Coalition of Service Industries

STATEMENT BY THE COALITION OF SERVICE INDUSTRIES

CONCERNING THE OBAMA ADMINISTRATION'S REVIEW OF THE U.S. MODEL BILATERAL INVESTMENT TREATY

JULY 31, 2009

The Coalition of Service Industries (CSI) appreciates the opportunity to submit a statement in connection with the Obama Administration's Review of the U.S. Model Bilateral Investment Treaty. CSI is the leading business association dedicated to reducing barriers to U.S. services exports and investment and mobilizing support for policies that enhance the global competitiveness of U.S. service providers.

The importance of services in the U.S. economy has been increasing for decades. Services comprise 78% of U.S. private sector GDP and 80% of private sector employment. U.S. services companies are the world's most innovative and competitive, but with 95% of the world's consumers living outside the United States, these companies must increasingly look overseas if they are continue to grow and create American jobs.

Why Invest Abroad

New customers abroad can expand US companies' revenues and profitability much more than can the U.S. market alone. Despite the large size of our economy, the past generation has seen slower growth in the U.S. compared with much of the rest of the world. From 1990-2008, U.S. GDP grew at an average below that of the rest of the world, and significantly below that of emerging and developing economies as a whole.[1]

Direct investment is one of the principal ways by which U.S. services companies compete in the global marketplace. Sales of services through direct investments in foreign markets account for

[1] Slaughter, Matthew. "How Multinational Companies Strengthen the U.S. Economy." Published by the Business Roundtable and United States Council Foundation, Spring 2009.

the largest share of global trade in services. U.S. sales of services through companies' affiliates in foreign markets are significantly larger than crossborder exports of services; such sales totaled $806 billion in 2006, up from $413 billion in 2000[2].

Investment in foreign markets is an imperative for many U.S. services companies for a variety of reasons. In some cases, a physical presence may be a legal requirement in order to supply a service. In many other cases, the inherent nature of the service is such that it cannot be supplied crossborder, but must be provided directly to clients and customers via an on-the-ground presence in a foreign market.

SALES OF SERVICES BY U.S. FOREIGN AFFILIATES
(U.S. $ millions)

	2004	2005	2006
All Countries	**642,840**	**725,036**	**806,310**
Canada	65,166	77,651	88,826
Europe	366,899	412,624	457,921
Latin America & other Western Hemisphere	63,652	72,414	80,084
Africa	8,108	10,008	10,469
Middle East	3,446	4,026	5,478
Asia & Pacific	135,569	148,313	163,533

Source: U.S. Bureau of Economic Analysis

The Benefits of Foreign Investment

Economic activity abroad by U.S. firms complements domestic activity. U.S. companies' presence in foreign markets has contributed strongly to productivity growth in the United States, and thus to higher living standards.[3] According to one study, each dollar of additional foreign capital spending is associated with $3.50 of additional domestic capital spending. Further, U.S.

[2] Bureau of Economic Analysis, Survey of Current Business, October 2008. Data cited are the latest available.
[3] Economic Report of the President, February 2007, p. 168.

firms' expansion of employment abroad is associated with expanded employment in the United States.[4] It is often assumed that U.S. companies are "exporting jobs" when they hire workers in foreign countries, but the historical data show the opposite: when U.S. companies expand their employment abroad, they also generally tend to expand domestically. Viewed over the longer term, the data demonstrate that, rather than being substitutes for one another, the domestic and foreign operations of U.S. companies have been complementary.[5]

The United States also benefits tremendously from inward investment by foreign companies, and *services related* foreign investment constitutes the bulk of total foreign investment in the U.S. Such investment supported 3.2 million American jobs in 2006, or about 60% of all jobs supported by foreign investment in the United States.[6] Inward foreign direct investment contributes to productivity growth, provides a source of financing for the current account deficit, and generates high-paying jobs for American workers.

Foreign investors participate in a wide variety of services activities in the United States. Among the 50 states, services-related foreign investors are particularly large employers in California, New York, Texas, Florida, New Jersey, Pennsylvania, Massachusetts, George, and North Carolina. (See Annex I for more detail).

In short, both inward and outward foreign direct investment contribute to higher levels of productivity and employment in the United States.

<u>The need for investor protections</u>

Foreign investments are by nature long-term commitments, and require high levels of investor confidence. Sufficient investor protections are in turn crucial for investor confidence, and in creating a climate in the host country in which high-quality, long-term investment can be

[4] Ibid., p. 184.
[5] Ibid, pps. 185-6.
[6] Bureau of Economic Analysis, Interactive Data Tables.

attracted. Predictability, the rule of law, contract sanctity, and property rights are all essential. For those reasons, CSI members place great importance on bilateral investment treaties.

