



February 26, 2013

Douglas Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

RE: International Services Agreement, Docket USTR-2013-0001

Dear Mr. Bell:

The Coalition of Service Industries (CSI) submits these comments pursuant to the Office of the United States Trade Representative's (USTR) Request for Comments on an International Services Agreement (ISA), FR. Doc. 2013-01497, published January 24, 2013.

The Coalition of Service Industries (CSI) is the primary policy advocacy association that works on behalf of U.S. headquartered global service industries. Our members include a vast array of U.S. companies that provide services domestically and internationally, including accounting, banking, computer-related services, energy, express delivery and logistics, insurance, media and entertainment, retail and wholesale services, technology services, and telecommunications. CSI works to obtain international rules and market access commitments and fair conditions of competition for service industries.

The Coalition of Service Industries puts its full support behind the participation of the United States in the plurilateral services negotiations currently taking place in Geneva. An ambitious International Services Agreement (ISA) is vital to the recovery and growth of the U.S. economy and the continued prosperity of American workers.

The World Needs and is Ready for a New International Services Agreement

These negotiations are the most promising opportunity in two decades to advance services trade internationally. The last major services agreement was the General Agreement on Trade in Services (GATS) in 1995.

In the intervening years, the international trading environment for services has changed radically as a result of technological advances, global data flows, innovative business practices, and the widespread use of the Internet by consumers. In addition, many new competitors have entered services markets, many of whom are owned or controlled by foreign governments.

None of these developments were contemplated when the GATS was negotiated in the early 1990s. The rules governing trade in services must be brought into line with the realities of international commerce to enable U.S. service suppliers -- both large and small firms -- to create the economic growth, jobs, and incomes that the U.S. needs to prosper in the 21st century.

The moment is right for setting the new framework for modern services trade. A critical mass of trading countries (responsible for 70 percent of world trade in services) have affirmatively stepped forward to engage in services negotiations, unhindered by other issues that have stymied services negotiations for a decade.

Many of these countries have already moved beyond their GATS commitments, either by negotiating more liberal regional and bilateral agreements or by liberalizing their services regimes unilaterally. They are ready to move even farther above the steps that they have taken to date. The countries are intent on constructively addressing the array of new opportunities on today's services landscape. We must seize this opportunity now.

Services Drive the World Economy

Services comprise most of the world economy. The world's services sector accounts for 70 percent of global GDP, up from 59 percent in 1990, and 64 percent in 2000.¹ Services are the world's main employers (3.3 billion people, including 60 percent of men and 70 percent of women).²

Services trade is the engine of growth in both developed and developing countries, having grown by 95 percent since 2000. In fact, a major determinant of a country's overall productivity and competitiveness is the efficiency of its services industries.

Services also have been the principal source of foreign direct investment (FDI), accounting for nearly two-thirds of the world's total FDI stock in 2010.³

The U.S. Economy Depends on Services

Services empower the entire economy. Regardless of the type of economic activity, it only gets done with the support of an array of services. Businesses, large and small, and across all sectors, including agriculture, manufacturing and mining, depend on services for their success. In fact, a large proportion of people employed in non-services sectors are actually performing services functions.

The United States depends on services for jobs and growth. Services generate more than 75 percent of America's national economic output⁴ and provide 80 percent of the private sector jobs in the United States.⁵

¹ World Bank Database. "World Development Indicators Survey 2011". World Bank *Data: Services, etc, Value Added (%GDP)*. <http://data.worldbank.org/indicator/NV.SRV.TETC.ZS>

² CIA World Fact Book. "World Indicators". *U.S. Central Intelligence Agency*, 2013. <https://www.cia.gov/library/publications/the-world-factbook/geos/xx.html>

³ UNCTAD. "Preface, Key Messages, and Overview" in *World Investment Report 2011*. UNCTAD, July 2011.*FDI flows increased largely due to reinvested earnings in foreign affiliates of TNC.

⁴ World Bank Database. "World Development Indicators Survey 2011". World Bank *Data: Services, etc, Value Added (%GDP)*. <http://data.worldbank.org/indicator/NV.SRV.TETC.ZS>

⁵ Bureau of Economic Analysis. "Economic Accounts Data 2011." *U.S. Department of Commerce*. <http://www.bea.gov/iTable/iTable.cfm?ReqID=5&step=1#reqid=5&step=2&isuri=1&403=1>

A New Services Agreement Would Create Jobs and Growth for Americans

An ambitious and robust international services agreement would be one of the most important economic contributions of this century. Such an agreement would recognize that we are in the “services revolution”, just as we were in the industrial revolution in past centuries.

