Coalition of Service Industries

COALITION OF SERVICE INDUSTRIES

RESPONSE TO

Federal Register Notice of March 28, 2000 [FR Doc. 00-7516]

Solicitation of Public Comment for Mandated Multilateral Trade Negotiations on Agriculture and Services in the World Trade Organization and Priorities for Future Market Access Negotiations on Non-Agricultural Goods

INTRODUCTION

The Coalition of Service Industries, in coordination with the Air Courier Conference of America, American Society for Training and Development, Energy Services Coalition, Information Technology Association of America, National Committee on International Trade in Education, National Retail Federation, and the United States Council for International Business is pleased to submit its recommendations to the United States Trade Representative (USTR) pursuant to the Federal Register Notice of March 28, 2000. We appreciate the opportunity to provide these comments and look forward to continuing to consult with the USTR and all involved government agencies in formulating U.S. positions and objectives for U.S. participation in the mandated WTO negotiations on services.

Organizations and companies that assumed primary responsibility for the initial drafting of specific portions of this submission are as follows:

I.	**General Issues**	Coalition of Service Industries

A. Purposes and General Objectives of the SERVICES 2000 Round
B. Negotiating Strategies
C. Transparency and Domestic Regulation
D. Electronic Commerce
E. Government Procurement
F. Mobility of Business Personnel
G. Safeguards

II.	**Air Cargo**	Coalition of Service Industries
III.	**Distribution**	National Retail Federation

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IV.	**Education and Training**	National Committee on International Trade in Education and the American Society for Training and Development
V.	**Energy Services**	Energy Services Coalition
VI.	**Environmental Services**	Coalition of Service Industries
VII.	**Express Delivery**	Air Courier Conference of America
VIII.	**Financial Services**	Coalition of Service Industries
IX.	**Health Care**	U.S. Council for International Business
X.	**Information Technology**	Coalition of Service Industries
XI.	**Professional and Business-Related Services**	Coalition of Service Industries
XII.	**Telecommunications**	Coalition of Service Industries
XIII.	**Travel and Tourism**	Coalition of Service Industries

Other associations that have been involved in the process of reviewing and commenting on this submission include: the Air Transportation Association of America, the American Hotel and Motel Association, the Council of Insurance Agents and Brokers, the American Bar Association, the American Consulting Engineers Council, the American Institute of Architects, the American Institute of Certified Public Accountants, the American Insurance Association, the Consumer Bankers Association, the Investment Company Institute, the American Council on Life Insurance, the National Society for Professional Engineers, and the Securities Industry Association.

I. GENERAL ISSUES

A. PURPOSES AND GENERAL OBJECTIVES OF THE SERVICES 2000 ROUND

The purpose of trade negotiations – whether in services or goods – is to create greater wealth and higher standards of living for all. The Services 2000 "Round" is a critical element in maintaining and expanding world prosperity. It is also critical to the expansion of global markets for US services. World markets for US services are vast and largely untapped. As income in foreign countries grows, their imports of US services tend to rise disproportionately, according to the Institute of International Economics. Thus international negotiations that reduce substantially barriers in all the modes of supply of services, in as many foreign markets and as many sectors as possible, could lead to a major expansion of US services trade and a concomitant reduction in the chronic US goods trade deficit.

The services negotiations, along with agriculture, are unfolding pursuant to the built-in agenda established by the Uruguay Round. The services negotiations should not be linked with progress in agriculture. They should not be made dependent on the start of a broader new round of negotiations. They should, as the US Trade Representative has proposed, be concluded by the year 2003. Negotiating guidelines should be drafted and agreed at the latest by the March "stocktaking" already mandated by the Council on Trade in Services. At that review the negotiations should shift emphasis from rule-making and other preparatory work to actual market access negotiations.

In general, the negotiations should achieve the following outcomes:

- Achieve maximum liberalization of market access in all modes of supply, including cross border supply of services and movement of natural persons, across the widest possible range of services, as soon as possible;
- Provide rights of establishment with majority ownership and national treatment for US companies operating in foreign markets, so that foreign investors have the same rights as domestic companies in a given market;
- Promote transparency and regulatory reform, with the objective of committing Governments to avoid discrimination against foreign service suppliers in their current and future regulations on services and to open markets to competition on a fair and equitable basis;
- Focus on creating a free and open commercial environment for the development of electronic commerce;
- Embrace important sectors that have previously not received significant WTO attention in the liberalization effort, such as express delivery, energy, legal, and audio visual services.

B. NEGOTIATING STRATEGIES

In general the GATS lacks substantive commitments. Current scheduled exceptions are too broad, and must be refined so only the most sensitive issues are excluded.

The current services round is the first in which we can apply lessons learned since the Uruguay Round about the structure of the GATS and how to improve the complex, specialized services negotiating process in order to achieve the primary objective: increasing Members' substantive liberalization commitments.

Since its conclusion in 1994 the GATS has drawn considerable criticism because of its complex structure. This has led some analysts to call for a revision of the "architecture" of the GATS. We do not believe that the benefits of such an effort would justify the considerable costs.

Innovative Negotiating Strategies

However, we do support the use of more efficient negotiating techniques and strategies. Previous services negotiations have largely been conducted on the basis of "requests and offers". Because of the peculiarly cumbersome ways in which commitments to liberalization are scheduled for services, the request/offer process can be complex and slow. This has given rise to the search for new negotiating strategies or techniques which may speed progress.

We urge negotiators to explore the development of techniques such as model schedules, horizontal approaches, or clusters. These can be used without affecting any changes in the underlying architecture of the GATS. Indeed, previous negotiations in financial services and telecommunications (the Understanding on Financial Services and the Telecommunications Reference Paper) are both examples of the use of "models". An advantage of this approach is that a broad range of countries can participate in the development of a model, such as the Reference Paper, without having to commit to it in advance. The decision whether to sign such an agreement is left to another stage of the negotiations.

Classification and Dynamic Definition of Services

The Committee on Specific Commitments has been concerned with classification issues. It is widely recognized that the existing classification of services used in the GATS is sometimes outdated and inadequate. It omits certain services and inappropriately categorizes others. In sectors where necessary classifications should be revised to reflect accurately the real structure of services industries, in order to facilitate the removal of barriers to trade in those services. Specific recommendations with regard to classification are made in the sectoral sections of this submission.

C. TRANSPARENCY AND DOMESTIC REGULATION

“Regulatory reform” has been given a great deal of attention by a number of US industry groups in approaching the new GATS negotiations. There is an increasing recognition, across many industries, that legally binding commitments to remove or lower trade barriers can be nullified by the decisions of national and regional governments, or industry standard setting and accrediting bodies, that are taken as part of regulatory processes.

However, it has become clear that regulatory “reform” has two aspects: one of these is transparency, the other the need to ensure that regulations are fair, and that they are applied without regard to the nationality of the industry or company affected by them.

While in the United States government processes that take place in the “sunshine” are taken for granted, this is not the case in most other countries. Thus CSI most strongly urges that USTR strenuously pursue the negotiation in this services round of cross-cutting transparency disciplines. We believe that this is one of the highest priorities in this negotiation.

CSI equally strongly supports the negotiation of special rules that meet the needs of specific sectors for transparency and fair regulatory systems, including regulatory reforms as are necessary and appropriate for a given sector.

CSI has prepared a “framework” to promote transparency across the board in all services. This framework is laid out below.

A transparent and fair regulatory system is a precondition for the liberalization of services. The importance of transparency is recognized in the Preamble to the General Agreement on Trade in Services (GATS) which states that Parties wish “to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization . . . . .” To promote that goal, the GATS contains a number of important rules regarding transparency. These rules benefit all WTO Members, but especially the country promulgating the rule, since a transparent and fair regulatory system is essential to continued expansion of the a country’s service sectors.

The new GATS negotiations provide an opportunity to build on the transparency disciplines obtained during the Uruguay Round negotiations. A review of prior achievements suggests that the best negotiating approach will be to fortify the GATS rules regarding transparency for all sectors and, as needed, to supplement these general rules with additional and/or special rules to govern particular sectors.

To achieve these objectives, the following Framework is proposed. The GATS needs stronger disciplines to promote greater transparency across the board for all services. In particular service sectors, special sectoral agreements or scheduling can be used to lay out additional transparency requirements for that sector, including broader regulatory reform as necessary and appropriate. Some sectors may need little supplementation, while other sectors may need many special rules tailored to that sector. This suggested approach will allow negotiators to respond flexibly to the particular needs of each sector while at the same time building on the transparency disciplines that apply across all sectors.

The purpose of this paper is to provide more specific recommendations for how governments should pursue GATS transparency issues in forthcoming negotiations. Section I briefly reviews existing disciplines on services transparency. Section II presents an outline for disciplines for all services. Section III explains how these general disciplines can be supplemented, as needed, with special rules designed for particular sectors.

I. Existing Disciplines

The main disciplines for a transparent and fair regulatory system are in GATS Articles III and VI. Article III: 1 provides for the prompt publication of measures affecting trade in services. Articles III: 3 and III: 4 provide for notification to the GATS Council and for prompt responses to (and enquiry points for) WTO member governments. Article VI: 1 requires that in sectors where specific commitments are undertaken, all measures of general application affecting trade in services be administered in a reasonable, objective and impartial manner. Article VI: 2 includes a commitment to maintain judicial, arbitral or administrative tribunals or procedures. Article VI: 3 requires regulators to inform applicants within a reasonable period of time and to give information on the status of an application. Article VI: 4 calls on the GATS Council to develop disciplines to ensure that qualification procedures are based on objective and transparent criteria, and are not more burdensome than necessary to ensure the quality of the service. Article VI: 5 applies these disciplines to sectors in which a Member has undertaken specific commitments.

II. Improving General Disciplines

A transparent and fair regulatory system is important for every service sector. Pursuant to GATS Articles XVIII and XIX, general commitments should be sought in three areas: (A) Standard-setting, (B) the Regulatory Application Process, and (C) Judicial, Arbitral, or Administrative Tribunals.

A. Standard-setting

To ensure non-discrimination in standard-setting, negotiators should seek agreement on the following general principles:

1. All new (or revised) regulations should be available for public comment prior to adoption with adequate time for comments by service suppliers operating in (or seeking to operate in) the national market.

2. To facilitate the notice and comment process, a public hearing should, when necessary and appropriate, be held to receive private sector input regarding proposed regulations.

3. Government agencies should address the comments received from interested parties.

4. New regulations should not be made effective until market participants have a reasonable period of time to become familiar with their contents and to take steps to implement them, except in emergency situations.

5. New regulations should be drafted so that they are clear and understandable.

6. Any hearings by government-sponsored advisory committees should normally be open to the public. When regulators or advisory committees hold private meetings that relate to pending regulatory proposals, a report of the substance of the meeting should be made available promptly to the public.

B. Regulatory Application Process

Negotiators should seek agreement on the following general principles:

1. All current regulations and licensing criteria should be publicly available and accessible in writing and through electronic media so that all market participants have easy access to such material. License applicants should be provided with a written statement setting out fully and precisely the documents and information the applicant must supply for the purpose of obtaining authorization.

2. Regulators should establish a mechanism to respond to inquiries on rules and regulations from service suppliers. Enquiry points for the public should be provided.

3. Regulatory interpretations and the grants of regulatory exemptions should be made available to the public on a prompt basis (subject to business confidential rules).

4. When an examination is required for the licensing of an individual, regulators should schedule such examinations at reasonably frequent intervals. Examinations should be open to all eligible applicants, including foreign applicants.

5. Actions on any application for a license should be taken within a reasonable period of time. Licenses should enter into force immediately upon being granted.

6. No service supplier should be denied a license, and no new service should be prohibited, on the basis of any factor not identified in the published written regulations or interpretations.

7. When an application for a license or other regulatory status is denied, regulators should provide a detailed explanation for that action, including the particular requirements that were not satisfied. Applicants should be given the opportunity to resubmit applications or to file additional or supplementary material.

8. Fees charged in connection with licenses should be fair and reasonable and not act to unreasonably limit licensing requests or the introduction of new products and services.

9. Confidential information provided by an applicant should not generally be disclosed. Disclosure of such information should occur only in accordance with established rules permitting public disclosure.

C. Judicial, Arbitral, or Administrative Tribunals

Negotiators should seek agreement on the following general principles:

1. Service providers should have an opportunity to file a complaint about inconsistent enforcement between foreign and domestic providers.

2. Service providers should have an opportunity to file a complaint about arbitrary regulatory action against those who give comments in regulatory hearings.

3. Applicants should have an opportunity to file a complaint in the event that a license application is refused review or a decision is delayed by the relevant authority.

4. Applicants should have an opportunity to file an appeal in the event that a license application is denied. Appeals should be decided within a reasonable period of time.

5. In any regulatory enforcement proceeding, the service supplier should be notified in a timely manner about the proceeding and should be given an opportunity to be heard and to submit documentary evidence. Subjects of regulatory proceedings should have

the right to legal counsel of their choice. The subjects of regulatory proceedings should be permitted access to evidence.

6. The burden of proof to demonstrate that a licensed market participant has not conducted its business in accordance with the relevant law should lie with the regulatory authorities.

7. Disciplinary actions should not be taken on violations of regulatory standards that were not in effect at the time the relevant activity took place.

8. Sanctions by a regulatory authority should not be imposed in an unfair or discriminatory manner. Regulators should treat similarly situated persons and entities in a similar manner.

9. The subjects of any regulatory enforcement proceeding should have an opportunity to appeal any enforcement finding or sanction imposed.

III. Special Sectoral Disciplines

Every regulated service sector has unique features that may require different rules regarding a transparent and fair regulatory system, including broader regulatory reform as necessary and appropriate. Such special rules should be provided for in future GATS sectoral agreements or in sectoral schedules. This was the approach used in the GATS Annex on Telecommunications and the Basic Telecommunications Reference Paper.

At present, it is recognized that the securities and insurance industries will need special rules. Papers from the Securities Industry Association and the insurance industry, for example, identify such special rules in the case of those sectors. (see Section VIII for SIA paper)

Other industries may request some special rules, and new services that develop in the future may also necessitate special rules. The GATS Council therefore should recognize these requirements and the dynamic nature of new industries by establishing a negotiating framework that has the flexibility to accommodate the unique nature of individual service sectors.

D. ELECTRONIC COMMERCE

Creating a global environment that spurs the growth of electronic commerce should be an important objective for U.S. trade negotiators in the current round of services negotiations in the World Trade Organization.

This goal can be achieved by agreeing on rules that support the maintenance of open markets for electronic commerce; by securing in the GATS negotiations, scheduled commitments across all sectors and modes of supply; and by obtaining specific GATS commitments to market access and national treatment in those services essential in the value chain of e-commerce business to business and business to consumer transactions.

I. Rules to Support Open E-Commerce Markets

The WTO should seek to promote an open commercial environment for electronic commerce and prevent the development of new barriers. This effort was begun in the WTO's Electronic Commerce Work Program launched in 1998, and should be renewed and advanced.

The renewed WTO Electronic Commerce Work Program should focus on securing consensus on:

- a standstill commitment not to impose new restrictions during the course of negotiations that affect e-commerce,
- a commitment to avoid the creation of any unnecessary barriers to e-commerce, and to ensure that where regulations are necessary, they are least trade restrictive as possible,
- a commitment to transparency in the application, modification, or creation of any regulations affecting e-commerce, and
- an extension of the practice of not imposing customs duties on electronic transmissions.

The work program should also be used as a vehicle for discussing the benefits of e-commerce and market liberalization as well as the trade and regulatory environment needed to realize these benefits.

In addition, the US government is urged to stand firm in its view that all currently scheduled cross-border commitments apply to services delivered electronically including electronic delivery via the Internet.

