

LIBERALIZING TRADE IN SERVICES CRITICAL TO U.S. ECONOMY

by

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The United States has consistently been at the forefront of the movement to liberalize trade in services under the 1994 General Agreement on Trade in Services ("GATS"). This advocacy transcends political leadership and is directly related to the structure of the United States economy, some 63 percent of which involves the supply of services both domestically and around the world. On July 1, United States Trade Representative ("USTR") Robert Zoellick announced the submission of a new proposal for liberalization of international trade in services, which in accordance with the agreed negotiating guidelines is comprised of specific requests directed at individual countries. Although details of the specific requests remain confidential, statements from the USTR's office make clear that the United States proposal conflicts with the services liberalization agenda of countries in the European Union and the developing world. This latest proposal should be viewed therefore as an opening offer in a multilateral bargaining process, on the basis of which many concessions will certainly be made and compromises struck as the Members proceed down the road toward a final agreement in 2005.

Background: the GATS Framework for Negotiation. The General Agreement on Trade in Services came into being in 1994 as a result of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade ("GATT"). Ostensibly a service-oriented counterpart to the GATT, the GATS is actually a much more far-reaching and politically sensitive agreement than the GATT, due to the nature of trade in services. First, regulation of services is fundamentally an internal domestic issue. Whereas trade in goods can for the most part be regulated through border measures, which intrude only minimally on national government policy, the vast majority of trade in services takes place not at the borders but within the territory of a country, either through foreign consumption of services on domestic soil or provision of domestic services on foreign soil. Second, provision of services, to a much greater degree than supply of goods, implicates issues of national policy: the need to protect investors and consumers from dishonest or unstable financial institutions, for example; or the widely held conviction that certain basic services such as telecommunications, energy and education should remain in the hands of one's own nationals.

In order to accommodate these concerns on the part of Member countries, the GATS permitted Members to establish exceptions to the general principles of open market access and national treatment, through the use of individual country "schedules." In these schedules, member countries were permitted to limit their obligations under the GATS in certain enumerated ways. Once the schedules were in place, no further exceptions were permitted, although a country may voluntarily increase its commitments under the GATS.

The schedules were designed as a stop-gap measure, to allow the GATS to proceed despite the fact that the Member countries were not, in 1994, in a position to agree on uniform market access rules for the myriad

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service sectors and modes of supply covered by the GATS. To ensure that further liberalization in trade in services occurred, the GATS established a mandatory series of negotiations "with a view to achieving a higher level of liberalization" of such trade. GATS Article XIX. The negotiations began, as stipulated, in January 2000, in the WTO Council for Trade in Services. Since then, every country has submitted multiple proposals, some comprehensive, some concentrating on one or more key services sectors. The GATS negotiations were formally incorporated into the Doha framework when that round of WTO negotiations was launched in November 2001.

In March 2001, the Council for Trade in Services agreed on a set of official guidelines and procedures for the negotiations on trade in services. Most relevantly, these guidelines direct the countries to advance liberalization through the "request-offer" approach — each country shall first request of its fellow Members that they reduce certain barriers to market access contained in their schedules, and then, having received other Members' requests, shall announce what liberalizations it is willing to offer in return. Special Session of the Council for Trade In Services, *Guidelines and Procedures for the Negotiations on Trade in Services* ("Guidelines") 3 (Mar. 28, 2001). The Council set a deadline for submission of specific requests of June 30, 2002, and a deadline for submission of offers of March 31, 2003. These specific offers and requests are then to form the basis of further negotiations, which are to result in a comprehensive agreement by January 1, 2005.

U.S. Policy in Favor of Liberalizing Trade in Services. The United States has been a leader in the campaign for liberalization of trade in services since the Uruguay Round. The motivation for this is clear: service industries currently account for 80 percent of United States employment and 63 percent of U.S. gross domestic product, and the country's yearly service exports bring in nearly \$279 billion in revenue. Office of the United States Trade Representative, *Executive Summary: U.S. Proposals for Liberalizing Trade in Services*, July 1, 2002, available at <http://www.ustr.gov> (last accessed July 23, 2002).

