Disruption of these obligations would undermine the operation of services export and investment supply chains in two major U.S. services markets.
- CSI believes that a modernization of NAFTA should include the highly beneficial services and e-commerce related provisions negotiated in the original TPP Agreement, including the financial services free flow of data and data localization prohibition and the streamlining of customs procedures, as well as increasing the *de minimis* customs levels in Canada and Mexico.
- A modernized NAFTA should include provisions to address intermediary liability/safe harbors relating to third-party content. For matters other than intellectual property and criminal law, consistent with U.S. law, countries should not hold platforms and service suppliers legally responsible for third-party content in an unreasonable manner that prevents them from effectively facilitating transactions and communications among businesses and consumers. For intellectual property, the agreement should ensure that effective legal remedies are available to address online copyright infringement and provide conditional safe harbors for intermediaries. Limitations of liability should also include provisions such as a "good Samaritan" clause that facilitates intermediaries addressing and deterring illegal activity conducted over their networks and services.

[12] Bureau of Economic Analysis

KORUS "Review"

- The Republic of Korea ("Korea") continues to be a growth market for U.S. services exports and investment. The U.S.-Korea Free Trade Agreement (KORUS) has provided generous opportunities for growth in services trade and investment.
- In July 2017, USTR (as directed by the Administration) formally called for a special Joint Committee meeting under KORUS framework to begin the process of negotiating to remove barriers to U.S. trade and consider amendments to the agreement. CSI maintains the goals of 1) securing implementation priorities, and 2) avoiding a comprehensive renegotiation or withdrawal. CSI has been engaged with the Administration and Congress prior and subsequent to this announcement, urging preservation and continuation of the Agreement given the vast benefits KORUS has provided to U.S. services firms exporting to and operating within Korea.
- Since its implementation in March 2012, KORUS has been instrumental in reinforcing the bilateral trading relationship and strength of the U.S. services industries in Korea, including through increased market access and greater regulatory transparency. Between 2011 and 2015, levels of trade in services across the board grew by an average 3.3 percent, with a greater 15 percent increase in U.S. exports of telecommunications and computer and information services.[13]
- Senior U.S. and Korean officials met in January 2018 where timing and logistics were discussed for talks related to amendments and implementation of KORUS. CSI stands ready to work with the Administration to ensure KORUS provisions related to investment, financial services, express delivery, telecommunications, e-commerce, audio visual, and legal services, as well as dispute settlement and others remain, while working with the Administration on areas of implementation and enforcement (such as updated commitments on data flows and storage) are addressed in a constructive manner.

TPP/CPTPP

While the United States withdrew from the Trans-Pacific Partnership trade agreement (TPP) in January 2017, the remaining eleven parties moved forward with the remodeled Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Yet, many of the Agreement's original services-related provisions remain valuable to CSI members as building blocks for current and prospective U.S. trade and investment positions. The original TPP provisions would have a high bar for rules, particularly in areas such as digital trade, and market access in Asian markets, which represent nearly 30% of global GDP.[14] They would have also ensured that American services companies and workers would not be discriminated against when other countries like China and the EU negotiate their own agreements with the remaining TPP countries. According to the Peterson Institute, the original TPP contained provisions that would have increased U.S. services exports by $149 billion.[15]

- The core, original TPP services and investment provisions would have:
    - Leveled the playing field by prohibiting discrimination against U.S. companies
    - Opened services markets, including for telecommunications, express delivery information technology, and online audiovisual content

[13] Bureau of Economic Analysis
[14] World Bank
[15] U.S. Department of Commerce