II. Scheduled Commitments to Trade Liberalization to Promote E-Commerce

The liberalization of trade in services will expand the e-commerce marketplace and in turn drive substantial new investment in the modernization of essential infrastructures. It may also impel changes in regulatory environments to facilitate this expanded economic activity. Two types of services liberalization should be pursued to maximize growth in e-commerce.

First, to expand cross-border trade in services, Members should adopt an approach through which a critical mass of countries would assume unrestricted commitments for all services that

use electronic commerce. Such commitments would of course be subject to existing GATS exceptions. The movement of natural persons with information technology skills is also related to the continued growth of electronic commerce. WTO member countries should be encouraged to increase commitments and eliminate exceptions to the movement of personnel.

Second, to secure further liberalization of services that are deemed essential to the "infrastructure" needed to facilitate e-commerce transactions, Members should make unrestricted commitments in a value chain of services that might include for example, advertising, business, computer related, telecommunications, distribution, financial, and express delivery services.

E. GOVERNMENT PROCUREMENT

Governments spend billions of dollars on procurement of services. In many countries this procurement is conducted in closed processes that work against foreign suppliers. Efforts have been made in the WTO to achieve agreement on transparency measures so that all WTO members can commit themselves to transparent procedures without making new commitments to market access and national treatment. Efforts have also been made to simplify the existing Agreement on Government Procurement, which has 27 signatories, including the U.S., to increase its adoption by member countries. The core of this document would remain a commitment to permit foreign bidders to receive national treatment as they compete for government awards. The emphasis on obtaining transparency in procurement processes is an important first step. We realize the difficulty on securing agreement beyond transparency to a cross-cutting rule of national treatment for all service sectors. This might mean that progress can be made by sector.

The goal is worth working for. Governments and taxpayers should able to realize the substantial economic benefits of obtaining services globally at least cost. This could as well dramatically improve the services which governments provide to their citizens.

F. MOBILITY OF BUSINESS PERSONNEL

Introduction

The temporary movement of key business personnel should be discussed, as a matter of priority, by WTO Member Countries as part of the services negotiations.

With the objective of reducing government measures which impede or restrict the temporary movement of key business personnel among WTO Member Countries, we recommend that agreement should be sought on the following:

- *common definitions of key business personnel* – to remove from scheduled commitments uncertain and inconsistent terms thereby reducing the scope for arbitrary and discriminatory application of the rules and procedures by relevant authorities
- *transparent procedures* – to facilitate compliance with necessary requirements for obtaining permission for entry
- *common terms for intra-company transfers* – to remove uncertainty and arbitrary restrictions on the movement of categories of personnel under intra-company transfers
- *provision of expedited procedures for short-term movement of personnel* – to reduce the delays (and costs) involved in arranging assignments in host countries of less than 12 months

Our attention is focused on the *temporary* movement of key business personnel. We accept that the GATS does not apply to measures affecting immigration or employment on a permanent basis.[1]

We hope that the views expressed in this paper will help to contribute to discussions that need to begin, by the developed as well as less developed Member Countries of the WTO, to achieve more predictable, harmonized and transparent arrangements for the movement of key business personnel under the GATS.

Growing significance of international mobility

Evidence of the growing incidence of the international mobility of business personnel is not hard to find. A recent survey by PricewaterhouseCoopers[2] of 271 leading, cross-sector organizations reveals that conducting business on a global basis requires an increasingly mobile workforce, a majority of whom experience short-term assignments.

Ability to perform contract work for clients abroad

It is also essential to address barriers associated with the temporary entry of professionals who are fulfilling a contract between two companies that does not involve the intra-corporate transfer of resources. This would address numerous situations in the market where the presence of professionals of a company from outside the host country is necessary in order to fulfill the terms of the contract. The same issues of transparency and timeliness are at stake in these situations, where in too many instances, the process of granting visas and work permits is so slow it makes it impossible to fulfill the work within the prescribed time periods.

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[1] See GATS Annex on Movement of Natural Persons Supplying Services under the Agreement, para 2. For this reason, we accept that the GATS is not an appropriate mechanism for addressing restrictions on family members (which is often a significant barrier in practice to the movement of personnel in relation to longer-term transfers, assignments or secondments) and which is likely to be considered more fruitfully on a bilateral basis.

[2] *International Assignments: European Policy and Practice 1999/ 2000* (1999).

Benefits of greater international mobility of labor

The benefits that can be obtained from greater mobility of personnel are not confined to developed countries. Depending on various factors (including the regulatory frameworks of home and recipient countries), the transfer of specialist knowledge, expertise and skills that typically accompanies the movement of key business personnel can bring important benefits for developing countries (as well as countries whose economies are in transition). The temporary movement of such personnel is one of the main areas in which developing countries can exploit their comparative advantage, for example for qualified professionals such as doctors and software programmers working on temporary contracts in developed countries. For developing countries, despite the temporary loss of skilled resources, offsetting gains can be expected to accrue from the enhanced experience and skills obtained while working temporarily abroad. In addition there are opportunities for home countries to promote specialization and develop economies of scale and scope of services.

Barriers to the movement of people

The need for an increasingly mobile workforce is presenting businesses (increasingly operating with new models, involving cross-border joint ventures and strategic alliances) as well as governments with growing challenges. While commercial activity operates in an environment that is becoming borderless, government measures that regulate the movement of business personnel across borders are failing to keep pace with the international market dynamic. Whether facilitating a business visit, an international assignment or an intra-company transfer, businesses face a variety of hurdles that act as significant non-tariff barriers to competitiveness. These include:

- complex, cumbersome and time-consuming procedures to obtain work permits and visas

- quantitative and qualitative restrictions, such as Economic Needs Tests (ENTs) and local market tests, the criteria for which may be unclear and subject to arbitrary interpretation; such restrictions (like the cap on H-1B visas in the US) frequently apply the same set of rules and procedures to permanent as well as temporary transfers.

- restrictions on the movement of foreign workers once in a recipient country (for example, restricting movement between client sites and restrictions on extensions of stay)

Mobility of persons and the GATS: limited progress to date

Despite some welcome initiatives, efforts to reduce barriers to the mobility of people on a multilateral basis under the GATS have proceeded very slowly. Following the extended negotiations in this area that were completed in June 1995, only a relatively small number of Member Countries made commitments regarding the movement of persons under Mode 4 with

regard to Market Access (Article XVI), National Treatment (Article XII) or for additional commitments (Article XVIII). Commitments made to date, by both developed and developing countries, have been:

- uneven in coverage by sector (many countries have not scheduled accounting, legal or health services)

- subject to conditional limitations (usually relating to functional or hierarchical criteria, length of stay, labor market and ENTs), with unclear or inconsistent criteria, and often not related to *temporary* movement

- expressed in terms that are neither clear nor consistent (despite scheduling guidelines, there is no uniformity of definition for types and categories of personnel), leading to arbitrary and discriminatory treatment by immigration and consular officials)

In short there is a need to introduce clarity, objectivity and transparency into the GATS commitments regarding the movement of personnel.

How to improve the mobility of personnel under the GATS

In order to improve the effectiveness of *existing* commitments and provide a stimulus for further liberalization, we propose the following:

- ***Develop a minimum set of Mode 4 requirements which could be applied both horizontally and sectorally***. These requirements – which could be specified in a model template schedule containing market access commitments and international trade principles with reference to existing GATS provisions concerning necessity, transparency and equivalence related to the *temporary* movement of natural persons. The principles would govern such matters as minimum durations of stay and circumstances in which ENTs could be justified.

- ***Create Mode 4 horizontal commitments to align with agreed principles***. Existing horizontal commitments should be reviewed to determine whether they are sufficiently detailed and specific; and reformulated as appropriate to align with the model template.

    - To facilitate the *temporary* movement of defined categories of personnel, ***an expedited procedure - a "GATS Permit" - should be developed for intra-corporate transfers*** wishing to move such personnel to another country for less than 12 months.

- There should be a similar undertaking for allowing commitments to be made for the temporary ***movement of employees of a business engaged in contract services.***

- A new category of ***"intra-corporate transfer for training and career development"*** should be created; this would benefit countries by increasing the knowledge, skills and experience of their workforces.

Conclusion and recommendations

The costs of improving the existing GATS framework to provide clarity and consistency of treatment would be very low compared with the benefits of liberalization in terms of the ability to move business people to locations where they can be most productive for a specific period, encouraging knowledge share and development, stimulating innovation and enhancing international competitiveness.

We do not underestimate the difficulties of liberalizing barriers to the movement of persons under the GATS. The understandably defensive interests of WTO Member Countries' immigration and labor market officials, coupled with the complexity and opacity of the GATS itself, however need to be balanced against the needs of a global market place which requires an internationally mobile workforce. These developments call for an internationally coordinated response from governments. The WTO Council on Trade in Services' Committee on Specific Commitments should focus attention on the movement of natural persons and possible improvements that could be made under the GATS. The Committee could take into account whether and to what extent related questions such as scheduling, classification, and domestic regulation need to be examined in liberalizing barriers to the movement of people. The Committee could also consider arrangements to monitor and track the operation of any revised schemes.

G. SAFEGUARDS

Article X of the GATS calls for multilateral negotiations on the question of emergency safeguard measures. On first consideration it might seem appropriate that there should be for trade in services a safeguard provision as there is for trade in goods. On closer consideration, however, a number of conceptual and practical problems arise, stemming from the fundamental distinctions between trade in tangibles (goods) and trade in services. First and foremost of these is that trade in goods can be and is fairly accurately measured, whereas the quantity of trade in services is at best estimated and even then is estimated by only a few countries.

The question of safeguards is however an important one, if only because a number of countries consider it to be, and understandably expect that their concern for a safeguard provision for

services is considered carefully. These countries have pressed in the Working Party on GATS Rules for completion of an agreement by December 15. But even the strongest proponents of a safeguards regime do not believe this deadline can be met.

The rule for safeguards in goods is that imports that "cause or threaten to cause serious injury" may be 'safeguarded' against by remedies that include vitiating bindings of tariffs. Compensation must be paid to the country whose trade is affected. Even in goods, where there can be some objective measure of import surges and the threat of injury to a domestic industry as a result of imports, safeguards have been the object of widespread abuse by all countries.

In services these problems are magnified many times. If it is virtually impossible to objectively determine flows of imports, how can a causal link be established between those imports and injury to a domestic industry? If such a causal link can be established, or is presumed, what is the remedy? Since most services "imports" result from the commercial presence of the foreign provider, the first line of action to constrain imports would have to be taken against the foreign provider. Would this action require disestablishment? Would it require freezing the foreign provider's business activities, curtailing its ability to expand its operations?

Recommendations

These sorts of issues explain why we are very concerned about the safeguards issue.
On the "desirability" question, we urge US negotiators to explore at great length with the proponents of safeguards the possible effects of such a rule on their own development goals. Would not the existence of such a safeguards regime act to discourage foreign investment in critical services infrastructures like financial services or telecommunications or transportation, thus retarding the development of the same countries that argue for it?

On the "feasibility" question, we ask US negotiators to determine if a safeguard is at all feasible for services in view of the absence of any credible, disaggregated data in these sectors. If the conclusion is negative, we ask US negotiators to determine if there are any workable alternatives to a services safeguard that might form a credible substitute for the more traditional form of emergency safeguard.

II. AIR CARGO SERVICES

A. SECTOR STATUS

Air transport is one of the world's fastest growing industries, making a vital contribution to the development of travel and tourism, both of which are major factors for national economies. Although "air transport" primarily conjures up images of passengers travelling, the majority of commercial aircraft are carrying cargo in some form or other. While in terms of weight, only 2% of all cargo moves by air worldwide, the OECD estimates that air freight transport now accounts for well over a third of the value of the world trade in merchandise. Air cargo is an indicator of wider economic trends, often showing the way into and out of recession. Although time-definite services were the exclusive domain of integrated carriers in the past, all carriers of freight are now forced by the market to offer at least some such services. Boeing anticipates that long-term air cargo growth will average 6.6% per year while the world economy pushes ahead at 3%.

This new breed of air cargo services plays a crucial role in ensuring US businesses' ability to attain and maintain global competitiveness by enabling them to streamline their supply chains leading to reduced delivery lead-times, faster responses to market needs (including after-sales service), reduced stockholding and savings in warehousing. Using air cargo services, manufacturers can acquire components and materials in the best value markets, locate facilities where labor and skills are available at competitive rates and market their products globally. In short, no sector today can do without just-in-time delivery, advanced logistics and door-to-door time-definite services, all of which depend on reliable transportation/cargo services.

B. CLASSIFICATION

The existing classification is adequate as it allows a clear differentiation between passenger and cargo services. CSI favors separating out air cargo under the Aviation Annex of the GATS, as passenger issues are likely to be more politically sensitive.

C. BARRIERS

The bilateral air services agreements that currently govern the provision of commercial air transport between the US and other countries – even those that follow the "Open Skies" approach – have become particularly inadequate for air cargo services due to the globalization of the manufacturing process and the need to offer integrated transportation services. Restrictions on market access (including cabotage), ownership and control, frequencies, intermodal operations in connection with air services, wet leasing, customs, groundhandling, the environment in particular local airport access times, and other barriers to the effective conduct of business all limit the ability of cargo carriers to plan their operations purely on the basis of commercial and operational considerations.

D. NEGOTIATING OBJECTIVES

In light of the above, the Coalition of Service Industries takes the view that air cargo services require a new vision, as a consequence of the fundamental changes and of the growing importance of the sector over the last 20 years. Recent developments such as the International Chamber of Commerce policy statement on air cargo and the WTO (Document n° 322-3/5 Rev.3), the OECD report on Regulatory reform in international air cargo transportation, the European Commission's ambition to put air cargo on the GATS/WTO agenda and the work undertaken by the Air Cargo Group of Working group I of the Transatlantic Business Dialogue show that the issue of air cargo deregulation is gaining momentum. This momentum should be built upon in order to create the genuine marketplace for air cargo services that a mature global economy requires.

CSI supports the work undertaken by the Air Cargo Services Sector of Working Group I of the Transatlantic Business Dialogue, which aims at the creation of a comprehensive liberal transatlantic aviation treaty for air cargo services between the EU and the US. An agreement between the two major trading partners is likely to set in motion the much needed liberalization of air cargo services on a worldwide basis.

CSI also firmly advocates further inclusion of air cargo services within the GATS. The WTO framework could provide cargo carriers with clear non-discriminatory rules on market access, frequencies, capacity, ancillary services and could address the vexing questions of ownership and control, cabotage and the ability to conduct business effectively. This would result in enhanced delivery options to the benefit of businesses, shippers and consumers worldwide. However, particular attention will have to be paid to the application of the MFN principle in this sector, in order to ensure that advantages granted are reciprocated. Particular attention must be paid to ensuring that there is a sufficient number of countries that agree to liberalize and, conversely, that there is no "free rider" problem. In that respect, the International Chamber of Commerce policy statement on air cargo and the WTO provides useful indications of how the MFN principle could be applied with regard to hard rights.

III. DISTRIBUTION SERVICES

A. SECTOR STATUS

The U.S. retail industry, represented by its trade association, the National Retail Federation (NRF), strongly supports negotiations at the World Trade Organization (WTO) to further liberalize trade in distribution services. A growing number of U.S. retailers recognize that there are many attractive business opportunities outside the United States. Many foreign countries have a growing middle class that increasingly demands the quality of service and broad selection of products that U.S. retailers can offer at competitive prices. At the same time, many of these countries have comparatively few retail outlets per capita.