America prospered by embracing the transition from a predominantly agricultural economy to the industrial economy. Likewise, our future prosperity now depends on embracing the services economy. We are already trying to do that in day-to-day services commerce within the rules fashioned for merchandise trade, but we would be much more productive, and our population much more prosperous, if we established rules appropriate for services trade.

The United States is the world’s largest and most competitive services provider, with a services trade surplus of more than \$150 billion in 2012.⁶

Trade in services generates quality, high-paying jobs for Americans. On average, these jobs pay more than \$60,000 annually.⁷ Many pay significantly more, particularly those in professional and management services, wholesale trade, transportation and warehousing, finance and insurance, and information services.

However, there is a huge opportunity for growth for U.S. services in international markets. For example, in 2010, U.S. trade in business services comprised only 12.5 percent of total exports.⁸ This represented an increase of 4 percent from 2000, but is still far short of potential.

The U.S. services industries urgently need trading conditions that will enable them to achieve their full potential as the engine of our economy’s growth. The International Services Agreement provides that opportunity.

Barriers to Effective Services Trade

To fully realize the potential of the U.S. services economy, it is essential to eliminate the many barriers and forms of discrimination to service trade. This includes barriers to market entry, discrimination in foreign markets, and a general failure to keep international trade rules aligned with new developments and realities of modern business practices.

The expansion of the Internet has opened possibilities for smaller firms to export to a degree that was unimaginable even a decade ago. Yet, these barriers are particularly damaging to smaller firms, which do not have the resources to surmount them.

The key obstacles that keep our businesses and firms from benefiting from their competitiveness, innovations, and hard work are described below.

⁶ Foreign Trade. “Goods and Services Deficit Decreases in 2012”. *U.S. Census Bureau*, February 8, 2013. <http://www.census.gov/indicator/www/ustrade.html>

⁷ Jensen, J. *Global Trade in Services*. Peter P. Peterson Institute for International Economics. 2011. pg 71

⁸ Bureau of Economic Analysis. “Economic Accounts Data 2011.” *U.S. Department of Commerce*. <http://www.bea.gov/iTable/iTable.cfm?ReqID=5&step=1#reqid=5&step=2&isuri=1&403=1>

Prohibitions on Cross-Border Data Flows and Forced Localization

In this digital age, companies in international markets constantly need to move data across the Internet for their own internal operations and in serving their customers.

While this may be obvious in the case of insurance firms processing claims or accounting firms verifying and reviewing audits, it is actually essential for any international service. For example, think of express delivery companies tracking packages across the globe or consulting firms in virtual dialogue with their customers in real time. Retailers have to manage their worldwide procurement and inventory. Health professionals seek second opinions from specialists across the globe.

However, governments increasingly and routinely impose legal restrictions on the ability of a firm to manage and move its own data across borders, or they impose requirements to store data on local servers.

Such requirements are the modern day equivalent of domestic content requirements in manufacturing. Just as local content requirements fell short of their protectionist goals, cross-border restrictions on data are equally misguided in terms of reducing the competitiveness and efficiency of every local company that relies on these services.

Unfair Competition from State-Owned Enterprises

Unfair competition from government subsidized, supported, or owned/controlled enterprises is a rapidly increasing barrier to the provision of services by U.S. firms in many markets.

The preferential treatment to these state-owned enterprises (SOEs) takes many forms.

- Some SOEs enjoy special exemptions, in whole or in part, from laws and regulations applicable to privately-owned enterprises.
- There may be substantial subsidies granted to the SOE competing against the unsubsidized firms, or the SOE may be granted a monopoly on providing a given service.
- Foreign-owned firms may also face harsher financial and regulatory requirements and stricter supervisory enforcement than the SOEs with whom they compete.

Discrimination and Lack of Transparency and Due Process

Discrimination in obtaining licenses and business permits often prevents firms from establishing operations or outlets in foreign markets. Lack of transparency and due process in regulatory matters (e.g., right to appeal decisions) for obtaining the necessary legal authorizations is commonplace.

Forced Local Ownership

Another impediment, and often a sizable cost burden, is a requirement that forces the foreign service provider to cede ownership and control to locally-based interests.

An International Services Agreement is Timely and Obtainable

Several unique attributes of the ISA negotiations in Geneva make it highly likely that the negotiations will result in a high-ambition agreement in the near future.

- The negotiations are confined to services, which means they are not being held hostage by failure to agree on other issues.
- Each of the parties in the negotiations has made an affirmative decision to join them, and most already have track records of negotiating services market access beyond their current WTO commitments.
- There has been a high level of collaboration and alignment among the principal players in framing the negotiations.
- Finally, the parties are committed to an agreement that produces results in the near future, which ultimately will form a template for the next generation of multilateral rules and levels of market access.