In July 2000, the United States submitted the first comprehensive proposal of the newly launched negotiations for liberalization of trade in services. This initial proposal was very general and expressed expectations regarding expanded future application of existing principles such as market access, national treatment, and most-favored-nation treatment, as well as raising the possibility of developing a new GATS discipline addressing regulatory issues. In December 2000, the United States submitted a new proposal that identified specific barriers to trade in eleven sectors¹ and one mode of supply.² This proposal did not suggest solutions to the barriers identified, but rather advocated the development of solutions through multilateral negotiations. Since December 2000, the U.S. has submitted 15 additional proposals addressing specific service sectors and issues such as regulatory transparency. USTR, *Executive Summary: U.S. Proposals for Liberalizing Trade in Services*.

On July 1, 2002, the U.S. submitted its most comprehensive proposal yet in favor of liberalizing trade in services. Though a day late, this proposal conformed to the "request" portion of the Guidelines' framework for negotiations, and comprised specific requests submitted directly to the 143 Member countries participating in negotiations for reductions in their barriers to trade in services. These individualized requests, like those made of the United States by other Members, remain confidential, as they are to form the basis not only for formulation of the offers due in March 2003, but also for negotiations leading up to the final agreement. However, the USTR has released an executive summary of the proposal which outlines the general areas in which the United States requests increased access, and Deputy U.S. Trade Representative Peter Allgeier has on at least one occasion indicated the nature of requests made to certain countries and regions. From these two sources of information, it is possible to identify areas in which the U.S. agenda will conflict with that of other members.

¹(1) Accounting services; (2) audiovisual and related services; (3) distribution services; (4) higher education, adult education, and training; (5) energy services; (6) environmental services; (7) express delivery services; (8) financial services; (9) legal services; (10) telecommunications and complementary services; and (11) tourism and hotels.

²Movement of natural persons.

In the executive summary, the USTR announced that the United States has requested increased access to foreign markets in twelve specific sectors: (1) telecommunications; (2) financial services; (3) express delivery services; (4) energy services; (5) environmental services; (6) distribution services; (7) education and training services; (8) lodging and other tourism services; (9) professional services; (10) computer and related services; (11) advertising services; and (12) audiovisual services. In addition, the United States requested improvements in transparency in the regulation of services, including the establishment of clear, publicly available domestic procedures for application for, renewal, and extension of licenses or authorizations, and domestic procedures providing for a standard formal process of informing the public of regulations, or changes to existing regulations, prior to their final consideration by the relevant authority and entry into effect.³ The United States also requested that other Member states remove both formal and effective barriers to the establishment of commercial presence by U.S. firms on foreign soil, as well as increased access for temporary entry and stay of highly skilled workers.

Though the USTR declined to specify how these general requests relate to the specific requests made to individual Member countries, Deputy USTR Allgeier has indicated certain individual requests that the United States considers particularly important. First, the United States has issued a request to the People's Republic of China that the newest Member of the GATS commit to further liberalization in areas such as banking, telecommunications and retail services. *World Trade Organization: US Submits GATS Requests to WTO Trading Partners*, Belize Trade & Investment Development Service Trade Monitor No. 23/02 (July 5, 2002), available at <http://www.belizeinvest.org.bz>. Second, the United States requested the European Union to commit to maintaining or improving their current levels of liberalization in areas such as cinema, video, radio, television, and music. *Id.* Finally, Allgeier announced that the United States has requested that Latin American countries such as Argentina and Brazil, which despite the current financial instability are some of the most developed Latin American countries, further liberalize their financial sectors. *Id.*

Conflicts. Several of these requests, both the general and the specific, highlight areas of likely future conflict in the GATS negotiations. First, in the area of express delivery services, the Executive Summary expressly excluded "services reserved exclusively to the postal authorities" from the scope of the United States request. This exclusion indicates that the United States is determined to reject a request that it received from the European Union in April 2002, that foreign companies be allowed to compete with the U.S. Postal Service. Carter Dougherty, *The Big Leak: EU Wants to Bid on U.S. Mail*, THE WASH. TIMES, Apr. 26, 2002. The express delivery services request also excluded "maritime" transportation services, which may be a reference to the EU request that the United States repeal the Jones Act, which requires cargo traveling between U.S. ports be ferried by U.S. built, owned and operated ships.⁴