Retail opportunities abound even in mature markets where one increasingly sees the business signs of familiar U.S. stores in many downtown and suburban shopping areas. Notwithstanding the current global economic situation, U.S. department, specialty, discount, and mass merchandise retail companies have opened stores abroad and are looking to expand their foreign operations to meet this growing consumer demand outside the United States.

In the Uruguay Round General Agreement on Trade and Services (GATS), a number of countries agreed to include commitments in their GATS schedules to bind at least some part of trade in distribution services under the rules of the WTO. These countries include our largest trading partners –- Canada, Mexico, the European Union, and Japan. Among the general categories included under distribution services:

- 33 countries scheduled commitments on retail services.
- 34 countries scheduled commitments on wholesale services.
- 23 countries scheduled commitments on franchising.
- 21 countries scheduled commitments on commercial agents.
- 2 countries scheduled under "other" distribution services.

However, in many instances, these scheduled concessions were rather modest and included broad exceptions.

B. CLASSIFICATION

The WTO Services Sectoral Classification List defines "distribution services" as encompassing retailing, wholesaling, franchising, and commission agents. This definition is, however, quite broad and somewhat vague. Therefore, negotiations at the WTO in this sector must take into consideration the entire network of activities that are necessary to support retail and other distribution services operations. For example, in the negotiations between the United States

and China on China's accession to the WTO, the area of distribution services covers all activities that support retail and other distribution services operation, from the port of entry to the store, and ultimately to the customer – e.g., customs clearance, storage and warehousing services; road, rail, water, and air transportation services; marketing; after-sales services and customer support; control of distribution networks and wholesale outlets; and protection of retail trademarks. It is necessary to recognize that barriers in any of these areas will disrupt the efficient operation of the distribution chain and, in order to support successful retail and other distribution services operations, barriers in all areas supporting distribution services operations must be addressed in some manner.

C. BARRIERS

In many countries, opportunities for U.S. retailers and other providers of distribution services to establish and maintain and commercial presence are limited by various laws, regulations, and policies. Some countries have protected their small stores from competition by limiting the size of retail establishments and placing arbitrary and onerous restrictions on where they may locate, prices they may charge, and how they may promote products. Restrictions imposed by countries to protect so-called "cultural industries" have significantly hindered the establishment of retail operations by large U.S. booksellers. U.S. direct sellers and other retail companies have been severely hampered in establishing and/or expanding business operations in countries as a result of local sourcing requirements, and tight limitations over ownership and control of distribution systems. Restrictions on investment, limitations on foreign ownership, restrictions on opening hours, constraints on the types of products that may be sold to protect local monopolies, lack of adequate protection for retail trademarks, and the non-transparent and arbitrary application of commercial laws and regulations are further examples of barriers facing U.S. retailers. In addition, some countries have undermined the value of commitments they have already scheduled at the WTO on distribution services by including broad exceptions permitting restrictions to be imposed under a vague "economic needs test."

It is also important to note that tariff and nontariff barriers to consumer goods imports, both in the United States and in other countries, increase the costs retailers and others face in getting goods into a country and onto store shelves. It is very important, therefore, that future WTO trade negotiations put these tariffs and nontariff barriers on the table. It is in U.S. retailer, wholesaler and distributor interests that import barriers generally be lowered, so that stores abroad can be better stocked with U.S.-made goods. It is equally important – and beneficial to the United States generally – that U.S. tariffs on consumer goods be lowered as well. A new round of multilateral talks provides a golden opportunity to realize these benefits.

The reduction of barriers to trade in distribution services warrants greater attention through specific sectoral negotiations at the WTO for several reasons. Since trade in distribution services includes wholesaling, retailing, and franchising, this sector represents the last link in

the trade chain to the consumer and is, therefore, essential to a well-functioning free and open trading regime. Larger retail establishments are more likely to sell imported along with domestically-made products. Moreover, market access is only meaningful if goods can be effectively distributed at the retail level.

D. NEGOTIATING OBJECTIVES

The U.S. retail industry strongly urges U.S. negotiators to seek the elimination of foreign restrictions to trade in distribution services. Once negotiations are underway, the United States should focus generally on:

- Obtaining commitments from as many countries as possible to bind the distribution services sector in their GATS schedules.

- Limiting as much as possible the number of exceptions taken by countries in their schedule of commitments on distribution services.

- Persuading countries to refrain from general, open-ended exceptions in their schedule of commitments on distribution services.

- Broadening and deepening the commitments from countries that have already included distribution services in their GATS schedules.

- Obtaining commitments that allow for full market access for distribution services under the principle of national treatment, rather than merely enshrining the current status quo.

E. ECONOMIC IMPACT

In order to achieve the goals listed above, U.S. negotiators should emphasize the economic and employment benefits that other countries would realize by opening up and liberalizing their distribution services sector. For example, the United States has no significant restrictions on retail services. Nearly one in five American workers is employed in retail jobs that are well-paying and require a marketable set of skills. Moreover, the U.S. retail industry registered sales receipts in 1999 of $3 trillion and economic activity in the sector has a significant multiplier effect throughout the U.S. economy. Thus, the retail sector alone adds substantially to U.S. Gross Domestic Product (GDP), economic growth, higher employment, and lower inflation. In addition, the ability of the U.S. retailers to provide American consumers with a wide variety of reasonably priced products is a substantial contributor to a high standard of living in the United States.

U.S. negotiators should impress on their foreign counterparts that, as in the United States, an open and thriving retail industry and distribution services sector generally will be an important factor in improving the standard of living of their citizens, expanding economic activity and growth, and developing a modern consumer society. Those benefits should not be taken lightly. When U.S. retailers establish commercial operations in a foreign country, those operations:

- Provide much needed local investment.

- Create jobs for many local people, not only in the retail establishment itself, but also in the warehouses, and transportation and advertising services that support those operations.

- Allow local workers to develop business expertise and a better understanding about proper business practices in the services sector.

- Provide local consumers with a better selection of goods at lower prices that will help improve the quality of their lives.

- Make their country's retail sector and the economy as a whole more efficient.

IV. EDUCATION AND TRAINING SERVICES

A. SECTOR STATUS

Developments in the global economy, including an unprecedented demand for lifelong learning, advancements in technology, and the proliferation of trade agreements continue to facilitate the global expansion of higher education and training, whether delivered electronically or through physically based campuses and training sites, or across national borders. The crucial role that education and training play in fostering economic growth and reducing inequality is well recognized. The World Trade Organization's *Education Services* report (1998) highlights the direct relationship between the level of education and vulnerability to unemployment that has been identified in many countries. The report points to Germany, Spain, France and the United Kingdom as examples of countries where the unemployment rate of people not continuing past the first level of secondary education has been found to be significantly higher than for those participating in some form of higher education.

Also according to the WTO report, by 1995 the global market for higher education was estimated at US $27 billion. In 1997, U.S. education and training services totaled more than $8.5 billion and ranked among the country's top five services exports (ITA, U.S. Department of Commerce), placing the U.S. among the top three higher education exporters worldwide.[3] These activities of the sector are increasingly important at the international level, and it is clear that the numbers would be significant.

Furthermore, we are witnessing a rapid increase in the use of "e-training and education" (delivered by means including video, CD-ROM, Internet and Intranet and other computer-based technologies). The emergence of electronic commerce has led to the development of additional education service products, such as Internet publishing and distance education through the Internet.

Notwithstanding the increasing importance of the Internet and other technologies to this sector, physically based facilities in host countries still represent the fastest growing sub-sector of international education services, as reported by the Quality Assurance Agency for Higher Education/United Kingdom, the Australian Vice-Chancellors' Committee, and the Committee of Regional Accrediting Commissions/USA. Work-related training also continues to be delivered primarily in on-site, classroom-based formats, although the availability of technology for delivery is causing expansion in the markets for training in developing countries.

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[3] It is important when examining this figure to note that it reflects expenditures by *incoming* foreign students, which are regarded as export receipts in the balance of payments data. Education and training programs and services are not generally reflected in balance of payments data.

Higher education and training take on numerous forms when exported, and a classification system that better represents the increasingly diverse global market for education and training is needed. Following are some examples of frequent forms of transnational education and training:

- *Branch Campuses*: campuses set up by an institution in another country to provide its educational programs to foreign students.

- *Franchises*: an institution (A) approves an institution (B) in another country to provide one or more of A's programs to students in B's country.

- *Articulation*: the systematic recognition by an institution (A) of specified study at an institution (B) in another country as partial credit towards a program at institution A.

- *Twinning*: agreements between institutions in different countries to offer joint programs.

- *Corporate Training:* Global companies train their employees in each country in which there are operations, provided either "internally" by corporate training staff or externally, in conjunction with foreign and local training providers or universities.

- *Organizations that sell materials, curriculum and training services, including training for the increasingly prevalent industry and vendor certifications in information technology*. This category is expanding rapidly with the availability "e-learning".

- *Distance Education Programs:* those programs that are delivered - through satellites, computers, correspondence, or other technological means - across national boundaries.

- *Study Abroad*: students from country (A) go to country (B) to live and study at an institution in country (B).

B. CLASSIFICATION

The World Trade Organization's *Education Services* report correctly notes:

> "Education services are commonly defined by reference to four categories: Primary Education Services; Secondary Education Services; Higher (Tertiary) Education Services; and Adult Education. While these categories are based on the traditional structure of the sector, rapid changes taking place in the area of Higher Education - which normally refers to post-secondary education at sub-degree and university degree levels - may be significantly affecting the scope and concept of education."(WTO 1998)

The third and fourth categories - higher education and adult education -- are of most interest to U.S. entities providing education and training services, although some types of education (e.g. languages) can be taught at all levels.

While "Adult Education" traditionally has encompassed "training", we would argue that changes in the global economy resulting from technology suggest the need for a separate classification for "training". This would be defined as "learning related to work that does not lead to a post-secondary education degree. Training, in this definition, includes employer-provided training for an employee's assigned work; training for work-related certification such as information technology certificates, skills training, and management and supervisory training provided by training supplier companies."

We strongly encourage USTR to review these classifications in dialogue with the sector. It is important that training be included in this sector, as well as academic and educational testing services. Also, USTR may wish to consider the contents of a fifth category, such as the U.N. Central Product Classification's "Other" category.

C. BARRIERS

National legislation and policy serve as inhibitors to foreign education providers, as they are often unable to obtain the national licenses necessary to be recognized as degree granting institutions. "Needs tests" are also used by governments to block the entry of a foreign institution, as often times governments claim to have conducted tests which lead them to conclude that the need for education services is met, thus eliminating the need for other (foreign) providers. In addition, national legislation and policy in many countries recognize higher education as a product of the state and not a proprietary function. Imported educational services, even if provided by another country's state system, are thus forced to register as private businesses. This generates a negative reaction from potential users, many of whom maintain the tradition that higher education is in the public good, and in many countries, should not even be paid for by the student (tuition-free systems). In many cases, students

attending such institutions are not afforded benefits enjoyed by students attending national institutions such as student transportation passes and financial assistance.

In addition to not qualifying for benefits, students also face difficulties in getting credit for degrees obtained from foreign universities. Qualifications authorities in some countries have difficulty recognizing foreign educational credentials, whether received inside the country or out, as viable for positions such as those in the civil service.

Furthermore, the absence of transparency constitutes a barrier. Providers of education and training services often do not know what regulations exist and who the appropriate regulatory authorities are in host countries.

Other common barriers include customs regulations that limit the movement of education and training materials across borders. For example, medical and health related educators report that some of their materials that show the naked human body in part or in whole are restricted from entry into countries with fundamentalist religious beliefs. In some cases, the flow of educational content is also inhibited by telecommunications laws restricting the use of national satellites and receiving dishes to national entities.

Existing barriers also limit the movement of persons, such as visas that are unnecessarily difficult or impossible for students, teachers, trainers, and administrative staff to obtain. In some countries, the acquisition of visas and work permits for teaching and administrative staff is tied to national politics related to imported education. Visas may also pose problems for third country learners (students from country C attending a university from country A with an educational program in country B).

Foreign currency controls also pose problems for education and training entities wishing to establish themselves in other countries, with measures limiting direct investment by foreign providers (equity ceilings). Finally, countries disregarding international agreements concerning intellectual property rights may also deter providers from bringing their materials across their borders. The issues of intellectual property rights are intensified with the proliferation of distance education and training, as educational institutions, training providers and content moves to online formats that are much more vulnerable than traditional formats.

D. NEGOTIATING OBJECTIVES

U.S. higher education and training seeks only to supplement, and not to replace, education and training services already being provided for by the host country. Nevertheless, U.S. negotiators should approach trade negotiations in the education and training sector with an emphasis on ACCESS. Emphasizing the important role that access to quality education and training for all people plays in the process of economic development will help all countries,

including those in the developing world, see the advantages to further opening markets to education and training services.

We urge the USTR to set the following negotiating objectives:

- U.S. higher education and training should be provided the opportunity to establish a commercial presence in a host country.

- U.S higher education and training should have the opportunity to provide and distribute their services on a cross border basis, such as by means of technologies including video, CD-ROM, Internet and Intranet.

- Foreign students and professionals should have the right to have access to U.S. education and training within their own national boundaries.

- U.S. education and training services providers should have the ability to provide their services through the temporary movement of natural persons.

- U.S. degree granting institutions of higher education should be recognized at the appropriate level by foreign ministries and or other national quality assurance bodies. In many cases, institutions are forced to warn students that, should they pursue a degree with their institution, their degree may not be recognized for future government employment, nor will it be recognized by graduate programs in their home country. Recognition is the largest concern for both physically based and virtual programs.

- International agreements that protect the intellectual property rights of the U.S. training industry need to be enforced.

- Customs regulations on U.S. training industry materials need to be reduced to ensure that they can move freely to locations around the world.

- Currency regulations, which impose additional taxes on revenues and minimum requirements for capital investment by wholly owned foreign firms, should be relaxed.

V. ENERGY SERVICES

A. SECTOR STATUS

All nations and all forms of economic activity – developed or developing economy; agriculture, manufacturing, or services company – depend on clean, reliable, efficiently produced, and reasonably priced energy. Demand for energy continues to grow. According to the U.S. Department of Energy, global energy consumption is projected to rise by 60 percent over the next 20 years. Almost two-thirds of the increase in demand is projected to occur in developing countries.[4]

A thriving energy sector – including energy services – is today a basic element of economic well-being. There is a high correlation between rising energy usage and economic growth, increased life expectancy, and higher standards of living. Moreover, modern energy services mean that we can develop energy resources in an environmentally sound manner and in ways that promote responsible and efficient development and usage of energy resources.

There is today no internationally agreed definition or classification of energy services. Yet for those companies active in the sector, there is wide agreement about the types of activities that comprise energy services. As a working definition of energy services, the Energy Services Coalition[5] has adopted the following:

> Energy services are those services that comprise or are related to the exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption, management and efficiency of energy, energy products and fuels.

The reasoning behind the definition is simple – energy services comprise a closely related set of activities that begins with the process of locating and developing energy resources, through their production and provision to final consumers, to cleanup and decommissioning, to activities in every stage to promote the development and usage of clean and energy efficient technologies.

B. CLASSIFICATION

Energy services do not have a discrete classification under the current WTO Sectoral Classification List (W/120). When the W/120 was developed and the GATS negotiated, energy services largely were omitted from the negotiations. At the time, the energy sector

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[4] International Energy Outlook 2000, Energy Information Agency, U.S. Department of Energy.
[5] A group of 52 companies and trade associations whose goal is to promote energy services trade liberalization.

largely was dominated by state-owned monopolies operating within national (or even subnational) markets. Whether public or private, oil and gas companies and power generating utilities performed most of their own services internally.

W/120 does contain for three classifications that specifically provide for limited elements of the energy services sector, including:

- Services incidental to mining;
- Services incidental to energy distribution; and
- Pipeline transport.