Necessary Outcomes in a New International Services Agreement

The last international agreement on trade in services was established 20 years ago. There is an overdue and urgent need to refashion the rules and definitions governing commerce in services to reflect today's realities, rather than the pre-networked world of yesteryear.

A successful International Services Agreement requires both new market access commitments and universal rules. Below are the objectives and outcomes in these areas that the United States should pursue in the International Services Agreement negotiation.

Market Access

The International Services Agreement should encompass the best features (both market access and rules) of every party's existing GATS and free trade areas (FTAs) and the proposals they have presented in those other negotiations. In addition, parties' initial offers should include market access that currently is available in their economy but not yet bound in any agreement.

A request/offer negotiation on market access should proceed beyond these elements. Any exceptions to the market access commitments (non-conforming measures) should be minimal in number and narrow in substance, and in any event should be much fewer and narrower than the party's existing exceptions in its GATS schedule.

There should be a mechanism to ensure a balanced result that prevents parties from taking advantage of liberalization without reciprocating to ensure there is no free riding.

In addition, market access should address the following areas, as described below, in the International Services Agreement:

- Technological Innovation
- Modes of Delivery
- Clustering/Bundling

Technological Innovation

Market access commitments should ensure that any new services that become possible to trade as a result of technological innovation in a covered category can be provided without further negotiation. Central Product Classification (CPC) categories should be used only as points of reference rather than as rigid requirements.

Modes of Delivery

Services are delivered in four basic ways – 1) across borders via the Internet and other forms of communication technology, 2) by providing the service in the firm's home country to a service consumer who is visiting the country, 3) by providing the service directly within the consuming country through its subsidiary or branch, or 4) by temporarily sending an employee overseas.

Various firms emphasize certain "modes of delivery", while other firms will rely on different methods of delivery. Moreover, technological advances constantly are forcing firms to reconsider their traditional delivery modes of choice.

All four modes of delivery of services should be explored in the negotiations, but with any offers conditional upon receiving reciprocal commitments of comparable value.

Clustering/Bundling

Market access commitments should provide access throughout the supply chain to take account of inter-related services, i.e., services that may fall in different categories but are complimentary to each other in providing an integrated services package to consumers.

The clustering concept is especially important for computer and related services, given the rapid advances in information and communication technology. It is essential to ensure that commitments in the ISA do not become obsolete quickly.

The Provisional CPC definitions, on which the W/120 classification system was based, were published in 1991 but were developed during the 1980s. This issue of coverage for evolving IT services was discussed extensively in the "Friends of Computer Services" group during the Doha Round negotiations.

Some very useful work came out of this group, as captured in the Understanding on Computer and Related Services, signed by 18 of the 21 ISA participants, and in the Plurilateral Request on Computer and Related Services, signed by 14 of the 21 ISA participants. The ISA could build on and update this work to ensure that evolving IT services are covered and that the new commitments will not become obsolete due to technological advances.

The bundling approach also makes sense in the context of express delivery. In order to allow express delivery service providers to offer customers the full array of services necessary to run a modern logistics supply chain, a “bundling” or “checklist” approach should be used in which countries would make commitments in a variety of service-related activities (e.g., trucking, courier, warehousing, freight forwarding, auxiliary transport services, etc.).

Universal Rules

The following section describes universal rules that should apply to all sectors in the International Services Agreement. These include the following:

- National Treatment
- Equity Limitations
- Cross-Border Data Flows
- Localization
- Performance Requirements
- State-Owned Enterprises (SOEs)
- Regulatory Barriers
- Licensing
- Business Operations
- GATS-Plus
- Transparency
- Standards
- Dispute Settlement
- Living Document

National Treatment

All parties should be required to provide national treatment across all categories of services. Any exceptions would have to be identified explicitly, with the narrowest possible application.

Equity Limitations

All parties should eliminate any remaining equity limitations on foreign service suppliers.

Cross-border Data Flows

There should be a clear obligation to allow cross border data flows and external data storage (including, to the extent not already covered ability to use cloud-based technologies), both within a firm and in its operations with customers. This principle has been described in the US-EU Trade Principles on ICT Services (and similar US-Japan principles), and in the OECD Internet policy principles.

The ISA should establish a binding obligation to allow cross-border data flows for the purpose of delivering permitted services (Mode 1) and for the operations of a global services business including local investments (Mode 3).