Second, the United States request regarding increased access to energy services is unlikely to prevail in its entirety, for although significant progress in deregulation and privatization has been made over the past decade in energy services sectors around the world, much of the developing world retains strict control over energy development, transmission and marketing services as an important source of national income. Although countries are increasingly recognizing the importance of employing foreign capital in critical service sectors that they themselves lack the resources to develop sufficiently, most prefer to control foreign participation through project finance or production sharing agreements. In these agreements, foreign developers of energy resources receive concessions in exchange for an agreement to share profits with the foreign government, or mandatory joint-venture agreements, in which foreign companies may participate only as the minority partner in a foreign-domestic joint venture. The United States is therefore likely to gain the greatest liberalizations

³The U.S. request regarding financial services also contained a specific request for improvement of regulatory transparency and fairness in the application of financial service regulations.

⁴Regardless of whether the exclusion was intended as a specific reference to the Jones Act, the EU request for foreign access to intra-U.S. maritime transport services will certainly face fierce resistance in the United States, where the livelihood of a powerful coalition of "shippers, ship-builders and maritime legislators" is at stake. Carter Dougherty, *The Big Leak: EU Wants to Bid on U.S. Mail*, THE WASH. TIMES, Apr. 26, 2002.

in secondary energy services, such as environmental and management consulting services.

Third, the U.S. request to more-developed Latin American countries for increased access to financial services markets has already met with fierce resistance in Latin America. Many in Latin America equate the request with liberalization of capital markets, which can reduce the government's ability to control capital movement and institutional behavior in the event of a financial crisis. Governments in countries such as Brazil view efforts by G-7 countries to open their financial services markets with suspicion, and reject U.S. claims that liberalization will enrich Brazilians as well as Americans. Upcoming elections in Brazil, in which socialist leader Luiz "Lula" da Silva is the clear favorite, further threaten this goal: da Silva is openly critical of trade liberalization on all fronts, and particularly of current President Cardoso's courtship of foreign financial institutions. His election to the presidency of the most powerful country in Latin America might significantly change the trade politics of the continent.

Requests for increased access to markets for education and training services are also certain to meet with stiff resistance in this round of negotiations. Only 44 countries have made commitments to market access in education, and only a small handful of countries, including the United States, New Zealand, Australia, Japan, and the European Union, have submitted requests for education liberalization during this round. As the U.S. request indicated, the current debate centers on higher education only, primary and secondary education being seen as solely in the province of domestic policy. However, opponents to liberalization of higher education provision fear (1) the effect that the private profit motive will have on the quality and/or affordability of higher education; and (2) the potential destruction of universities and other higher educational centers as repositories and incubators of national culture.

Finally, the U.S. request to the European Union for guaranteed, continuing access to its audiovisual services is merely another step in an ongoing cultural struggle between the two entities. In 1998, France led the EU in successfully blocking the OECD's proposed Multilateral Agreement on Investment (MAI), on the grounds that it threatened national culture by forcing countries to open cultural industries such as the broadcasting, print, and audiovisual sectors to unlimited foreign investment. Since 1994, the European Union has steadfastly refused to undertake any commitments regarding liberalization of educational services. However, Britain, a strong exporter of audiovisual services, has indicated that it may be willing to fight for EU liberalization of trade in the audiovisual services sector, providing that the United States can offer liberalizations in other sectors that are important to the EU. This, combined with the U.S. willingness to leave room for protection of national culture, indicates that some liberalization in this area may in fact occur.

Conclusion. Services negotiations between the United States and the EU are highly complex, involving the balancing of different agendas in areas as diverse as movies, shipping, and the mail. The GATS negotiations add the competing goals and concerns of 128 additional countries, and direct these countries to reach a unanimous decision on individual changes in regulation of dozens of sectors in five short years. The submission of requests, such as the July 1 submission of the United States, is the first important step in this process, but several more steps must be taken before a final agreement is reached. Thus, it is important to remember that the United States itself sees this submission not as a list of demands, but as an opening bid in an extended multilateral haggling session. No countries will get all that they asked for, but the United States is hopeful that 2005 will bring the world significantly closer to its goal of full services liberalization.