However, these classifications are narrowly defined and do not cover the breadth of energy services activities, including those related to energy development, production, energy networks, and wholesale and retail activities. While some activities related to energy services may be covered under existing, non-energy specific classifications – design, engineering and construction of generating facilities, for example – it simply is not clear where the full range of energy services activities falls within the GATS classification system or even if the system provides for all of these activities.

Because most countries make market access commitments on the basis of the W/120 classification list, it is imperative that work be done to ensure that the full array of commercial activities by energy services providers be covered by that list. Any classification also should be sufficiently flexible so as to encompass new energy services activities and technologies as they arise.

C. BARRIERS

Energy services providers face a variety of barriers that fall within two key categories – limits on market access and restrictive or discriminatory regulatory systems.

Market access restrictions are similar to those faced by many services providers and include lack of a right of establishment, an inability to provide cross-border service, barriers to entering needed personnel and equipment, restrictive procurement practices, among others.

But just as important – or in some cases even more important – are regulatory frameworks that are opaque, discriminatory, arbitrary, or simply confusing. Without a regulatory network that provides a basis for fair competition, energy services companies often are at a disadvantage to one favored competitor.

Both market access and regulatory issues therefore must be addressed in the services negotiations. Market access commitments may well be meaningless without regulatory reform, and its does little good to create a pro-competitive regulatory environment unless market access restrictions are eliminated. To take but one example, if a country were to make a market access commitment liberalizing the trading and brokering of energy, that commitment would be meaningless unless it also committed to a regulatory environment that ensured fair, nondiscriminatory access to the electricity grid or the pipeline system so that the trader could deliver its product.

D. NEGOTIATING OBJECTIVES

Given the nature of the barriers commonly faced by energy services providers, we believe that the best way to ensure broad, meaningful liberalization in energy services trade would be to negotiate a "model schedule" of market access commitments and a pro-competitive regulatory reference paper.

I. "Model Schedule"/Market Access Commitments

The model schedule of market access commitments would incorporate a new "energy services" classification covering those energy services not already provided for within the GATS classification system as well as activities essential to energy services that already are covered in the system (e.g. construction and engineering services, transportation services, maintenance and repair, etc.). It should incorporate a variety of principles aimed at ensuring the greatest possible market opening for energy services. The maximum removal of barriers to energy services trade will create an environment in which energy services providers can deliver the greatest possible benefits to energy services consumers in terms of cost, investment, transfer of technology, and employment.

The following are principles that we would urge be embodied in market access obligations undertaken by all Members subscribing to an energy services agreement[6]:

- Broadest possible market access commitments: Energy services providers should have the opportunity to provide and distribute their services through all four modes provided under the GATS – cross border supply, consumption/purchase abroad, establishment of a commercial presence, or through the temporary movement of natural persons. Commitments should be made in all four modes, with minimal exceptions, so as to ensure the most efficient means of providing a given energy service.[7]

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[6] Consistent with GATS Articles XIV (General Exceptions) and XIV bis (Security Exceptions).

[7] We recognize that several countries have sensitivities in the energy area, such as ownership of resources. We believe an energy services agreement could be negotiated that would address these nations' concerns in a manner

- Technological neutrality: Technology in energy services continues to evolve at a rapid pace. To ensure that energy services providers can use the best available technology, market access commitments should be made without regards for the technology used to provide energy services.

- Temporary entry of equipment/tools of the trade: Energy services providers often rely on specialized equipment to perform their service. When market access commitments are made in energy services, energy services providers should be allowed to enter, on a temporary, duty-free basis, tools of the trade and equipment essential to the provision of those services.[8]

- Temporary entry of business persons and specialists: Energy services companies employ many people with highly specialized skills and should have the right to the temporary entry of essential personnel necessary to provide a covered service.

- Unrestricted movement of electronic information and transactions: Many energy services today rely on electronic information flows and transactions, including geologic data analysis, trading and brokering, and energy efficiency services. Any negotiation should ensure the free movement of these information exchanges and transactions.

II. Regulatory Framework

Regulation and technical standards play a critical role in energy services. Indeed, regulations and technical requirements often are the key barriers to market entry and growth.

In the negotiations on Basic Telecommunications, WTO members recognized the need for specific disciplines in a highly regulated sector. We believe that a similar approach is required for energy services. Indeed, the prior work in the WTO on telecommunications issues may provide an appropriate basis for crafting a reference paper on energy services. Building on the work done in both the Annex on Telecommunications and the Basic Telecommunications Reference Paper, a reference paper on energy services should ensure the following requirements are applied to both governments and to major suppliers[9] of energy services.

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that could allow them to more effectively develop their resources and create new market opportunities for energy services providers.

[8] We have made this recommendation on the basis that negotiations now are limited to the mandated agenda. Should negotiations on goods commence, we would strongly urge governments to consider eliminating tariffs on energy related goods. While not fully resolving the issues surrounding the need to temporarily enter equipment and tools of the trade, such an initiative could significantly help facilitate such activities and would enhance greatly the costs savings and benefits associated with energy services liberalization.

[9] For purposes of this paper, the terms “major supplier” and “essential facilities” are defined as in the Basic Telecommunications Reference Paper on Regulatory Principles. A major supplier is a supplier that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for an energy service as a result of: (a) control over essential facilities (such as transmission networks); or (b)

- Transparency in the formulation, promulgation and implementation of rules, regulations, and technical standards.

- Fair, non-discriminatory third-party access to and interconnection with energy networks and grids.

- An independent regulatory system separate from and not accountable to any supplier of energy services.

- Fair, objective and timely procedures for the allocation of scare resources, such as transmission capacity and rights of way.

- Disciplines to prevent anti-competitive business practices, including cross-subsidization.

E. CONCLUSION

When the WTO first addressed the services in the Uruguay Round, the energy services sector was in its infancy. The time would not have been ripe to attempt to address this sector and its issues within the context of the GATS.

Today, however, the energy services sector has developed to the point where it can benefit most – and deliver the greatest benefits in return – from a system of global commitments that ensure the broadest possible market access and a pro-competitive regulatory environment. We urge governments to make a firm commitment to broad energy services liberalization in the current WTO services negotiations.

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use of its position in the market. "Essential facilities" means facilities of an energy, energy product, or fuel transmission network or service that are (a) exclusively or predominantly provided by a single or limited number of suppliers; and (b) cannot feasibly be economically or technically substituted in order to provide a service.

VI. ENVIRONMENTAL SERVICES

A. SECTOR STATUS

The provision of environmental services encompasses a broad range of integrated operations from research and design, analytical, and waste management and remediation services to professional engineering and architecture services. Together these provide the public and private sectors with a means to improve industrial production methods throughout the value chain to minimize pollution, and to deliver basic services for clean water, waste treatment, and sanitation. The environmental services sector is growing in developed and developing countries due to the demand for cleaner industrial production and disposal methods.

In international trade, the primary barriers to environmental service delivery are domestic laws and regulations that impede market entry and limit competition for foreign firms. Regulations that constrain a firm to particular forms of commercial presence are an example. Non-transparent government procurement rules and restrictions on professionals' entry into the market through quotas and ambiguous regulations inhibit competition. Advertising restrictions raise marketing costs for foreign providers, and direct subsidies distort the market as well.

The WTO services negotiations offer an opportunity for WTO Members to improve the classification of environmental services, to rationalize government procurement rules, to apply public comment procedures systematically in the development of domestic laws and regulations, and to ensure that professional licensing requirements are clear, transparent and rational. WTO Members can also create a more liberal trading environment by guaranteeing unrestricted market access and national treatment to foreign service providers through their sector specific commitments.

The OECD has estimated that in 1996 the global environment industry including both goods and services represented US $453 billion. Environmental services including solid waste management, hazardous waste management, consulting and environmental engineering (including operations and maintenance), remediation and industrial services, analytical services, and water treatment services represented 50.46% of the total global environment market. That global market is expected to continue to grow due to the demand for technologies that provide cleaner production methods in developed markets and supply basic needs for clean water, waste treatment, and sanitation in developing economies (OECD, 1998). The demand for technologies that help reduce energy consumption and improve the efficiency of energy use is rising. Remediation services that enable the cleanup of hazardous waste, spills, and air from older industrial plants has growing demand. Industry use of the International Organization for Standardization (ISO) 14000 Standards for Environmental Management has also increased demand for environmental services as an integrated component of manufacturing.

In the U.S., small and midsize firms generate over 50% of industry revenues. These firms

increasingly look abroad for new markets as US industry adapts to environmental regulations. In 1997, the US was a net exporter of environmental services. "Solid waste management services and consulting and engineering services accounted for the greater share of US environmental services exports. U.S. exports of environmental services grew at an average annual rate of 15 % during 1994-97. In 1997, Europe had the fastest-growing market for environmental services"[10] followed by Asia/Australia, Latin America, Canada, Middle East, and Africa. East European countries offer a growing market, as East European governments adopt stringent environmental laws. Adoption and implementation of environmental regulations in developed and developing countries, as well as private sector use of international environmental management standards, help drive growth in the industry.

B. CLASSIFICATION

The CPC classification currently in use for environmental services is narrow and does not reflect design and operating realities. The present code lacks identification of those services introduced throughout the production value chain to reduce pollution. The CPC classification uses "point of origin" as a basis for classification, which overlooks environmental services determined by their "point of consumption." The code should be expanded to better reflect environmental engineering and service operations.

Existing Commitments:

Existing GATS commitments in environmental services demonstrate the lack of national bindings in market access and national treatment in the four modes of supply (cross-border, consumption abroad, establishment, and presence of natural persons). Commitments do exist in sewage services, refuse disposal services, sanitation and similar services, and other environmental services including cleaning of exhaust gases, noise abatement, nature and landscape protection, and other environmental protection services. These commitments can best be characterized as scarce and shallow. Only one WTO Member has made full commitments in modes 1,2 and 3 in sewage services. When considering full commitments in modes of supply separately, the number of countries making commitments does not improve significantly.

Full commitments have been made in individual modes of supply with the highest number (15) in consumption abroad in sanitation & similar services. Twenty-seven Members have made partial commitments with numerous exceptions in the provision of environmental services through commercial presence. These exceptions include limitations on sectoral coverage, for example, sub sector restrictions, exclusions for provision to governmental authorities, and exceptions for provision to certain sectors. Market access exceptions in some cases require

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[10] Recent Trends in U.S. Services Trade: 1999 Annual Report Investigation No. 332-345 (Publication 3198 U.S. International Trade Commission, Washington D.C., May 1999) 11-5.

local operating license requirements, impose licensing quotas, and create economic needs tests, local domicile requirements, and ownership restrictions. The majority of WTO Members have made no commitments in environmental services in their national schedules.

To improve the provision of environmental services, WTO Members must make full commitments in all the environmental service categories and remove the limitations they have imposed on providers. The nature of the environmental services industry requires that Members address not only environmental services commitments in the current schedules, but that they expand and remove limitations on their commitments in architectural, engineering, and construction services. National commitments to cross-border trade of architectural, engineering and construction services tend to limit market access and discriminate against foreign service providers. Furthermore, WTO Members should make commitments in their schedules that allow the provision of engineering operations and maintenance as a component of environmental services. WTO Members should also reduce tariffs on equipment used in the design, building, and implementation of environmental services.

C. BARRIERS

US environmental services firms face significant barriers in foreign markets. Domestic laws and regulations that govern components of the environmental services market create barriers to market entry and thus limit competition. To minimize such barriers, WTO Members should subject laws and regulations to public comment procedures to ensure they are as least burdensome as possible and do not create unnecessary obstacles to the provision of environmental services. WTO Members should commit to transparency in regulations.

Regulations that constrain a firm to particular forms of commercial presence can raise costs for environmental service suppliers. Requirements for "majority share" ventures can constrain the flexibility of a non-national firm, and hinder their ability to put together the most effective technical team when bidding for projects. Ownership, incorporation, and geographic regulations raise market entry barriers, and foreign remittance constraints create obstacles to operating locally. Subsidies provided to national environmental services firms, sometimes in the form of linkages with foreign aid, distort the playing field for firms bidding on environmental services projects. WTO Members should rationalize domestic regulations to reduce market barriers and minimize the use of subsidies.

Municipal governments are often the purchasers of environmental services; therefore, the government procurement regulations and the transparency of these regulations have a direct effect on US firms' ability to compete with other international or national firms. Procurement restrictions sometimes prohibit or limit non-national firms' participation in bidding for environmental services projects. Competitive calls to bid many times lack transparency in procedure and announcement. These issues need to be addressed through the formulation of government procurement rules for services or expanded participation in the existing Government Procurement Agreement.

Professional service providers including architects, engineers and operating technicians represent a key link in the provision of integrated environmental services. Restrictions on professionals' entry into a market, the duration of their stay, and nationality impede US firms. Quantitative limits on investment, suppliers, and sales restrict market access. Preferential treatment of domestic suppliers inhibit competition. Local licensing quotas and requirements that are ambiguous or unreasonable limit foreign participation. Negotiations should seek to ensure that licensing requirements are clear, transparent and rational. The US should press for horizontal liberalization in the movement of natural persons to reduce a primary barrier for environmental engineering and service providers.

Limitations on advertising services that restrict foreign providers who manage advertising in newspapers, periodicals and on television stations raise costs for environmental service providers. Regulations favoring domestic suppliers of advertising planning, creating and placement services create market barriers for foreign environmental service providers in foreign markets. WTO Members should eliminate market access and national treatment limitations in their schedules on advertising and broaden and deepen their advertising commitments.

Specific barriers include:

- Prescribed forms of commercial entities
- Ownership restrictions
- Joint venture requirements
- Foreign remittance constraints
- Restrictions on participants in government procurement processes
- Prohibitions on service provision to the public sector
- Exceptions for provision to certain sectors
- Professional licensing quotas
- Ambiguous or unreasonable licensing requirements
- Nationality limitations on professional service providers
- Limitations on advertising, public relations, communications
- The absence of intellectual property protection

D. NEGOTIATING OBJECTIVES

- Rationalize the classification of environmental services to accurately reflect industry operations.

- On a horizontal basis, advance the GATS work on government procurement, domestic regulation, and movement of personnel.

- Advance GATS work in government procurement to guarantee access to the procurement process, eliminate local preferences, and the use of "deposit and performance bonds" to

restrict competition.

- Advance GATS work in domestic regulatory reform to institutionalize public comment and open procedures for formulating and amending regulations, and ensure that regulations are as least burdensome as possible.

- Rationalize professional licensing requirements to ensure that licensing regulations are clear, transparent and rational. Eliminate professional licensing quotas.

- Advance GATS work to reduce subsidies.

- Broaden and deepen the commitments in sewage services, refuse disposal services, sanitation and similar services, and other environmental services with a focus on cross-border, establishment, and movement of natural persons within the GATS.

- Eliminate limitations from national schedules particularly exceptions to establishment such as joint venture, use of nationals, and foreign ownership restrictions.

- Seek expanded commitments and remove exceptions to national schedules in architecture, engineering, and construction services. Seek commitments to ensure that engineering operations and maintenance services are covered.

- Seek full commitments in the provision of advertising services.

VII. EXPRESS DELIVERY SERVICES

A. SECTOR STATUS

ACCA is the trade association representing the air express industry; its members include large firms with global delivery networks, such as DHL Worldwide Express, Federal Express, TNT U.S.A. and United Parcel Service, as well as smaller businesses with strong regional delivery networks, such as Global Mail, Midnite Express and World Distribution Services. Together, our members employ approximately 510,000 American workers. Worldwide, ACCA members have operations in over 200 countries; move more than 25 million packages each day; employ more than 800,000 people; operate 1,200 aircraft; and earn revenues in excess of $50 billion.