With advances in information and communication technology, more and more services can be delivered electronically, so restrictions on data flows serve as barriers to trade in services generally. Given that services in general, and ICT and ICT-enabled services in particular, are areas of comparative advantage for the United States, creating binding commitments to allow cross-border data flows should be a high priority for the United States

The ISA should provide for consistency and regulatory certainty by ensuring that any protection of personal data laws imposed by a party should be in accordance with accepted international principles, such as the OECD Privacy Principles contained in the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

Localization

There should be a general prohibition on localization requirements (e.g., data storage, server location, domestic employment quotas).

Performance Requirements

All forms of performance requirements should be prohibited (e.g., sourcing and local content requirements).

State-Owned Enterprises (SOEs)

When state-supported and state-owned enterprises (SOEs) are engaged in commercial activity, they should not be granted more favorable treatment (including preferential financing) than competing private service providers. Procurement by SOEs should be on a commercial basis only. SOEs should be subject to all of the disciplines that govern the entities that own them.

Since the rules contained in the ISA are likely eventually to have much broader geographic application, even multilateral application, it is important that general disciplines on SOEs be articulated, not just fashioned to deal with particular situations among the existing negotiating partners.

Regulatory Barriers

Parties should modify or eliminate regulations that serve as barriers behind the border. While we recognize the necessity of certain regulations (e.g., for national security, data protection, prudential reasons), there should be parameters and limitations for their application.

For example, prudential carve-outs should limit the scope of allowable prudential measures to non-discriminatory measures that are subject to a rule of “least trade and investment distorting” (or something along those lines). Similarly, capital requirements should not be used as disguised barriers to entry or competition with domestic suppliers of comparable services (e.g., financial services, insurance).

There should be no new regulatory barriers imposed on one category of service that is bundled with another more regulated service in a party’s market access commitments.

The agreement should ensure technological neutrality in establishing regulations (e.g., in telecoms), along with transparency and opportunity for public comment on proposed standards.

There should be a mechanism for facilitating dialogue among regulators.

Licensing

There should be rules to ensure transparency and non-discrimination in the issuance of licenses and certifications. Effective appeals procedures should exist in cases of denial.

Business Operations

Service providers should be free to choose the legal form (e.g., subsidiary, branch, etc.) and mode of delivery. Parties should be prohibited from requiring service providers to meet nationality requirements for Board members. Services providers should be afforded intermediate liability protection.

GATS-Plus

No country should be allowed to “clarify” existing GATS commitments, or introduce new restrictions or exceptions, that derogate from or weaken existing GATS commitments.

Transparency

Regulations should be subject to transparency and advance comment procedures (recognizing certain exceptions, e.g., monetary authorities). Regulation must be transparent. Both suppliers and consumers of services must know what the rules are and have confidence that the rules will be applied consistently and fairly.

Although there are different ways to achieve this, in general, regulators should: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations, where practicable; (ii) make publicly available the requirements that suppliers must meet in order to supply a service; and (iii) enforce laws and regulations on a non-discriminatory basis, according to fair and transparent criteria.

Standards

The ISA should provide that government-mandated requirements and specifications for services products and suppliers are not to be applied in a manner which creates unnecessary barriers to international trade. Technical rules and regulations should treat services and suppliers of other parties on a *de jure* and *de facto* basis in a manner no less favorable than that accorded suppliers based in the member's own territory.

Dispute Settlement

There should be binding dispute settlement procedures.

Living Document

The agreement should include a mechanism to facilitate trade in the face of future technological and business practice developments.

Sector-Specific Priorities and Objectives for the International Services Agreement

In addition to the market access and universal rules described previously in this letter, the International Services Agreement should address the following issues specific to individual sectors. These sectors include the following:

- Electronic Security Systems
- Express Delivery
- Financial Services
- Insurance
- Internet and Computer-Related Services
- Media and Entertainment Services
- Retail and Distribution Services
- Telecommunications

Electronic Security Services

Open and accessible market commitments for electronic security services allow for the deployment of innovative technology and professional response in order to protect life and property. Products are only as good as the quality of the design, installation, servicing, and monitoring of the electronic security system. The benefits of commercial and residential electronic security services should not have equity limitations or be subject to localization requirements under the banner of national security.

National Security

Legitimate commerce, such as electronic security services where the customer is likely a business or household, does not threaten national security and should not be regulated as such.

Equity Limitations

Requirements that foreign security service providers divest a portion or all of their interests in local security suppliers should be prohibited. Furthermore, limitations on foreign direct investment in the security sector should not be allowed.

Movement of Persons

Given the technical and potentially lifesaving nature of electronic security services, the quality of design, installation, maintenance, monitoring, and response may depend on skilled personnel, top management, and other personnel without regard to their nationality. Each party should permit temporary entry into their territories for persons who provide or direct such services to work with clients or to staff a commercial presence.