    - Guaranteed the free flow of data and prohibit local server requirements for non-financial services
    - Included high standard investment protections and enforcement, such as investor state dispute settlement
    - Addressed unfair competition by State-Owned/State-Sponsored Enterprises (SOE/SSEs)
    - Required transparency when bureaucrats develop new regulations
    - Modernized NAFTA's services commitments
- While the original TPP provisions would have secured high standard rules and vast market access for U.S. services providers, the remaining CPTPP parties (and resulting agreement) have since eliminated many of the commitments secured on rules, market access, and non-discriminatory treatment across services, IP, and investment.
- Promoting the competitiveness of services in the Asia Pacific region should remain a key objective in light of the volume of current and potential services and investment trade flows with the region. CSI believes that any agreements negotiated in the Asia Pacific region should include the original TPP services provisions listed above, as well as the updated U.S. policy regarding financial services free flow of data and data localization prohibition.
- Agreements negotiated in the region should also include provisions to address intermediary liability/safe harbors relating to third-party content. For matters other than intellectual property and criminal law and, consistent with U.S. law, countries should not hold platforms and service suppliers legally responsible for third-party content in an unreasonable manner that prevents them from effectively facilitating transactions and communications among businesses and consumers. For intellectual property, the agreement should ensure that effective legal remedies are available to address online copyright infringement and provide conditional safe harbors for intermediaries. Limitations of liability should also include provisions such as a "good Samaritan" clause that facilitates intermediaries addressing and deterring illegal activity conducted over their networks and services.
- CSI is committed to working with the Trump Administration on a way forward in Asia and other regions, including a potential U.S. re-entry into the CPTPP, as well as within modernization efforts of NAFTA.

China

U.S. services trade and investment with China presents tremendous opportunities and challenges. Despite China's expressed intent to further open its services economy, its industrial policies continue to protect its SOE/SSEs and domestic industries, and substantial services and investment restrictions remain. China's Cybersecurity Law favoring local technology and forcing data localization on U.S. companies creates cybersecurity and other risks and is of concern across U.S. services sectors. Moreover, the Administration's use of Section 301 and 232 investigations on China add significant factors that may further impact the trade and investment relationship in 2018.

- The BIT negotiations with China, which would provide both strengthened rules and the potential for new market access for services, may be one of the best ways to help ensure a more balanced and reciprocal set of opportunities. CSI encourages policy makers to continue to push for conclusion of a high standard bilateral investment treaty with China.
- Finding a positive path forward with China will require encouraging China to move forward with market reforms and actions to open its services market, coupled with the inclusion of

strong enforcement protections with investor state arbitration. We must also continue to utilize all enforcement tools, including WTO dispute settlement, to insist on full implementation of China's WTO commitments.

APEC

CSI believes that it is important to continue to press forward in the Asia-Pacific Economic Cooperation (APEC) with an ambitious agenda on both services as well as the digital economy and to identify concrete deliverables for 2018.

A Services Agreement with Like-Minded Countries

- The TiSA negotiations includes 50 countries (including all of the EU member states), covering over 70 percent of global trade in services. These countries share a commitment to reducing trade and investment barriers that undermine the international competitiveness of services companies.
- As further discussed below under CSI objectives under the WTO, at the conclusion of the 11th WTO Ministerial Conference (or MC-11), USTR Ambassador Lighthizer indicated, via public statement, the possibility of potential sectoral plurilateral agreements. CSI will monitor developments from this statement, with hopes of a pathway to the resumption of TiSA, while also complementing the work done on the WTO e-commerce work program.
- Incredible technological advancements over the last two decades have changed the ways services are provided, traded and consumed. While TiSA negotiations are currently stalled, they offer the opportunity to update the rules for services trade and investment that will become the world benchmark for years to come, much like the General Agreement on Trade in Services (GATS) did in the mid-1990s.
- Significant progress on CSI priorities has been made in the TiSA negotiations, including a core set of rules and transparency obligations, with more work needed on market access offers and digital trade. This includes reaching agreement to ensure the free flow of data and prohibiting data localization in the e-commerce annex and financial services, as well as the additional new TiSA provisions regarding financial services free flow of data and data localization prohibition, as well as on inclusion of an effective intermediary liability/safe harbor framework, similar to that previously tabled by the United States within TiSA.
- Resuming, and concluding, a high standard TiSA by the Trump Administration would provide a major boost to U.S. services exports and jobs.