As pointed out in ACCA's earlier submission to USTR, express operators provide integrated, door-to-door delivery service for documents and packages, and our customers expect value-added services like time guarantees, electronic information, brokerage services and more. Our customers are not as concerned with how their documents or parcels are moved -- just that they arrive on time. This could be by plane, train, truck, van, automobile, motorcycle, or even gondola. Consequently, a broad spectrum of issues affects our industry, including laws and regulations in the areas of intermodal transportation, air auxiliary services, distribution, warehousing, customs, postal, telecommunications, logistics, brokerage, insurance, and freight forwarding. For this reason, barriers to international trade in our industry can involve trade restrictions and trade distortive measures in any of these pertinent service sectors.

B. CLASSIFICATION

Under the Uruguay Round's Services Sectoral Classification List, express delivery services are currently classified as "courier services" -- a communications service (CPC 7512), along with postal, telecommunications and audiovisual services. While ACCA believes it is appropriate to classify the express industry under the communications service heading, we also believe the "courier services" definition fails to describe the true nature of the express service. In fact, CPC 7512 more properly describes services commonly referred to as "messenger." In contrast, express services provide for the regular exchange of items over a network of locations and, as described above, incorporate transportation, communications and other services. Therefore, ACCA continues to believe that express service should be provided its own sectoral classification.

In earlier submissions to USTR, ACCA proposed a specific definition for express services. That proposal generated considerable discussion and, after a year of consultations with various parties, ACCA believes it is appropriate to modify that definition to better describe the nature of express services. ACCA now proposes the following definition:

> **express services:** the expedited transport and delivery of documents, printed matter, and/or other goods, incorporating electronic tracking and/or other advanced technologies, and services ancillary thereto. These services include one or more value-added elements, such as pick-up from shipper, guaranteed delivery in a specified time, shipment tracking and tracing, customs facilitation, the possibility of changing the destination/addressee in transit, confirmation of receipt, and logistics management.

ACCA would like to make two important clarifications with respect to this definition. First, it does not encompass "hard" aviation rights (i.e., air traffic rights). Second, the definition applies to any entity providing an express service, including national postal authorities engaged in commercial express activities.

C. BARRIERS

Express sectoral negotiations must address the various services encompassed by express operators. The subsequent section of this submission discusses some of the express industry's objectives with respect to electronic commerce; this section details some of the key practices in other areas that create barriers to the provision of express services.

Customs: Examples of customs practices that impede express service include:

- preferential treatment by customs of postal shipments in comparison to shipments by private express carriers;
- absence of a system for pre-clearing imports;
- limited capability to receive and process data electronically;
- absence of a *de minimis* value level for imports below which customs clearance procedures would be vastly simplified and expedited;
- restrictions on the weight, value and type of commodities that may be shipped express;
- unreasonably high rates (sometimes 100 percent) of inspection;
- customs working hours that are not tailored to commercial realities; and
- refusal to accept photocopied paperwork for clearance.

Postal: Many countries use their postal laws to discriminate against express operators. For example, Thailand's Postal Act of 1934 permits the Communications Authority of Thailand to levy a fine on a company providing transportation services for imported letters and documents. The fines sharply increase the cost of providing express services.

Ground transportation: Governments often restrict the ability of express operators to provide door-to-door service by limiting a company's options with respect to ground transportation. For example, some countries prohibit express companies from directly operating ground vehicles. Express operators need the ability to operate on a fully intermodal basis in all markets.

Operational control: In some countries, express operators are not able to maintain full control of their operations when shipments arrive. Instead, they must subcontract to other vendors the movement of shipments to express operators' facilities. In addition to increasing costs, this limits the efficiency and security of the express service. Furthermore, it increases delays and potential service failures because express shipments do not receive handling priority.

Licensing restrictions: In some cases, express operators can only contract with agents that have received a government license to provide express-related services. A government may only license subsidiaries or affiliates of local express competitors, producing competitive difficulties for express operators.

Access to radio frequencies: Some countries restrict access to radio frequencies. Express operators need radio frequency licenses in order to operate efficiently; access to radio frequencies should be available on a national treatment basis.

Ownership restrictions: In many countries, foreign-owned express companies are prohibited from wholly owning, and sometimes even from holding majority ownership, in local businesses.

D. NEGOTIATING OBJECTIVES

The express industry seeks liberalizations through the GATS negotiations that would eliminate the barriers identified above in the areas of customs, postal, ground transportation, operational control, radio frequency, licensing and ownership. In addition, the express industry seeks commitments in the burgeoning arena of electronic commerce.

E-commerce is particularly important to the express services industry. It allows express operators to create business-to-business links, extend information services to customers, and provide the hallmark of our service, door-to-door shipment on a time-sensitive basis. E-commerce is intertwined with the operations of the express service industry in several ways: express services are purchased by shippers through the Internet and the use of advanced

technologies; the industry uses information technology and the Internet to provide vital information to its customers; the industry uses the Internet and advanced technologies to carry out certain elements of its express service; express operators use e-commerce to streamline our customers' supply chains and logistics; and the Internet allows express companies to facilitate the transfer of transaction funds. For goods and information to move seamlessly from point-to-point around the world through the use of express services, there must be harmonization among countries and/or regions with regard to such areas as infrastructure, market access, and liberalization of government regulation. For example, government measures that restrict, impede or otherwise limit access to or use of the Internet and advanced information technologies, or which increase the cost of such access, constitute trade barriers contrary to traditional trade liberalization rules and principles. The following is a discussion and detailed listing of the factors mentioned above and how actions by governments with regard to these factors can either inhibit or assist the globalization of trade through e-commerce.

Infrastructure: For there to be a seamless movement of goods and information throughout the world, it is essential that each country drive change from within its own borders and create a constituency of e-commerce users. For example, the populace must possess the requisite tools in order to access the Internet and purchase express services. There must be a functioning and affordable communications network and services and connections within the network must be reliable. The market must be open for competition to provide the network (e.g., there should be competitive pricing for Internet services), because allowing only a certain number of authorized operators creates trade barriers. Interconnection must be guaranteed at reasonable rates so that e-commerce is global in nature; governments should adopt internationally recognized standards (e.g., telecommunications standards). Physical distribution must be fast, reliable and affordable, and choice of delivery services must be made widely available (again, the authorization of only a couple of companies to offer services creates trade barriers).

Market access: Each country must adhere to MFN and National Treatment principles with respect to e-commerce.

Legal and regulatory framework: It is essential that each country pursue a regulatory framework that is stable, transparent, fair, and flexible. Governments must be flexible in exercising their regulatory oversight, should work with e-commerce companies in creating laws, and should allow a certain amount of industry self-regulation. Governments must also be involved in market-based world standards for globalization. Laws must be nondiscriminatory and should not be onerous on those companies participating in e-commerce (as opposed to those companies participating in traditional commerce). Transparency is essential, and countries should agree not to create tariffs on electronic submissions sent over the Internet.

Several principles should apply to taxation of goods purchased through e-commerce: revenue codes must be harmonized and streamlined; tax laws must be transparent; tax laws cannot be

discriminatory so that taxes on e-commerce products are more onerous than those on products acquired through traditional commerce; each country's taxation policy must be consistent with internationally agreed principles; and, if taxes are imposed on any e-commerce transactions, express operators should not be the collection mechanism for those taxes. With respect to "E-contracts" and digital signatures/electronic authentication: each country should amend laws expanding the notion of "writing" to include information that may be accessed electronically; contracts entered into over the Internet must be able to be assented to by digital signatures; a uniform law must be required in each country authorizing the use of digital signatures via compatible technologies; laws must be created concerning the electronic authentication of messages sent over the Internet. It is essential that each country not have unreasonable and inconsistent restrictions on security software, such as encryption technology, used to protect the privacy of e-commerce participants. Furthermore, the government should not control the use and trade of encryption products, but must allow users to choose the most appropriate solution for encryption. It is imperative that privacy laws be created which are uniform in nature; for example, information about a shipment and the customer involved in an express service transaction must be capable of being transmitted across borders.

VIII. FINANCIAL SERVICES

In its November, 1998 submission for the Federal Register the Financial Services Group of CSI made a number of general recommendations for the types of barriers that should be removed in the current Services 2000 round. These include expanding the scope of WTO members' commitments, expanding rights of establishment and ownership, expanding cross border trade rights, reforming regulatory structures, promoting transparency, and removing obstacles to the movement of natural persons. All of these objectives remain valid today. That 1998 submission is attached for reference.

As we prepare for the new financial services negotiations we will lay stress on three areas.

First, the need to obtain specific commitments in key markets to eliminate existing barriers to financial services trade. Preparation of a barriers list by the Financial Services Group is underway.

Second, the need to obtain commitments to transparency and to better regulation. Our thinking is outlined in a CSI paper on transparency and in its two attachments, one relating to securities, and the second to insurance. The CSI paper appears in section I Part C of this submission. The SIA securities paper is attached below.

Third, the need to obtain commitments to permit the expansion to cross border trade and electronic commerce as a means of facilitating that trade. Here we attach a paper titled "Providing a Secure Financial Environment for Global E-commerce: Discussion of Objectives Advancing Cross-Border Financial Services Commitments in the WTO" which outlines the need to obtain greater cross border trade commitments in the new financial services negotiations.

FINANCIAL SERVICES - 1998 SUBMISSION

A. BENEFITS

Increasing competition in financial services markets through liberalization of restraints on foreign participation in financial services activities will enhance economic growth for all countries. Such liberalization will help provide developing countries with: (1) essential information and infrastructure to speed their modernization; (2) improved health, safety and retirement security for working people and; (3) the broadest range of products and services at the lowest cost for consumers. Additionally, it will help enhance investor confidence, and attract and retain private long-term direct investment. Liberalization promotes the development of modern, efficient, well-regulated financial markets.

B. SECTOR STATUS

WTO financial services negotiations provide an excellent opportunity to achieve meaningful liberalization on a global scale. By securing binding commitments by a significant number of countries of the right of foreign companies to establish and to own all or a majority share of their direct investments, the 1997 negotiations made important progress.

Even though the 1997 agreement didn't include comprehensive agreements to reduce or eliminate investment barriers for foreign financial service providers, the agreement made major progress in a number of countries. Much remains to be done in the upcoming negotiations and the 1997 Agreement serves as a strong foundation to add truly liberalizing commitments.

C. BARRIERS

The financial services 2000 negotiations offer an extremely important opportunity to build on this base in a number of ways:

- Further the scope of commitments by reducing the number of exceptions countries have written into their commitment schedules.

- Expand rights of establishment and ownership. While progress has been made in securing bindings of existing practice in regard to establishment and full or majority ownership, these rights should be expanded and secured from more countries that made no such commitments.

- Expand cross border trading rights. Little attention has been given to securing rights to sell financial services across borders in negotiations to date. WTO members should, where appropriate take into account the views and legitimate objectives of the regulators.

- Modernize and reform regulatory structures that frustrate trade commitment and competition. Regulatory regimes can be used to block gains made in trade negotiations by imposing unnecessary restraints on foreign financial services suppliers, and thus favoring local suppliers. Such practices prevent realization of the goal of national treatment. They are inherently anti-competitive and inefficient. These "pro-competitive regulatory reforms" should be directed at establishing fair, competitive markets by focusing on solvency and transparency to provide the most effective protection of consumers and markets.

- Achieve impartial administration of regulations. Article VI of the GATS, applying to Domestic Regulation, requires that "in sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner." It further requires each member to set up tribunals or procedures which provide prompt review and remedies for administrative decisions affecting trade in services, and it establishes that members must provide impartial review of these procedures. These requirements for reasonable, objective and impartial administration of regulations should be amplified by the establishment of principles against which regulations should be tested.

- Promote administrative and regulatory transparency. Clear and reliable information about a country's financial services laws and practices advances equitable trade and competition, reduces the possibility of manipulation, and is an essential component of a liberalizing agreement. Non-transparent regulations hamper foreign firms' ability to do business. Transparency requirements make countries more accountable for their actions and provide information needed to evaluate compliance with the agreement.

- Reduce and remove obstacles to the free movement of people. The temporary posting of key business personnel should be facilitated by creating a system of easily obtainable and renewable visas, and by easing or removal of other restrictions.

D. CLASSIFICATION

Should include language necessary to provide for protection and applicability for pensions, long-term care, disability income and life insurance and reinsurance.

E. NEGOTIATING OBJECTIVES

- Foreign investors should have the right to establish through a wholly owned presence or other form of business ownership, and to operate competitively through established vehicles available to national companies.

- Foreign investors should have the same access to domestic and international markets as domestic companies. They should be treated to regulatory and other purposes on the same basis as domestic companies.

- Unnecessary restrictions on cross-border financial services businesses and consumption of services abroad should be removed, to encourage trade without requiring establishment.

- Creating a system of easily obtained and renewable permits should facilitate the temporary posting of key business personnel.

- Existing investments should be grandfathered by Member countries that did not commit to do so in the 1997 Agreement.

- Countries wishing to accede to membership in the WTO should do so on the basis of commitments to substantial financial liberalization consistent with the 1997 Financial Services Agreement and the goals set forth above, resulting in commercially meaningful access. Countries should be permitted to participate in the negotiations in a way which encourages them to make such commitments.

- Financial regulation principles leading to the development of sound, more competitive markets should be negotiated. Such regulation will foster risk management standards, transparency, product diversification and consumer choice important for public policy purposes. It will also enhance financial security for citizens, nations and the global financial system.

- Transparent laws and regulations are necessary to liberalize financial services. Clear and reliable information about a country's financial services laws and practices promotes equitable trade and competition, and reduce the possibility of manipulation.

- A notification waiting period for all new national and sub-national taxation of financial services should be established to provide industry and governments with a minimum of one year to factor changing taxation rates in technical, solvency and pricing decisions.

- Nations should commit to lock in and improve pension policies that encourage private savings for retirement, in recognition of worldwide aging populations and related pressure on government social security systems.

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PROMOTING FAIR AND TRANSPARENT REGULATION

DISCUSSION PAPER

I. Setting The Foundation for Open and Fair Securities Markets

Deep and liquid capital markets are the essential building blocks of today's economy, supplying the funds for economic growth and job creation. The firms that participate in the markets price risk, allocate capital, provide investors with advice and investment opportunities, and supply the liquidity needed to make markets work efficiently.

Just as capital markets underpin economic growth and job creation, transparent and fair regulatory systems are essential to the development of deep and liquid capital markets. A system of regulation that is transparent to market participants instills the confidence needed to attract both the suppliers and users of capital to make the best use of the markets.

Governments, regulators and the international financial institutions have undertaken substantial projects designed to improve the quality of the financial systems world-wide. Attention is now focused on building fair and transparent regulatory systems – grounded in the principles of market integrity and investor protection – to oversee those markets. Consistent with those goals and the principles of prudential regulation, discriminatory practices and considerations, such as the nationality of individuals or the place of origin of firms, should not be permitted to influence regulatory policies or actions.

This paper is based on the assumption that a country’s relevant laws should promote fair and transparent regulation. The principles outlined in this paper are not intended to prevent a regulator from taking measures for prudential or legitimate public policy reasons recognized under the World Trade Organization, including protecting investors, ensuring that markets are fair, efficient and transparent, and reducing systemic risk.

A consensus view, supporting the development of active, sound and efficient markets based upon established principles for capital market regulation, is rapidly emerging. In September 1998, the International Organization of Securities Commissions (IOSCO) issued a paper entitled "The Objectives and Principles of Securities Regulation" that urged the adoption by all regulators of processes and regulations that are:

- consistently applied;
- comprehensible;
- transparent to the public; and
- fair and equitable.