Licensing

The ISA should require parties to implement clear, predictable, and transparent licensing regimes for electronic security services. It also should prohibit citizenship restrictions on the management of commercial presence in order to obtain a license to operate in-country.

Express Delivery and Logistics

The Coalition of Service Industries supports the negotiation of provisions addressing both express delivery and customs modernization in the International Services Agreement. This could be achieved through a sector-specific reference paper similar to the WTO Telecom Reference Paper to capture the unique aspects of the industry. This could require a new approach to the traditional Express Delivery Annex included in the most recent U.S. Free Trade Agreements. Specifically, the agreement should include the following:

Fair Competition/Level Playing Field

The International Services Agreement should seek to further liberalize trade in package delivery services by ensuring a level playing field for all competitive services offered outside the postal monopoly. There is a need to secure more ambitious commitments and disciplines for domestic regulation and fair competition by allowing free market principles to govern the highly competitive express sector, or where necessary, independent regulation and a level playing field with competing services offered by Posts such as express mail services. Exclusions and non-conforming measures (NCMs) for postal services should be drawn as narrowly as possible, for example, by using a reasonable price/weight multiple.

Transparency, Regulatory Coherence, and Private Sector Consultation

To encourage greater transparency, coordination, consultation, and partnership between express delivery services and regulators, the International Services Agreement should include the establishment by each party of a national coordinating body, process, or mechanism, to ensure a whole-of-government approach, regulatory coherence, and institutionalized private sector input. Parties should also include mechanisms to review the impact of current or proposed measures and provide appeal opportunities should a measure not achieve desired results.

Integrated Approach, Particularly for Customs Processes

To respond adequately to the nature and scope of the services this industry provides, the agreement must address the unique needs of express delivery service providers, including the need for an integrated approach for customs clearance, seamless regulation across multiple modes of transport, and commitments to immediate release, single-window, and electronic border clearance.

Financial Services

The following are essential provisions for financial services in the International Services Agreement.

Cross-Border Business Operations

In the financial services sector many types of services can be performed across borders, without sacrificing appropriate prudential supervision. These services include buying and selling financial products across borders, participating in and structuring transactions, and providing investment advice.

The International Services Agreement should permit firms established in a party to provide services cross-border to sophisticated clients (e.g., “qualified investors”) without establishing a commercial presence and without being subject to separate licensing and approval requirements of the type that generally apply to firms commercially present in a market.

Consumers Traveling Abroad

A party should permit consumers traveling outside their territories to utilize any capital markets related service in the other party’s jurisdiction.

Information Processing

Each party should permit dissemination and processing of financial information to provide clients with services necessary for the conduct of ordinary business.

The parties should therefore agree not to adopt or maintain measures that prevent or restrict transfers of information or the processing of financial information, including transfers of data by electronic means, or that prevent transfers of equipment, where such transfers of information, processing of financial information, or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.

This commitment would not seek to nullify the right of a relevant authority to protect personal data, personal privacy, and the confidentiality of individual records and accounts.

However, the agreement should include a commitment that when an act, policy or practice of a relevant authority seeks to restrain cross-border data transfers or processing, that authority must demonstrate that the restriction is not an unnecessary restraint of trade or investment in light of alternative means by which to achieve the objective of protecting the identity of the customer, security of the data or the performance of prudential oversight.

New Services

The competitiveness of financial services firms depends on their ability to innovate, often rapidly in order to meet the special needs of customers by developing and offering new products and services.

A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular party but which is supplied in the territory of the other party. Each party should ensure that regulators allow private firms to meet these needs, while maintaining appropriate prudential supervision.

Recognition Arrangements

The agreement should create a framework for developing recognition arrangements, which could include appropriate forms of substituted compliance focused on outcomes.

Other steps might include consultation among capital markets participants and regulatory authorities which would lead to the development of a list of regulatory obstacles where recognition arrangements could be developed. This can be accomplished while protecting investors and ensuring the integrity and stability of their financial systems.

Insurance

The International Services Agreement must have coverage or disciplines on insurance that are at least equal to those established in the Financial Services Chapter (13) of KORUS, including the Exchange of Letters dated June 30, 2007 between United States Trade Representative Susan C. Schwab and Korean Ministers Hyun Chang Kim (Trade) and Sung Jin Kim (Finance and Economy). The following insurance-related issues should be addressed in the International Services Agreement:

Market Access

- All measures which limit or restrict the volume or proportion of risk that can be placed with foreign insurers or reinsurers to a fixed ratio or percentage should be prohibited.
- For reinsurance, retrocession, surety bond, large scale commercial risk, asset management for sophisticated consumers, and as a service auxiliary to life insurance, reinsurance and pensions, modes 1 and 2 should list no reservations.
- Measures which require foreign insurers or reinsurers to cede a portion of their business to domestic insurers should be prohibited. Measures which give domestic insurers and reinsurers a right of first refusal over foreign suppliers with respect to new policies should be prohibited.
- Measures which require foreign insurers to convert locally-held foreign currency or foreign currency-denominated financial assets into domestic currency should be prohibited.