European Union and the UK

- The Transatlantic Trade and Investment Partnership (TTIP) negotiations provided an opportunity to create an integrated U.S.-EU services market that would benefit producers and consumers on both sides of the Atlantic, helping establish norms for 21st century services trade and investment. While TTIP has stalled, CSI supports continued bilateral engagement with the EU to promote expansion of bilateral trade flows of services and investment and greater regulatory cooperation, particularly in financial services.
    - As the EU continues its Digital Single Market (DSM) initiative, CSI will identify opportunities to help shape the EU's regulatory landscape in a way that benefits CSI members.
- We also support deepening of U.S.-UK bilateral relations, with the goal of an FTA, when the Brexit negotiations are sufficiently advanced. CSI believes that any FTA with the UK should

include highly beneficial chapters on cross-border services, financial services, telecommunications, digital trade, investment, and government procurement, including the updated U.S. position on e-commerce and financial services data flow and data localization prohibition. Inclusion of a mechanism for real, meaningful regulatory cooperation needs to be in place in order to reach a high standard outcome for a potential U.S.-UK FTA, along with a broader set of cross border services trade commitments.

- It should also include provisions to address intermediary liability/safe harbors relating to third-party content. For matters other than intellectual property and criminal law and, consistent with U.S. law, countries should not hold platforms and service suppliers legally responsible for third-party content in an unreasonable manner that prevents them from effectively facilitating transactions and communications among businesses and consumers. For intellectual property, the agreement should ensure that effective legal remedies are available to address online copyright infringement and provide conditional safe harbors for intermediaries. Limitations of liability should also include provisions such as a "good Samaritan" clause that facilitates intermediaries addressing and deterring illegal activity conducted over their networks and services.
- The UK is the United States' largest services trading partner, accounting for close to one-tenth of U.S. total trade in services. As the UK and EU continue negotiations for the UK's exit from the EU ("Brexit"), CSI urges both the UK and EU to take all measures necessary to guarantee the continuation of business operations without interruption, legal or otherwise, in order to ensure a smooth transition and lessen any harmful impact on the local markets. This would include prioritizing equivalence measures necessary for UK-based operations to conduct business in the EU (such as solvency and supervision regulations for financial services firms), a consistent visa regime, and ensuring a smooth transition in GATS and other commitments at the WTO.

Emerging Markets

- Emerging markets such as Brazil, India, Indonesia, Malaysia, Vietnam, the Middle East and Africa, and others present some of the largest potential customer bases in the world and could generate significant growth for U.S. services providers.
- Demand from growing populations in these markets and rapidly expanding internet connectivity through mobile devices is likely to present opportunities for U.S. services firms in the ICT, insurance and other financial services, and logistics sectors.
- As the Administration has indicated interest in pursuing a trade agreement with an African country as a potential "model FTA" for the United States, CSI stands ready to engage on member regional priorities, highlighting the importance of services and digital trade in any future U.S. trade and investment agreements to ensure such related provisions are priority for negotiations.

WTO

- CSI Members are longstanding supporters of the WTO, including the General Agreement on Trade in Services (GATS), which established rules and a minimum level of market access that has been the starting point for deepening trade relations bilaterally and in free trade agreements.
- In December 2017, the WTO convened at the Ministerial level for the 11th WTO Ministerial Conference (or MC-11) and set a new course for trade. In addition to renewing the

moratorium on e-commerce duties, the United States and 69 other WTO Members, representing both developed and developing economies, agreed to launch exploratory discussions on negotiations on e-commerce.

- Forging a consensus will require U.S. leadership, and CSI applauds the efforts of the United States at MC-11 to promote the e-commerce agenda and work to explore the possibility of negotiations, and stands ready to work with the Administration to further promote these initial actions. CSI supports making the moratorium on duties on e-commerce permanent and ensuring that U.S. interests in expanding services opportunities in emerging markets are met. Finally, CSI supports greater efforts to educate WTO members on the importance of digital trade in promoting economic growth and greater inclusiveness.