

FOR THE RECORD

An International Services Agreement

Advancing Liberalization Using a Next-Generation Plurilateral Approach

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The enormous promise of open global markets for services trade and investment remains to be fulfilled. It is imperative that the international community now actively formulate an effective strategy to deliver new services trade and investment liberalization as part of a broader strategy to renew global economic growth. Two fundamental changes require this new and more focused approach.

First, ways and means of doing business in the 21st century global economy - and new barriers - are evolving much faster than the ability of traditional multilateral trade and investment negotiations to keep pace. For example, the Internet integrates services and manufacturing and, as a result, adds value throughout global supply chains and creates tremendous growth in cross border trade.

Traditional barriers to services trade are still very important. Equally important is creating an environment which enables technology-driven services trade and investment. For example, securing the ability to send and receive data over reliable networks is essential to facilitating cross-border trade in services since most such trade is, at its essence, the exchange of data. Manufacturing also depends on the transfer of data across borders. Other complex issues like the role of state-owned enterprises and regulatory coherence must also be addressed.

The very great promise for the US economy of open global markets for services direct investment, supported by a recent working paper by the US International Trade Commission staff, is only partially fulfilled. The international community must now devise an effective vehicle for delivering new services trade and investment liberalization that responds to the realities of this century's global business.

Second, it has become clear that the traditional approach to services liberalization through multilateral negotiations in the WTO is not welcomed by all its Members at this time. The WTO does, however, provide a useful framework on which those who are interested in moving forward can build.

These two fundamental factors mean that the United States and others committed to liberalization in the international community must find additional global pathways to develop 21st

century trade and investment rules for services. While the U.S. is vigorously pursuing cutting edge services liberalization in very important bilateral and regional free trade negotiations, these efforts should be complemented by exploring how to bring together the largest group of countries willing to work on the services trade and investment issues that spring from the realities of the new economy.

Alternative Pathway

In its January, 2009 paper titled “Forging the Way to Growth: Expanding World Markets for Services”, CSI supported the Doha Round but recognized that if it could not fulfill its promise for services, “alternative pathways” should be considered, including under the auspices of the World Trade Organization and the General Agreement on Trade in Services (GATS). One of the most promising of these is the idea of a services “plurilateral” agreement pursuant to Article V of the GATS.

What Do We Mean by “Plurilateral”?

This type of plurilateral (the term can refer to several types of agreements) is an agreement – essentially an FTA - among a group of countries, the benefits of which apply only to the participants, not to all WTO members. Article V permits such preferential agreements if they satisfy several baseline standards: the agreement (1) provides substantial sectoral coverage, (2) makes no a priori exclusion of any sector or mode of supply, (3) provides for the elimination of existing discrimination, and (4) restricts the introduction of new discriminatory measures. To help meet the Article V requirement that the agreement cover “substantially all” service sectors, negotiations would use a negative list approach where all services are covered by the rules of the agreement, unless specifically excluded. This would be a major advance above current practice under the GATS where services commitments are based on a positive list approach which allows countries to bind selected sectors while excluding a tremendous amount of services trade from GATS disciplines. The agreement would of course be open to all who wish to join it provided that they can meet its standards and satisfy any other requirements established by the parties to the new agreement.

The Advantages and Scope of a Such an Agreement

Such a plurilateral, which we call an International Services Agreement (ISA), would be a means of achieving, with a number of countries representing a very substantial volume of services trade, multiple objectives which cannot be achieved through WTO negotiations in the foreseeable future:

- Providing additional motivation for compliance with current WTO obligations
- Legally securing or “binding” existing, “autonomous” liberalization among the parties.
- Obtaining new, bound market access, using the deeper commitments obtained by FTA agreements.

- The ability to pursue on a broader global basis, the new, more complex “next generation” issues that have grown in importance over the past 10 years, that we are currently pursuing in bilateral and regional agreements, including provisions to address restrictions on flows of data, the location of the infrastructure necessary to facilitate these flows, forced localization of business functions that can best be provided globally, and the increasing problems of competing with state-owned enterprises engaged in commercial activity.

Achieving a Critical Mass of Participants

An ISA would create a new dynamic to attract willing countries to a services agreement that is more comprehensive, and with deeper liberalization commitments. If the participating countries represent a large majority of global services trade, they would constitute a critical mass that would be a powerful incentive for some of the recalcitrant emerging market economies to join. This is the phenomenon that is now occurring in the TPP. The initial group of 5 countries has grown to 9, and now Japan, Mexico and Canada have expressed interest in joining the negotiating group. It is our hope that this plurilateral will help convince the emerging markets of the value of service trade and investment liberalization and provide an incentive not to be excluded.

Importantly, an ISA would complement and supplement efforts to achieve high level commitments on services and investment issues in TPP and other comprehensive FTAs by “plurilateralizing” with a larger group of countries the best of what we have and are achieving in bilateral and regional agreements. This, in turn, could create a more dynamic and positive environment in WTO negotiations and new FTA negotiations. By consolidating the achievements from the myriad of bilateral FTAs into a single, multiparty framework, it would establish an FTA-plus level of market access as the norm rather than the exception. It would also demonstrate that open markets can be achieved quickly rather than incrementally.

The ISA would be a major step toward integrating a very large number of existing FTAs. When negotiated among an initial group of countries, it could provide a platform which would create economies of scale in global services liberalization whereby new members could secure the benefits of liberalization of many FTAs through a single negotiation. The plurilateral agreement should be structured in such a way as to facilitate the entry of additional members over time, such as by using WTO-agreed provisions wherever possible and clearly identifying those steps necessary to dock into the agreement.”

With Existing and Growing Support

Finally, this idea has been endorsed by the APEC Business Advisory Council (ABAC), which called on APEC to incubate the idea of stand-alone services negotiations, and to build the critical mass necessary for them to commence. The Pacific Economic Cooperation Council and the Asian Development Bank Institute (PECC/ADBI) Taskforce on Services has likewise called for future services negotiations to be organized on a stand-alone, plurilateral basis, noting that

less than one third of the WTO members have made services offers in the Doha Round. It appears that there is now a growing interest in this pathway toward greater freedom of services trade and investment.