Cross-Border Data Flows

Cross-border trade in insurance services depends in large part on the continued and secure flow of information between nations. Specifically, insurance firms rely on data to offer products and services to customers around the world. Reliable information flows across country borders serves as the raw material for underwriting decisions, market research, product development, comparative analysis, measuring customer satisfaction, and fraud prevention.

The efficient flow of data with proper safeguards is a vital component to continued economic growth in the insurance services sector. Therefore, any legal proposals must be sufficiently flexible and technologically-neutral to enable businesses to respond competitively to the dynamic, information-driven marketplace.

Many governments continue to require foreign companies operating in their territory to maintain redundant local storage of data which is also stored at headquarters or at regional data centers outside the country. These requirements impose added costs and operational burdens on insurance suppliers and interfere with data outsourcing arrangements, offline back office operations, and the use of cloud computing. They do not serve any prudential purpose that could not be achieved through less burdensome measures.

In the U.S.-Korean Free Trade Agreement (KORUS) the parties have agreed that U.S. financial services companies doing business in Korea can transfer electronic information out of Korea for offshore data processing, and can perform certain back-office functions offshore.

The International Services Agreement should build on KORUS and establish rules with respect to data flows in the insurance sector that enable insurers to deploy global strategies for data that do not require redundant local data storage facilities. Companies should be free to supply data from headquarters, through affiliates, through regional centers, and through third party vendors as long as the data protection requirements of the local jurisdiction are satisfied.

All requirements that data be maintained in a given local jurisdiction should be prohibited.

Licensing

The International Services Agreement should prohibit consecutive licensing requirements, which require foreign insurers to acquire licenses on a city-by-city or region-by-region basis over time, rather than on a simultaneous countrywide basis. The Agreement should require that foreign insurers are guaranteed the same procedures and timelines for multiple, concurrent internal branch approvals as domestic insurers.

State-Owned Enterprises (SOEs)

While the International Services Agreement should not prohibit the operation of state-owned insurance businesses, it should clarify that the ISA's national treatment, market access, and transparency disciplines are fully applicable to State-Owned Enterprises (SOEs) with no exceptions.

Conditions of competition between SOEs and private companies should be on a level playing field basis. SOEs should have the same obligations with respect to national treatment, market access, or any other obligation under the International Services Agreement as their owners which are parties to the agreement. In addition, the Agreement should prohibit specific types of government favoritism found in the insurance sector, with respect to SOEs, including:

- Implicit government guarantees to SOE policyholders;
- Cross-subsidization of insurance SOEs by other SOEs or governmental organizations;
- Exclusion from the scope and full application of the Financial Sector Assessment Program by the IMF or World Bank;
- Exclusion of services and services products of other parties' suppliers from networks controlled by SOEs;
- Special exemptions in whole or in part, from laws and regulations applicable to privately-owned enterprises, including:
 - restrictions on business combinations;
 - licensing requirements;
 - and domestic taxes and fees;

- Government financial support which is inconsistent with commercial considerations and/or provided at below commercial rates; and
- De jure or de facto exemptions from national competition laws and regulations.

Equity Limitations

Requirements that foreign insurers divest a portion or all of their interests in local insurance suppliers should be prohibited.

Transparency

The International Services Agreement should provide at least the same guarantees with respect to transparency as Article 13.11 of the Financial Services Chapter of KORUS. Moreover, the ISA should require that:

- Any exemptions from statutory or regulatory requirements granted to any domestic service supplier be published; and
- Any preferential treatment granted to any domestic insurance supplier, including an SOE, as compared with treatment accorded to other Parties, be published.

Postal Financial Service Entities

In some countries, government-owned postal delivery and network entities supply insurance and banking services themselves or through affiliates. The International Services Agreement should include language that clarifies that government postal entities that engage in the underwriting and supply of insurance services are fully subject to the disciplines of the Agreement. The Agreement should spell out certain measures which are inconsistent with these prohibitions, including:

- Preferential regulatory treatment, including more lenient enforcement practice;
- Preferential access for products of postal insurance businesses to postal networks;
- Preferential licensing for postal insurance entities, including blanket, deemed or automatic issuance of licenses to postal insurance entities on a different basis than that accorded private insurance suppliers;
- Preferential business structure regimes which permit postal insurance entities to operate as part of business organizations in a manner prohibited for private insurance suppliers;
- Preferential financing schemes; and
- Regulation or co-regulation of a postal insurance entity by a government authority which promotes the business of the entity.