The International Monetary Fund ("IMF") is developing a broad-based "Code on Good Practices and Transparency in Monetary and Financial Policies" that complements IOSCO's work.

The securities industry, which today operates on a global basis, supports the IMF and IOSCO efforts to establish principles of fair and transparent regulation. The securities industry strongly believes that by making regulation and the operation of regulators accessible and transparent and by treating foreign and domestic licensed market participants fairly and equitably, governments, regulators and international financial institutions will promote the best markets for investors throughout the world.

Building on the emerging regulatory consensus, this paper provides the views of the securities industry on fundamental regulatory principles and practices that will provide a fair and level playing field for market participants. It also sets the foundation for building strong and vibrant markets worldwide. Moreover, we strongly believe that the principles promoting fair and transparent markets are broadly applicable to all financial services firms participating in the global capital markets. In this regard, we are actively seeking the support of financial services firms worldwide in promoting these principles.

II. Guiding Principles of Fair and Transparent Regulation

A. *Rules, regulations and licensing requirements should be considered and imposed, and regulatory actions should be taken, only for the purpose of achieving legitimate public policy objectives that are expressly identified, including, for example, investor protection, maintaining fair, efficient, and transparent markets, and reducing systemic risk.*

B. *Regulation should be enforced in a fair and non-discriminatory manner.*

1. *Regulations and regulators*[11] *should not discriminate among licensed market participants on the basis of the nationality or jurisdiction of establishment of the shareholders of a market participant or the jurisdiction of establishment of any entity that owns or controls the equity or indebtedness of a market participant.*

2. *The relationship between a regulator and a licensed market participant should be governed by the standards set forth in relevant rules and regulations, and should not be subject to political or other extraneous or improper considerations.*

3. *The introduction of new securities products and services by firms should be governed by the standards set forth in relevant rules and regulations*

C. *Regulations should be clear and understandable.* Clear and understandable regulations and rulings provide market participants with the predictability and necessary knowledge to comply with regulations. Opaque or ambiguous regulations and rulings create uncertainty among investors and licensed market participants.

D. *All regulations should be publicly available at all times.* All regulations should be made, and at all times remain, publicly available, including requirements to obtain, renew or retain authorization to supply a service. Disciplinary actions should not be taken based on violations of regulatory standards that were not in effect at the time the relevant activity took place.

E. *Regulators should issue and make available to the public final regulatory actions and the basis for those actions, in order to enhance public understanding thereof.*

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[11] The term "regulator" is intended to cover all bodies that are authorized pursuant to law to play a role in the licensing and supervision of the activities of financial services firms, as well as the bodies that formulate rules, regulations and policies relating to such firms. Where the legislature or authorized regulator delegates its authority to a non-governmental entity such as a self-regulatory organization or trade association, the term is intended to encompass such an entity.

III. Rulemaking and Implementation

A. *The rulemaking process*

1. *Regulators should utilize open and public processes for consultation with the public on proposals for new regulations and changes to existing regulations.* A reasonable period for public comment should be provided. Any hearings at which formal promulgation or adoption of new regulations or changes to existing regulations are considered, if open to a member of the public, should be open to all members of the public. Regulators should not take arbitrary regulatory action against those who participate in the consultation process.

2. *In considering whether rules, regulations, licensing requirements or actions are necessary or appropriate, regulators should also consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.*

B. *Communicating and implementing new rules*

1. *New rules and regulations that provide advice for market participants should be made available to them and the public in a timely and efficient manner.* Such changes should be made available, in writing, by electronic media or other means of distribution so that all market participants have reasonable access to such material.

2. *Market participants should be given a reasonable period of time to implement new regulations.* The effective date of a new regulation should provide a reasonable period for market participants to take the steps needed to implement the new regulation under the circumstances.

C. *Interpretations of rules*

1. *Regulators should establish a mechanism to respond to inquiries on rules and regulations from market participants.* The titles and official addresses of the relevant regulatory offices should be provided.

2. *Interpretations and the grants or denials of regulatory relief or exemptions should be made available to the public.* Such interpretations, relief or exemptions should generally apply or should

be applied upon proper request, to substantially similar licensed market participants and new products. Under limited circumstances it may be appropriate to delay the publication of individual grants of relief for reasonable periods of time to address legitimate competitive concerns.

IV. Licensing and New Product Procedures

A. *Procedures for licenses and introduction of new securities products and services.*

1. *Criteria governing licensing of firms and the introduction of new securities products and services by firms should be in writing and accessible, and should be the basis on which decisions are made.* All regulations and related explanatory materials governing the consideration and issuance of licenses to firms and the introduction of new securities products and services by firms should be reduced to writing and made publicly available to potential applicants upon request. No licensee should be denied a license, and no new securities product or service should be prohibited, on the basis of any factor not identified in such written regulations or explanations.

2. *The introduction of new securities products and services by firms should be governed by the standards set forth in relevant rules and regulations.* Where particular requirements are established in connection with the introduction of a product or service, such requirements should govern the introduction of complying products and services. In order to promote flexibility and efficiency in the capital markets, such standards and requirements should enable firms, to the maximum possible degree consistent with principles of prudence and investor protection, to introduce complying new products and services on the basis of sound internal procedures for compliance without additional regulatory review.

3. *Information supplied by applicants as part of an application process should be treated confidentially. Such information should be disclosed only in accordance with existing rules permitting public disclosures, such as those that may be triggered by the granting of a license or product approval.*

4. *Regulators should promptly review all applications by firms for licenses and required product or service approvals and should inform the applicant of any deficiencies.* No application for a license or approval

that provides all information required pursuant to regulation and is made in good faith by an applicant that meets required criteria should be refused review and action by the relevant regulator. Action on all applications received should be taken within a reasonable period. Licenses should enter into force immediately upon being granted, in accordance with the terms and conditions specified therein.

5. *Where an examination is required for the licensing of an individual, regulators should schedule such examinations at reasonably frequent intervals.* Examinations should be open to all eligible applicants, including foreign and foreign-qualified applicants.

6. *Fees charged in connection with licenses and the introduction of new securities products and services should be fair and reasonable and not act to prohibit or otherwise unreasonably limit licensing requests or the introduction of new product and services.*

B. *Licensing of entities and their employees*

1. *An applicant's competence and ability to supply the service should be the criteria used for licensing entities and employees.* The terms and conditions for granting licenses should be made explicit, including education, experience, examinations and ethics. Procedures and criteria should not unfairly distinguish between domestic and foreign applicants. In addition, there should be no quantitative limits on the number of licenses to be granted to a particular class of market participants who are otherwise qualified.

2. *When imposing licensing requirements, regulators should endeavor to give consideration to comparable testing or other procedures confirming the qualifications of an applicant that already have been completed in another jurisdiction.* The ability of qualified and experienced market professionals to provide services in a foreign jurisdiction may be promoted where testing or other procedures used in the professional's home jurisdiction may satisfy all or part of the foreign jurisdiction's licensing requirements.

C. *Denials of licenses and product and service approvals*

1. *When denying an application for a license or a required securities*

product or service approval, regulators should, upon request, provide an explanation for that action. Any total or partial denial of any application for a license or a required new product or service approval should, upon request, be accompanied by a written statement of explanation from the relevant regulator detailing the reasons for the denial, including the particular requirements of the regulations governing the issuance of such license or required approval that were not satisfied. Applicants should be given the opportunity to resubmit applications or to file additional or supplementary materials in support of their applications.

2. *Applicants should be afforded meaningful access to administrative or judicial appeal of a denial of a license or a required product or service approval (or failure to act on an application).*

3. *An appeal of a denial of a license or a required product or service approval should be decided within a reasonable time period after the appeal is filed.* An applicant's decision to pursue an appeal (whether formal or informal) should not prejudice its existing licensed operations.

V. Implementation of Regulatory Standards

A. *Inspections, audits, investigations and regulatory enforcement proceedings*[12]

1. *All inspections, audits, investigations and regulatory enforcement proceedings should be conducted pursuant to established regulatory and judicial standards and should not arbitrarily discriminate based on improper or other extraneous criteria like nationality.*

2. *All inspections, audits, and investigations should be conducted in a manner that does not impinge on the rights of licensed market participants and their directors, officers and employees.*

3. *A regulatory authority*[13] *should not publicly disclose the fact that it is conducting an enforcement related inspection, audit or investigation of a*

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[12] The term "regulatory enforcement proceedings" means administrative or judicial action authorized by the relevant regulatory authority and is intended to cover civil, administrative or criminal proceedings that involve a financial services firm and/or its employees based on their financial services activities.

particular entity until a determination has been made by the regulatory authority to take remedial or other enforcement-related action, unless otherwise subject to a legally enforceable demand unless made in connection with a generally applicable disclosure requirement imposed on the entity. The inspection, audit or investigation should be conducted at all times with due attention to the privacy and confidentiality concerns of all affected parties, including licensed market participants, their directors, officers, employees, and clients.

B. *Regulatory proceedings to impose a sanction*

1. Notice and opportunity to be heard

a. *Notice of applicable law and regulation*. A regulatory proceeding to impose a sanction should only be instituted based on the violation of laws or regulations that were in effect at the time that the relevant activity occurred and where the subject of the proceeding had timely notice of them.

b. *Notice of determination to take action*. Licensed market participants should be notified in a timely manner both when: 1) a determination has been made to hold a regulatory proceeding concerning the conduct of that participant; and 2) a decision in, or on the status of, that proceeding has been made.

c. *Opportunity to be heard*. Except in situations where emergency temporary relief is necessary, in all regulatory proceedings, licensed market participants should be given a reasonable opportunity to be heard and to submit, on the record, position papers and other documentary evidence.

2. Representation by counsel and access to evidence

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[13] The term "regulatory authority" is intended to cover all regulatory bodies involved in the inspection, auditing, investigation or prosecution of the activities of financial services firms. Depending on the system, the term may encompass criminal and judicial authorities as well as non-governmental entities such as self-regulatory organizations.

a. *Right to legal counsel*. The subjects of a regulatory proceeding should have the right to have legal counsel of their choice represent them in all meetings with, and interviews by, regulatory authorities. A regulatory authority should not suggest or imply that the attendance of counsel will in any manner alter the character of the proceedings being conducted, the level of supervisory review to be undertaken, or the manner in which the regulatory authority carries out its functions.

b. *Access to evidence*. The subjects of a regulatory proceeding should, upon request, be permitted reasonable access to all documents and records that are relevant to the subject matter involved in the pending regulatory action. Documents and records to which access is denied based on privileges generally recognized in such proceedings should not be admissible in evidence in such regulatory proceeding.

c. *Burden of proof.* The burden of proof to demonstrate that a licensed market participant has not conducted its business in accordance with the relevant law and regulation should rest with the regulatory authorities.

3. Sanctions and Appeals

a. *Sanctions.* Sanctions by a regulatory authority should be imposed in a fair and nondiscriminatory manner based on the relevant facts and with an effort to treat similarly situated persons and entities in a similar manner. The basis for any decision to impose sanctions by a regulatory authority should be explained in a writing that is made available to the subjects of the proceeding.

b. *Appeals.* The subjects of a regulatory proceeding should have available to them a forum for appealing the decisions rendered and sanctions imposed. The body considering a particular level of appeal should be separate from that which made the decision or imposed the sanction that forms the basis of the appeal. Appeals to a regulatory authority should be decided in a timely manner and appeal determinations should be explained in a writing that is made available to the subjects of the proceeding.

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Providing a Secure Financial Environment for Global E-commerce: Discussion of Objectives Advancing Cross-Border Financial Services Commitments in the WTO

Electronic commerce is on the WTO agenda and the "value-chain" approach is a serious effort to bring together liberalizing commitments on a cross-sector basis in contrast to the historical WTO process of sector-specific schedules. While there are likely to be problems in practice in implementing this innovation (especially for regulated fields such as banking, insurance and securities), the financial services industry has a major stake in the e-commerce value chain initiative. This draft paper is the financial services industry's attempt to present our sector's perspectives in a balanced way that reflects regulatory priorities and is open to the changes underway in the market.

Today: The Key Role of Financial Services in Making E-Commerce Work

Critical to the rapid development of electronic commerce within the United States and other developed countries has been the existence of efficient domestic payments, clearing, credit and insurance systems. This financial services infrastructure has enabled wholesale and retail businesses to move their B2B and B2C marketing and sales onto the web with minimal concerns about completing or insuring the financial portion of the transaction. Partly in response to the growth in e-commerce, domestic (non-cash) transactions have grown roughly 18% from 1994 to 188 billion transactions globally in 1997[14] -- about 82% of which occurred within the United States, Europe, and Japan. The expectation is that domestic transaction growth will remain at about 6.6% annually over the next decade – to about 358 billion transactions worth about $2.8 trillion by 2007.

Tomorrow: Financial Services and Regulatory Frameworks Must Accelerate their Pace of Adaptation and Capacity-Building for Global E-Commerce Demands

Financial services providers are also playing a key role in the development of electronic commerce globally, as providers of payments, credit and insurance services, which constitute the basic financial infrastructure for global web commerce as well.

The overall expansion in cross-border payments is expected to outstrip even the rapid rise in domestic transactions. Growth in cross-border transaction volume is expected to be about 9.8% annually over the decade from 1997, for a total of 4.6 billion transactions worldwide in 2007. Cross-border payments value is expected to increase by 8.3% per annum to $397 trillion.[15] At that time, retail transactions are expected to account for 83% of total cross-

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[14] All statistics and projections in this paper, unless otherwise indicated, are drawn from: The Boston Consulting Group, Global Payments 1999 A Senior Management Perspective, (The Boston Consulting Group: 1999).

[15] The cross-border transaction volume is low largely because of significant netting between institutions. The disproportionately large size of cross-border value most likely reflects, in part, the sizeable dollar transfers underlying foreign exchange trading.

border volume, but wholesale transactions are projected to account for 99.8% of total cross-border transactions value. The significant disparity in volume and value between wholesale and retail is partially accounted for by the increasing consolidation of retail payments by both financial institutions, Internet service providers and others and the significant rise in netting by domestic and international clearing systems.

It is clear that the continued growth in electronic commerce is dependent upon the development of an efficient cross-border financial services infrastructure similar in scope to the financial services systems operating at the domestic level. The provision of retail financial services raises many consumer protection and other jurisdictional issues, that need to be worked out among national regulators and their regulated industries in various multilateral and/or bilateral fora -- before commitments can be made in the WTO.

At a minimum, however, wholesale financial services supporting B2B e-commerce transactions are needed on a cross-border basis in order to enable the growth of global electronic commerce.

Why should we focus on WTO financial services commitments:

- Establishment and national treatment were largely addressed in the 1997 Financial Services Agreement (FSA);
- Cross-border commitments (especially mode 1: cross-border supply) were largely ignored in the FSA (see **Annex 2** detailing cross-border commitments made in the FSA);
- To complete the e-commerce services infrastructure outlined in the value-chain approach, new commitments in cross-border financial services must be linked with existing establishment commitments in order to provide seamless and efficient payments, credit and insurance networks that will enable any web-based company to initiate, insure and complete secure electronic transactions globally.

Barriers to Cross-border Financial Services Critical for E-Commerce

Consequently, the 1997 FSA left a rather full agenda of cross-border issues to be dealt with in the millennium services negotiations. A number of these will have a direct impact on the development of web commerce. For example (for a fuller treatment of these and other barriers see Annex 1):

- Many countries place restrictions on foreign banks' access to local payment systems. Collectively, these barriers raise the cost of direct access to local Automated Clearing House (ACH) systems often to prohibitive levels. This gives local institutions, acting as payment intermediaries, considerable pricing latitude which results in significantly higher transactions costs for cross-border payments. In 1997, the global average cost of a domestic payments transaction was $1.11, while the average cost of a cross-border

payments transaction was $13.52.[16] The impact of these payment cost disparities, especially for small value payments, could critically impair the growth of electronic commerce.