These agreements provide for market access or the right to establish a commercial presence, and they protect U.S. investment abroad while attracting U.S. investment and trade to the partner economies. They encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory manner and encourage services companies to secure a physical presence in a foreign market.

CSI seeks several characteristics in bilateral investment treaties:

- The investor-state arbitration mechanism. This is one of the most crucial elements of a sound investment regime. The investor-state dispute settlement mechanism can ensure U.S. investors that their investments are protected against arbitrary, discriminatory and unfair government actions.
- A broad definition of "investment," which includes portfolio investment, not solely cross-border investments with long-term aims.
- Appropriate protections against direct and indirect expropriation and guarantees of prompt, adequate and effective compensation when it occurs.
- The ability to transfer all payments related to an investment.
- Retrospective application of investment protections. That is to say, the protections should apply to pre-existing investments, as has been in the case in our earlier bilateral investment treaties.
- A ban on performance requirements, such as the requirement to export a certain portion of output, or to hire certain numbers of host country nationals.
- Pre-establishment provisions, under which national treatment is extended to investors prior to establishing in a market.
- Use of a negative list, stating the specific services that will be exempted from coverage in the agreement, with all other services open to investment.

Conclusion

Employing 80% of the U.S. workforce and accounting for 78% of our GDP, the service sector is a driver of U.S. economic growth and jobs. Central to sustaining the growth of this dynamic sector is the ability of U.S. companies to expand abroad to provide services to customers in fast-growing foreign markets. Investment abroad is therefore part and parcel of continued U.S. economic growth, as is investment in the United States by foreign service providers. The confidence and predictability that are afforded by strong investor protections help make such investments viable, with important economic benefits for both the investor and the host country alike.

1090 VERMONT AVE, NW ■ SUITE 420 ■ WASHINGTON, DC 20005 ■ (202) 289-7460 ■ FAX (202) 775-1726 ■ WWW.USCSI.ORG

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ANNEX I: U.S. EMPLOYMENT SUPPORTED BY FOREIGN INVESTMENT

Employment Supported by Foreign Investment By State and Industry Sector, 2006 (thousands of employees)			
	Total	Manufacturing	Services & other
Alabama	73.6	45.6	28
Alaska	12.2	2.7	9.7
Arizona	71.1	20	51.2
Arkansas	33.7	23.6	10.1
California	572.5	187.2	385.2
Colorado	75.9	24.5	51.4
Connecticut	104.9	38	66.9
Delaware	25.2	11.2	14.1
District of Columbia	17.3	3.2	14.1
Florida	248	66.8	181.2
Georgia	173.6	62.9	110.8
Hawaii	28.5	2.9	25.6
Idaho	13	4.3	2.7
Illinois	243.1	90.1	153
Indiana	148	95.9	52.1
Iowa	40.2	21.5	9.3
Kansas	46.5	26.1	20.4
Kentucky	91	47	44
Louisiana	49.7	16.3	33.4
Maine	24.4	7.9	3
Maryland	104.1	26.6	77.5
Massachusetts	173	49	124
Michigan	195.5	119.6	75.9
Minnesota	86.5	28.4	58.1
Mississippi	25.7	10.4	15.4
Missouri	85.7	47.1	15.1
Montana	6.8	1.8	5
Nebraska	18.7	10.7	3.6
Nevada	35.9	9.1	9.3
New Hampshire	37.1	20.2	16.9
New Jersey	230.5	79.5	150.9
New Mexico	14.2	2.4	11.9
New York	389.3	69.7	319.8
North Carolina	209.4	98.6	110.8
North Dakota	8.3	3.9	1
Ohio	213.3	114.7	98.6
Oklahoma	35.9	*	6

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Oregon	44	15.7	28.4
Pennsylvania	249	112.4	136.6
Rhode Island	19.5	4	15.5
South Carolina	114.3	62	52.3
South Dakota	6.7	3.6	3.2
Tennessee	140.3	72.4	67.8
Texas	368.2	130.2	238
Utah	34.6	10.6	23.9
Vermont	9.8	3	1.1
Virginia	150.8	44.1	106.6
Washington	88.2	27.7	60.5
West Virginia	19.9	10.1	9.9
Wisconsin	87.2	44.6	42.6
Wyoming	8	2.1	5.8
TOTALS	**5,331**	**2,032**	**3,158**

*data suppressed to maintain confidentiality.
Note: totals may not match the sum of the 50 states due to suppression of some data to maintain confidentiality

Source: Bureau of Economic Analysis, Interactive Data Tables.

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