Cooperatives

Although the legal definition of a cooperative can vary by jurisdiction, the International Services Agreement should assure a level playing field among all insurers. In many jurisdictions, cooperative insurers operate outside the same regulatory framework as other insurers; they should be incorporated under the same regulatory framework, supervisor, and subject to the same prudential standards as all other similarly-situated insurers.

Cooperative insurers should be regulated by an independent supervisor. They should not enjoy support from government agencies in the form of exemptions from paying into guarantee funds or other special benefits which give them a competitive advantage over similarly-situated stock companies. Likewise, cooperative insurers and mutual insurers should be on an equal footing regarding special benefits, if any, that flow to stock insurers.

Universal Service Requirements

Most governments around the world have imposed universal service requirements on postal delivery entities, and the concept of universal service is closely associated with the delivery of mail. Similar requirements have in many cases been established for some providers of telecommunications services.

In 2012, Japan enacted legislation imposing the world's first universal service requirement for insurance and banking services on Japan Post Company, the government-owned postal delivery and network company. The private sector can supply all of Japan's insurance and banking needs.

The International Services Agreement should clarify that while signatories have the right to establish universal service requirements such action cannot be used as a mechanism for avoiding the disciplines of the agreement, which include requirements with respect to national treatment, most-favored nation treatment, and market access. There should be no exceptions for "public goods" or "public services" that compete with private sector goods or services.

The International Services Agreement should include a universal service provision which incorporates the principle established in the GATS Telecommunication Reference Paper – ensuring that universal services requirements are implemented in a manner which is non-discriminatory, transparent, competitively neutral, and which is no more burdensome than necessary.

Prudential Measures

The International Services Agreement should clarify the scope of prudential exceptions to its core disciplines in insurance by adopting language from an agreement to which many parties to the ISA are already signatories.

The OECD Code of Liberalization of Current Invisible Operations is a multilateral code which establishes a framework for the elimination of restrictions on current invisible transactions and transfers, including the sale and provision of insurance services. The U.S. is a signatory. Annex A to the Code sets forth a prudential carve-out for insurance and pensions which explicitly provides that even prudential measures must not discriminate against foreign service suppliers.

Inclusion of comparable language in an International Services Agreement would clarify that governments may not invoke a prudential justification for any measures that discriminate against foreign firms.

In order to minimize the prospect that the application of measures with a purported prudential justification may unnecessarily interfere with ISA disciplines, the International Services Agreement should require members to go through a consultation process if they take measures in insurance for prudential reasons, which are otherwise inconsistent with the market access, most favored nation, or national treatment provisions of the agreement.

Internet and Computer-Related Services

The market access commitments in computer-related services should ensure full coverage by making commitments at the two-digit level (CPC 84), or by having a supplementary list of covered services (modeled after ITA Schedule B), or some combination of both. This is important to avoid a situation in which trade commitments become obsolete due to advances in technology that create new ways of delivering computer services.

Mode 1 commitments should cover electronically delivered services as well as cross-border provision of services through other delivery mechanisms.

Clustering/bundling of market access commitments is particularly important for computer and related services (CRS). Advances in technology have enabled service providers to bundle various services that might not have been bundled in the past. The International Services Agreement should enable delivery of such bundles, and the classification system should not be permitted to become a trade barrier or a barrier to innovation in services. CRS subsectors include the following:

- Consultancy services related to the installation of computer hardware (CPC 841)
- Software implementation services (CPC 842)
- Data processing services (CPC 843)
- Data base services (CPC 844)
- Other (CPC 845+849)

Firms in this sector typically provide packages of one or more of the above subsectors, so all subsectors should be covered, preferably at the two-digit, CPC 84 level. This issue has an impact beyond computer-related services inasmuch as computer services provide the platform for the delivery of other services online, such as financial services, entertainment services, news services, and other services that make up the digital economy. Mode 1 commitments, therefore, should be horizontal by providing for electronically delivered services across the broad range of service sectors.

Many of the GATS general exceptions, including privacy and the essential security exception, could be used by countries to block cross-border data flows or require the use of local computer servers. The exceptions could thus undermine cross-border market access commitments if they are not limited in some way. Since online delivery of services is becoming increasingly common and can be expected to continue to expand, the ISA must address this issue so that trade agreements will remain relevant in the growing digital economy.