- Financial institutions will play a critical role in developing B2B E-Commerce platforms. These platforms enable businesses, especially small- and medium-sized enterprises (SMEs), to cost-effectively interact with a global universe of suppliers and business customers, substantially lower purchasing and marketing costs, and increase transaction security and reliability. However, existing barriers to the cross-border issuance of corporate credit cards limits the ability of many companies to efficiently participate in these B2B platforms.

- Licensing and other restrictions on the cross-border offering of new web-related business insurance products, such as cyber-security and e-business liability insurance, as well as traditional marine/aviation/transport insurance, impedes the ability of local companies to adequately insure themselves against the risks of doing business in a global electronic marketplace.

- Other financial sectors, such as the securities industry, may draw attention to other barriers to cross-border transactions that may require special consideration in framing negotiating proposals.

Financial Services Stake in Expanding E-Commerce

Electronic commerce offers substantial benefits to SMEs and other companies nimble enough to take advantage of the marketing and cost-savings opportunities that arise from the technologies and systems that comprise the Internet and web commerce. The value of electronic commerce to financial institutions is derived foremost from their ability to better serve their customers, whether wholesale or retail. Not surprisingly, financial services providers are strongly supportive of all developments and all commitments that enable and promote electronic commerce anywhere along the "e-commerce value chain". The ability of financial services customers to reach new markets, increase innovation, and reduce their operating, production and delivery costs, enhances their competitiveness and strengthens their creditworthiness. This makes them better customers for banks, securities firms and insurance companies.

Conclusion

Consequently, the financial services industry supports the electronic commerce value-chain approach, and believes that a truly effective proposal will include commitments that enable a financial services infrastructure necessary to support global e-commerce. This

[16] Boston Consulting Group, p. 1. Also a recent survey of the Euro-zone found the average cost to be 17.1 euros for transferring 100 euros, European Commission, May 23, 2000.

recommendation is made with the clear understanding that such commitments must have the full support of the financial services regulatory community to be effectively implemented, and that a dialogue between industry, government and regulators is a necessary precondition for the success of the WTO services negotiations in this important area. Such a dialogue would include the following:

- Determining the prudential priorities of governments and regulators;
- Drawing from the deep experience of historical wholesale cross-border financial services, which would require, inter-alia, at least a commitment to a standstill, with no rollback of existing practice;
- Underlining the stake financial service firms have in the potential of e-commerce gains in all sectors;
- Providing scope for innovative public/private and international partnerships addressing policy concerns; and
- Seeking the widest possible circle of strong WTO member commitments.

ANNEX 1: Barriers to Cross-border Financial Services Critical for E-Commerce

The following are examples of barriers to cross-border financial services that were not addressed in the FSA, but will need to be eliminated if an efficient financial services e-commerce infrastructure is to be developed.

- Many countries place restrictions on foreign banks' access to local payment systems. A couple place direct restrictions on locally established foreign financial institution's access to payments and clearing systems. **(Malaysia, Singapore)** A large number of countries, including the U.S. and many EU member-states, require some form of local establishment in order to qualify for access to local payments systems. **(U.S., Canada, France)** This prerequisite is in addition to any requirements to post collateral. Other governments enforce selective customary rules, such as mandatory membership in local trade or payments associations that, in turn, have rules discriminating against foreign participants. In other cases, there may be different capital requirements or collateral requirements for foreign institutions. **(India, Korea, Thailand, Turkey)**

  Collectively, these barriers raise the cost of direct access to local Automated Clearing House (ACH) systems often to prohibitive levels. This gives local institutions, acting as payment intermediaries, considerable pricing latitude which results in significantly higher transactions costs for cross-border payments. In 1997, the global average cost of a domestic payments transaction was $1.11, while the average cost of a cross-border payments transaction was $13.52.[17] The impact of these payment cost disparities,

[17] Boston Consulting Group, p. 1. Also a recent survey of the Euro-zone found the average cost to be 17.1 euros for transferring 100 euros, European Commission, May 23, 2000.

especially for small value payments, could critically impair the growth of electronic commerce.

A recent study by the European Central Bank concluded that in the Euro-zone: "(t)he present situation in the area of retail cross-border payments is not satisfactory because prices for cross-border transactions are substantially higher than for domestic ones, despite the introduction of the Euro, and the execution time needed for cross-border transactions is substantially longer than for domestic ones."[18] The Bank attributed this problem, in part, to the "predominant use of correspondent arrangements involving many intermediaries".[19] Increasing competition is clearly a critical element to bringing these costs down and the ECB recommended that "(a)ccess to cross-border retail payments systems should be open."[20]

Without relief, cross-border on-line businesses will be at a cost disadvantage to local companies that can utilize domestic payment alternatives such as ACH. Otherwise, they will increasingly rely on transaction intermediaries (such as utility companies) to create alternative payment mechanisms that consolidate payments in order to reduce the cost per transaction. This would effectively remove a large percentage of the payments process from financial institutions, and therefore, from the direct oversight of national financial regulators.

- Financial institutions are well placed to pioneer the development of large B2B Internet E-Commerce platforms. These would enable businesses, especially small- and medium-sized enterprises (SMEs), to cost-effectively interact with a global universe of suppliers and business customers, substantially lower purchasing and marketing costs, and increase transaction security and reliability. In addition, these platforms permit financial institutions and their SME customers to pool their purchasing power and gain access to a broad range of small business services such as accounting and legal services at significant cost savings.

  However, existing barriers to the cross-border issuance of corporate credit cards to businesses for purchasing (as well as travel and entertainment purposes) limits the ability of multinational corporations to efficiently participate in these B2B platforms from all their local offices and many SMEs from participating at all. Restrictions on the ability of financial institutions to acquire merchant customers on a cross-border basis also limits the ability of local SMEs to efficiently take advantage of the broad marketing and supplier opportunities provided by these B2B platforms. These restrictions include:

[18] European Central Bank, "Improving Cross-Border Retail Payment Services: The Eurosystem's View" (European Central Bank, 1999), p. 14. A 1994 Commission study recorded these costs at 24% of the underlying transaction amount, though these have dropped since that time, p. 7.
[19] Ibid. p. 14.
[20] Ibid., p. 6.

- outright prohibitions on the issuance of business credit cards by non-resident banks; **(Brazil, Malaysia, Philippines, Singapore, Indonesia, Korea, Thailand)**
- requirements that issuers belong to local credit card associations (that restrict foreign membership); and
- limitations on non-established foreign institutions ability to acquire and service new local merchants. **(Brazil, Malaysia, Philippines, Singapore, Indonesia, Korea, Thailand)**

- As the relationships between financial institutions and their business customers become increasingly complex and interdependent, the ability of financial institutions to meet their customers' investment, cash management and foreign exchange needs as part of payment support services becomes increasingly critical to the ability of their customers to compete. **(Brazil, Czech Republic, Korea, Poland, South Africa, Singapore, India, Korea, Indonesia, Malaysia, Philippines, Thailand)**

  Restrictions on cross-border commercial deposit taking, bill presentment and payment or other cash management services, and limits on non-resident financial institutions ability to place short-term debt or provide financial advisory services to domestic companies, hamper financial institutions' capabilities to orchestrate effective cash management strategies for their clients. **(Singapore, India, Korea, Indonesia, Malaysia, Mexico, Pakistan, South Africa, Thailand, Venezuela)**
  Similarly, the inability of financial institutions to provide cross-border business credit services (such as working capital lines) will force SMEs to rely on more expensive credit products such as letters of credit. Because trade finance is often provided only at minimum funding levels of US$ 100,000, it simply may not be available to many SMEs, preventing them from responding to new business opportunities offered by electronic commerce.

- There remain a number of countries that place restrictions on the provision and transfer (and processing) of financial information. **(Indonesia, Malaysia, Poland, Singapore, Thailand)**

- Licensing and other restrictions on the cross-border offering of new web-related B2B insurance products, such as cyber-security and e-business liability insurance, as well as on traditional marine/aviation/transport insurance **(Brazil, India, Mexico)** impedes the ability of local companies to adequately insure themselves against the risks of doing business in a global electronic marketplace. **(restricts cross-border trade of insurance services: Argentina, Philippines)**

- Reinsurance companies are prohibited in many countries from providing reinsurance unless they are established there, with prohibitions against spreading the ceded risk to other companies who are not registered in the host country. The cost of establishing in individual countries deprives these companies of the most efficient capital allocations

abroad, as well as raises administrative overhead charges in underwriting reinsurance. **(Brazil, Chile, Poland, India)**

- Likewise, under mode 2, insurance underwriters are required to cede their risk through a local reinsurance monopoly or solely through reinsurance companies that are established in the host country, thus depriving them of the maximum choice to find the cheapest and most efficient means to cede and spread the risk outside of the country. This means higher insurance premiums for the insured, or, perhaps the inability to insure some risks at all. **(Egypt, Turkey, Thailand, Singapore, Korea, Malaysia, Pakistan, Philippines)**

- Brokers who provide risk managers of companies with the best choices for reinsurance and transportation insurance, are not allowed to do so unless established in the country where these lines of insurance take place, thus losing opportunities to do business in many countries. **(Malaysia)** Under mode 2, insurance underwriters are severely limited in their choice of the best broker to find a reinsurance company who can handle the cession, taking into account their reputation to handle complicated lines of insurance and to do so at the most reasonable price.

Annex 2: Cross-border Commitments in the 1997 Financial Services Agreement

The 1997 WTO Financial Services Agreement focused largely on barriers to establishment (mode three) and did not result in many commitments to market access in modes one (cross-border supply) or two (consumption abroad). For example, only two countries[21] made full commitments to market access in mode 1 in the banking and other financial services sector. An additional 51 countries made partial commitments to market access in mode 1 in this sector. Of these, 25 (including the U.S.) made commitments to paragraph B.3. of the Understanding on Commitments in Financial Services, which includes the cross-border transfer and processing of data, and financial advisory and auxiliary services. The rest made partial commitments generally more restrictive than paragraph B3.

Nine countries made full market access commitments in the banking and other financial services sector to mode 2, while an additional 43 made partial commitments, including the U.S. and 25 others who made market access commitments to paragraph B.4. of the Understanding. B.4. is considerably more extensive in its coverage of products and services than B.3., and includes acceptance of deposits, all forms of lending and leasing, payments and clearing, including credit and debit cards, trading, guarantees and commitments, foreign exchange, money market instruments, etc.

[21] Ecuador and Ghana, see the attached table by Torie Waite detailing all commitments made in modes 1 and 2 contained in the 1997 Financial Services Agreement. Commitments relevant to national treatment can also be found in the commitment summary tables. Please note: due to the size of the tables, they are not included in the submission. For a copy, please call CSI at (202) 289-7460.

Many of these services, such as payments, clearing and settlement, involve transactions that move in both directions. The fact that countries made commitments to allow the provision of such services in mode two, but not in mode 1, creates an anomaly of sorts. For example, assuming no prudential restrictions, under the U.S. schedule, a clearing association in the U.S. could – on its own initiative – set up a clearing and payments relationship with an EU bank that was not established in the U.S., but the same EU bank could not – on its own initiative – apply for an identical relationship with the same U.S. clearing association. Since payments flow both ways, a relationship once established in mode 2, would look and perform identical to one that could have been established in mode 1, had that been permitted under the U.S. schedule.

The numbers are not dissimilar for the insurance sector. No country made a full commitment to market access under mode 1, and only one, South Africa, made such a commitment under mode 2. Partial commitments to market access in mode1 were submitted by 46 countries, including 28 who made commitments under paragraph B.3 of the Understanding, which is limited to re-insurance and retrocession, auxiliary insurance services, transit, shipping and aviation insurance.[22] Likewise, 58 governments made partial market access commitments under mode 2, with 28 committing to B.4.of the understanding, which is virtually identical to B.3. with respect to insurance services.

[22] See commitment tables. Commitments relevant to national treatment can also be found in the commitment summary tables.

IX. HEALTH CARE SERVICES

A. SECTOR STATUS

There appears to be little coverage of healthcare services in current agreements between countries; therefore, these comments reflect preliminary thought process around GATS negotiations for health care services. We intend to continue to gather information and talk with businesses that are working throughout the world in the health care services sector to bring additional clarity to the submission.

There are several emerging global trends that could benefit U.S. health care service suppliers in overseas markets including the rapid growth in health care expenditures in a large number of countries. Rapidly expanding health care expenditures in many developed countries are due to an increase in their aged populations, the demographic segment that uses health care services most intensively. The entire spectrum of geriatric services, both community and institutionalization, for senior citizens should be explored. Increased health expenditures in rapidly developing economies are occurring as newly emerging middle classes demand the levels of health care previously enjoyed only in more developed economies, such as the U.S. and Western Europe.

We believe we can make much progress in the negotiations to allow the opportunity for U.S. businesses to expand into foreign health care markets. In the U.S. competition has provided reductions in the cost of health care as well as increased quality in the care that is being provided. Some types of services are consulting and training for local pharmacy management; consulting and training for health care including treatment of abusive behaviors; telemedicine; development of treatment protocols to enhance healthcare quality; sharing expertise on appropriate treatment; and, management of overseas health care institutions.

According to official statistics from the U.S. Department of Commerce, in 1996 U.S. receipts of health care services amounted to $872 million. This number was 2 percentage points less than the average annual export growth rate of nearly 6 percent for health care services during 1991-1995. U.S. cross-border imports of health care services amounted to an estimated $550 million in 1996. U.S. receipts and payments for health care services accounted for less than 1 percent of such cross-border trade in all service industries in l996. The U.S. cross-border trade surplus in health care services was $322 million in 1996.

B. CLASSIFICATION

Below are the health care entries from the WTO's Services Sectoral Classification List (W-120) with reference numbers to the UN's Central Product Classification (CPC) numbers. In current practice, many WTO members do not use the CPC references in their scheduled

commitments; practices may vary per sector. While the W-120 and CPC classifications provide a reasonable start toward definition of the health care services that should be covered in this negotiation, we need flexibility. We do not want to be locked into only these specific existing classifications. For example, we need flexibility to include some services which may not be captured by these definitions. We also recognize that some of these services may be included as parts of goods negotiations or in the definitions of other service sectors. We will continue our work to provide negotiators with the most detailed and comprehensive description of the health care services we are now providing or which we will want to provide.

WTO SERVICES SECTORAL CLASSIFICATION LIST (W-120)

Sectors and Sub-Sectors

1. Business Services
2.
   A. Professional Services
      h. Medical and Dental Services — 9312
      i. Veterinary Services — 932
      j. Services provided by midwives, nurses, physiotherapists and para-medical personnel — 93191

8. Health Related and Social Services
   A. Hospital Services — 9311
   B. Other Human Health Services — 9319

C. BARRIERS

Historically, health care services in many foreign countries have largely been the responsibility of the public sector. This public ownership of health care has made it difficult for U.S. private-sector health care providers to market in foreign countries. In addition, there are substantive differences in emerging markets vs. OECD countries. In most emerging markets there are few barriers to these services but barriers can be erected in the future as laws and regulations are enacted absent commitments in writing. Existing regulations are by and large not a problem in emerging markets.

However, existing regulations do present serious barriers in OECD countries, including:

- Restricting licensing of health care professionals.
- Excessive privacy and confidentiality regulations.
- Lack of transparency in the OECD countries’ regulations.
- Difficulty processing permits for work and for facilities.