Media and Entertainment Services

Media and entertainment services play a valuable role in developing and supporting national economies, culture, and international trade. Maintaining and furthering open markets for media and entertainment services would benefit the domestic industry and economy in participating countries.

The media and entertainment sector facilitates the introduction of new technologies, skills, and business models – which lead to new services, encourage investment in digital networks, and foster local creativity and innovation. A growing number of countries recognize that opening the media and entertainment sector has a positive impact on the sector, as well as on the local economy more generally, including other sectors such as tourism, education, and manufacturing.

In spite of the broad benefits of media and entertainment services, numerous WTO members continue to maintain and support barriers to the sector. Barriers that limit market access, whether by certain distribution methods or times or quotas, are among the most counterproductive, since they distort the market and actually reduce consumer choice.

ISA parties should further agree not to extend existing barriers and discriminatory policies into Internet-based means of media and entertainment services. Additionally, the International Services Agreement should include provisions to liberalize the sector across all sub-sectors and across all means of distribution.

This is also an opportunity to eliminate discriminatory quotas. To the extent discriminatory quotas are maintained, ISA parties should commit not to base them upon ownership of the underlying intellectual property. Recognizing the importance many countries place on the sector to economic and social development, there may be a need for flexibilities in the form of phase-outs, subsidies and co-production agreements, each of which is preferable to outright limitations on trade. Local sectors and audiences benefit when competition and choice are the cornerstone of a market.

While historically many countries have sought to preserve the right to impose discriminatory market access barriers in the media and entertainment services sector, the primary underlying rationale for those barriers has been eroded, if not entirely eliminated, with the growth of the internet. Previously, theories of discrimination were based on an assumption of scarcity of distribution – scarce access to mass distribution outlets and a scarcity of options for those outlets (whether technological – e.g., bandwidth constraints – or practical – e.g., the number of programming hours in a day on a limited number of channels or screens). The massive growth of the Internet-based distribution has for all intents and purposes eliminated the scarcity underlying these discriminatory barriers.

Now, anyone with an Internet connection can mass-distribute an audio-visual product to a community or the entire world within seconds. That same Internet-connected person has access to millions and millions of audio-visual entertainment options, often available continuously 24 hours a day, and that is not even counting the hundreds of television channel options available now through a Pay TV service. Nor is there a screen constraint – there are literally billions of screens on a variety of devices, with more coming to market every day, that deliver media and entertainment services.

Retail and Distribution Services

Barriers to trade in retail and distribution services are significant in many markets. These include restrictions on investment in certain sectors or with respect to certain goods; foreign ownership caps; limitations on ownership, location, and store size; limitations related to special sales, prices, and operating hours; burdensome authorization/licensing procedures, discriminatory inspections, and lack of transparency with regard to rule of law; and economic needs tests.

The International Services Agreement should establish full market access for retail and distribution services as well as national and most-favored nation treatment for all forms of distribution, including e-commerce platforms. It should protect retail and distribution rights in both single and multi-brand formats, with no limits on size, geographic location, or merchandise assortment. In addition, the Agreement should:

- Prohibit equity caps or restrictions on foreign direct investment in retail as well as performance requirements.
- Require parties to implement clear, predictable, and transparent licensing regimes for new stores.
- Bar restrictions on particular kinds of merchandise (e.g., audiovisual, tobacco, food, pharmaceuticals, cosmetics).
- Require that capital requirements be proportional and consistent among all retailers based on size and scope of operations.
- Discourage economic needs tests, allowing them only if the requirements are transparent and based on objective criteria.
- Require that land ownership and leasing arrangements be based on objective, transparent criteria.

Telecommunications

The International Services Agreement should use the existing GATS Annex on Telecommunications and Reference Paper for basic telecommunications services. Additionally, ISA participant countries that have not made full market access commitments in telecommunications under the GATS should make such commitments under the ISA.

Importantly, the GATS Annex on Telecommunications and Reference Paper for basic telecommunications services should remain limited to basic telecommunications services and should not be extended to value-added services or other ICT services. Moreover, the provisions listed in this paper, such as cross-border data flows and innovation principles, among other items, will ensure that U.S. companies have an opportunity to compete in the global marketplace.

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Once again, we appreciate the opportunity to support and provide our input on this critical initiative for jobs, economic growth, and U.S. competitiveness. We look forward to the continued leadership of the United States towards an ambitious new International Services Agreement, and remain a solid partner in achieving its success.

Sincerely,

A handwritten signature in black ink that reads "Peter Allgeier". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Peter Allgeier
President