D. NEGOTIATING OBJECTIVES

There is a significant potential to bring doctors and patients together across borders through the WTO negotiations. Priorities for the negotiations might include:

- Improving the WTO classification used to describe health care services.
- Ensuring transparency in the licensing of health care professionals and facilities.
- Obtaining market access, national treatment commitments, and the right to fully own healthcare facilities in foreign markets.
- Obtaining commitments for the cross-border transfer of health care information.
- Seeking inclusion of health care in the WTO procurement disciplines.
- Negotiating mutual recognition agreements (MRAs) for licensing of professionals and cooperative agreements on regulation of facilities.
- Providing greater freedom of movement of personnel, both professionals and patients, and transparency in the government regulations affecting such movement.

X. INFORMATION TECHNOLOGY SERVICES

A. SECTOR STATUS

The information services industry has a vital interest in the successful conclusion of the World Trade Organization (WTO) services negotiations. Information technology, while a service industry itself, is critical to the success of the other services industries, which, in turn provide a substantial market for information services. As the services sector thrives, so will the information services sector.

The WTO's agreements on telecommunications, intellectual property, and information technology goods have had a positive impact on information technology services, but further liberalization is needed. For example, while substantive commitments by many countries in the area of value-added services (information services), and computer and related services are included in the General Agreement on Trade in Services (GATS), some commitments are weak, while others are non-existent. The services negotiations provide an opportunity to broaden and deepen the current commitments.

GATS Annex on Telecommunications and the WTO Agreement on Basic Telecommunications Services

The Telecommunications Annex provides substantial commitments for information technology services and for access to telecommunications networks for the provision of such services. Examples of services covered under this Annex are electronic mail, on-line information and database retrieval, code and protocol conversion, data processing, and electronic data interchange. These commitments, while important, need to be deepened.

The 1997 WTO Agreement on Basic Telecommunications Services (GBT) and its reference paper on pro-competitive regulatory principles is an integral element of providing a liberalized environment for trade in information technology services. Under a very broad and essentially open-ended definition employed for the negotiations, basic telecommunications are considered any telecommunications transport networks or services and the schedules of commitments cover a wide variety of services fitting this definition. Some examples of basic telecommunications include: voice telephone services, packet-switched data transmission services; circuit-switched data transmission services, telex, telegraph, facsimile and private leased circuit services, analog/digital cellular/mobile telephone services, mobile data service, paging, personal communications services, satellite-based mobile services, fixed satellite services, VSAT services, gateway earthstation services, teleconferencing, video transport and trunked radio system services. Categories of service included: local, long distance, international, wire-based, radio, satellite or cable-based, resale, facilities-based, for public use, and for non-public use (closed user groups).

The agreement, which opened trade in the $600 billion global basic telecommunications market, has helped to promote competition in world telecommunications markets, spur innovation and competition-based pricing and speed the delivery of robust information products and services to consumers everywhere. The agreement is helping to expand the market not only for telecommunications, but for other information service providers as well.

The GBT commitments are a key element in securing the infrastructure for trade in information services. Together with the Telecommunications Annex, we believe many of the basic elements to secure access to infrastructure over which information technology services thrive, are subject to existing liberalization commitments. It is our understanding that the GATS Annex on Telecommunications Services and the GBT cover the delivery of services electronically. We urge the USTR to enforce these existing commitments, expand commitments from those who made limited commitments in both basic and value added services, and seek new commitments from those who have not signed on to the Basic Telecom Agreement.

Information Technology Agreement (ITA)

Concluded in December 1996, the ITA has 54 participants and covers 94% of world trade in information technology goods. The agreement provides for the elimination of customs duties and other charges on information technology products through equal annual tariff reductions and covers five main categories of IT products: computers, telecommunications products, semiconductors, semiconductor manufacturing equipment, software, and scientific instruments. The tariff reductions are implemented by signatories on a most-favored-nation (MFN) basis.

The ITA has opened global trade in a wide array of information technology products, valued at over $500 billion, and spurred growth of the global information infrastructure. The USTR estimates that the ITA has provided a competitive boost of 1.8 million jobs in the U.S. since the agreement's conclusion.

The agreement brings significant benefits to software and telecommunications companies. The agreement includes a broad definition of software products, which covers multimedia and interactive software and "Nuisance tariffs" on software (tariffs below 3%). The agreement also covers a wide array of telecommunications equipment and products, including fiber optic cable.

The ITA, while a goods-based (rather than services-based) agreement, is essential to the liberalization of trade in information technology services, as it provides the means to deliver information technology services. We urge the USTR to work with its trading partners in the WTO to expand commitments made in the ITA and secure broader endorsement of it by more countries.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Adequate and effective protection and enforcement of intellectual property rights is a critical element in fostering the growth of IT globally. As electronic commerce continues to grow it will become increasingly important that commitments to protect intellectual property are enforced. In many countries, both developed and developing, civil and administrative procedures do not meet the enforcement standards set forth in Part III of the TRIPS agreement. As more and more software is being sold over the Internet, adequate and effective IPR enforcement becomes even more important.

We recommend the USTR press other WTO members to meet the enforcement obligations outlined in Part III of the TRIPS Agreement.

B. BARRIERS

The private sector has been the driving force behind the rapid growth, innovation, and development of information technology services, the Internet and electronic commerce. Despite this rapid growth, a few barriers remain. Elimination of these barriers must be industry led and market driven. Consistent with the U.S. Administration's Framework for Global Electronic Commerce, we strongly recommend that the USTR continue to recognize the course of industry leadership and self-regulation.

Barriers also remain with regard to the current market access commitments of some countries. Restrictions on foreign ownership and requirements for local partners of varying descriptions hamper the ability to provide information technology services seamlessly across a number of services sectors. In addition, requirements to use public networks and restrictions on the use of leased lines also provide barriers to true global market access. Finally, national treatment is not a reality in every country.

Practices in government procurement vary dramatically across the globe and offer considerable barriers to the provision of information technology services to governments. They range from many of the OECD nations which have, both on paper and in practice, highly organized and wholly transparent processes, to nations which conduct procurement entirely behind closed doors. Likewise, a number of nations have very open procurement markets while others are closed both to foreign firms and to those firms not in favor, regardless of capability. Finally, there is the same range of conduct regarding the ethics of procurement, with many "clean" systems and just as many in which bribery and corruption are the norm.

The greatest barrier to the continued development of the information technology industry globally, however, is the lack of market access and national treatment in the industry sectors which information technology serves. Liberalization of the key services sectors that enable electronic commerce transactions and information technology services is essential to facilitate

further growth worldwide. Moreover, cross border services liberalization is also essential to those sectors that are using the new digital economy to deliver their goods and services in more efficient ways. For example, if the financial services industry is not permitted to sell mutual funds or distributors can't sell goods across borders, then the capability of the information technology services industry to provide that service electronically is moot. For the information technology services industry to reach its full potential to deliver benefits to individuals as well as entire economies, the markets in every other industry sector must be opened and liberalized.

C. NEGOTIATING OBJECTIVES

We urge the USTR to set the following negotiating objectives:

- Expand the coverage of existing agreements in information technology related and enabling areas such as the Telecommunications Annex, the Basic Telecommunications Services Agreement, and the Information Technology Agreement.

- Insure information technology services can be performed and delivered without establishment.

- Achieve full market access and national treatment for information technology services and for services that enable electronic commerce transactions in a cluster agreement.

- Explore commitments in government information technology services procurement for full market access, national treatment, transparency, and access to independent appeals, and dispute resolution processes.

XI. PROFESSIONAL & BUSINESS-RELATED SERVICES

A. SECTOR STATUS

Professional and business-related services are those services for which the provider requires specialized, technical knowledge – acquired through post-secondary education or equivalent training or experience – which is adapted and applied to the specific needs of business clients. Many of these services are performed by licensed professionals for whom the right to practice is controlled by the government and/or professional bodies. These licensed professions tend to be more regulated than commercial services because the license holders are authorized to practice restricted activities in return for which they are expected to assume public interest responsibilities. Examples include accountancy, architecture, engineering and law. Other business-related services share common characteristics with the professions, such as high levels of human and intellectual capital input and close interaction between the provider and the client, but generally are not highly regulated or controlled by licenses granted by government or professional bodies. Examples include management and business, including computer-related, consulting services.

Statistics on trade in services are notoriously poor, so it is difficult to know the volume of trade in professional and business-related services worldwide. In the U.S. balance-of-payments category of "business, professional and technical services," U.S. providers exported $21.3 billion in 1997 and $24.3 billion in 1998. Imports were valued at approximately one-quarter of these amounts. There is reason to believe, however, that these numbers substantially understate the level of international business in this sector, because they do not include data on earnings from foreign investments and foreign affiliates, especially with respect to "accounting" firms and information technology companies. Nor do they include fees generated by mobile service providers, such as lawyers, architects, engineers and consultants, who serve temporarily in foreign countries but are paid at home.

Professional and business-related services received substantial coverage in the schedules of commitments under the General Agreement in Trade in Services (GATS).

- More than 60 WTO member governments have made commitments in accountancy and related services, accounting for approximately 90 percent of the world market measured by gross revenues. Virtually all these commitments confirmed the status quo with respect to market access and national treatment.

- More than 40 WTO member governments made commitments on architectural services, and just fewer than 30 made commitments on urban planning and landscape architectural services.

- More than 50 WTO member governments made commitments on engineering services.

- More than 40 WTO member governments have made commitments in one or more aspects of legal services. The commitments mostly cover advisory services on international and home country law. The commitments are mostly in the nature of a standstill and do not achieve the American bar's objectives on Foreign Legal Consultants or rules for examinations in foreign jurisdictions.

- More than 60 WTO member governments also made commitments in computer-related services an management consultancy, also accounting for about 90 percent of the world market measured by gross revenues. Again, the commitments largely confirmed the status quo, which for the most part is relatively free of trade restriction and discriminatory regulation.

It should also be noted that the WTO and the GATS have created an international legal umbrella over substantial work initiated by the professions themselves in the areas of mutual recognition and standards. Two examples follow:

- The International Union of Architects (UIA) Professional Practice Commission has produced the "UIA Accord on Recommended International Standards of Professionalism in Architectural Practice." The American Institute of Architects and the Architectural Society of China serve as the Commissions' joint secretariat. The document was initially adopted by the UIA's 91 national member sections in July 1996. A revised and expanded edition, including recommended policy guidelines, will be presented for adoption at the XXI UIA Assembly in June 1999 in Beijing. A primary objective of this document is to allow member sections to more easily negotiate bilateral mutual recognition agreements (MRAs).

- The American Institute of Certified Public Accountants (AICPA) strongly supports the work of the International Federation of Accountants and the International Accounting Standards Committee in developing a body of widely-accepted international accounting and auditing standards and international guidelines on ethics. In addition, the AICPA has joined with the National Association of State Boards of Accountancy to complete MRAs with the Canadian Institute of Chartered Accountants and the Institute of Chartered Accountants in Australia. Additional discussions are continuing with other professional bodies in Australia, England, Ireland, Mexico and Scotland.

B. CLASSIFICATION

The professional and business-related services covered by this paper are found in the following categories listed in the World Trade Organization's (WTO) "Services Sectoral Classification List."

BUSINESS SERVICES

- Professional Services
  - Legal services
  - Accounting, auditing and bookkeeping services
  - Taxation services
  - Architectural services
  - Engineering services
  - Integrated engineering services
- Computer and Related Services
  - Consultancy services related to the installation of computer hardware
  - Software implementation services
- Other Business Services
  - Management consulting services
  - Services related to management consulting

CSI recommends that the U.S. Trade Representative seek the inclusion of several additional classifications of professional and business-related services in the specific commitments made by member governments. These are:

- Actuarial services.
- Counseling in business transactions.
- Participation in the governance of business organizations.
- Mediation, arbitration and similar non-judicial dispute resolution services.
- Public advocacy and lobbying.

C. BARRIERS

International trade in professional and business-related services is conducted both by individuals who have met specified professional qualification requirements or have specialized business knowledge and by firms owned by and/or employing these individuals. Professional and business-related services are rendered in all four modes of delivery contemplated by the GATS. They may be provided across borders by professionals travelling to another country or communicating electronically with clients there. More typically, the services are provided by locally established firms affiliated with others abroad through ownership, contract or cooperative agreement. And in some cases they are provided to foreign consumers visiting the provider's home jurisdiction.

The impediments to trade in professional and business-related services stem from regulations intended to protect local providers from competition and, probably more importantly, from domestic regulations intended to protect defined national interests. Most professions are enveloped in national and/or sub-national systems of regulation, which were developed to respond to particular circumstances and political demands. These distinct systems have persisted even as the globalization of markets has accelerated and, thus, have given rise to trade and investment barriers.

Impediments to Professional Firms

- Restrictions on the movement of capital and investment, such as foreign equity limits, screening of investments and the application of economic needs tests, and reserving ownership to locally-qualified professionals.

- Restrictions on making current payments, such as profit remittances and the payment of royalties and fees across borders.

- Restrictions on the types of business structures permitted.

- Numerical, geographic or other restrictions on the establishment of branch offices.

- Requirements to employ only local people and professionals or the use of quotas to limit intra-firm transfers.

- Inadequate protection on intellectual property, such as software, practice methodologies and training materials, as well as restriction on the use of international firm names.

Impediments on Individual Professionals

- Onerous professional qualification requirements, such as citizenship, permanent and/or prior residency, local university degrees, and excessively long experience requirements, and administering qualification examinations in languages other than the WTO working languages.

- The use of different technical standards or standards of practice in each national and/or sub-national jurisdiction.

- Difficulties in obtaining visas and work permits.

Impediments Affecting both Firms and Individuals

- The lack of transparency in the regulatory process, including the failure to make laws and regulations available, closed decision-making processes, the lack of opportunity to comment before rules are adopted, and the absence of appeal processes.

- Local establishment requirements.

- Rules either requiring or prohibiting relationship between foreign and local professionals or professional firms.

- Customs duties on professional documents, project models, training materials, promotional publications, and software.

- Scope-of-practice limitations that may prohibit the provision of selected or multiple services to clients.

- The assignment of contract by government agencies, the mandatory rotation of providers, and “Buy National” policies.

- Prohibitions on advertising professional services.

- Reciprocity laws or regulatory requirements.

D. BENEFITS OF LIBERALIZATION

Professional and business-related services are part of the intellectual capital infrastructure essential to the operation of modern economies. For example:

- Accounting and auditing services are critical to management control of enterprises and provide the assurance that underlies efficient capital markets.

- Architectural and engineering services are essential to the creation of modern business structures and processes.

- Legal services make possible effective relations between buyers and sellers and among business partners, as well as help to protect the investments and property of national of one country transferred to another.

- Consulting services provide valuable management know-how, competitive insight, and advice on modernizing and reengineering business enterprises.

The key driver of change in the markets for professional services is the internationalization of business. The removal of barriers to international capital movements, coupled with the growth of investment vehicles, is leading to increased cross-border capital flows, as investors search the world for the best returns. At the same time, the power of national governments to regulate their affairs independently is diminishing, and the need for closer cooperation between international regulatory authorities is growing.

As international investors mobilize capital, there is growing pressure for financial reporting standards that are globally consistent and of the highest quality, accompanied by good corporate governance. Providing that confidence is the business of audit; building the underpinning systems is the work of consultants. The accountancy profession has an essential role to play in economic modernization and stable financial markets. It needs to be able to mobilize its intellectual capital, to be able to establish a commercial presence in emerging markets without unnecessary restrictions and to be able to move specialist business personnel without avoidable delays and costs.

Liberalization of trade and investment in this sector makes available to business users state-of-the-art inputs to their production processes. Moreover, the international operation of professional and business-related service providers are important conduits for transferring state-of-the-art technology and training, which has ripple effects throughout the host economies. And many professional services firms provide international networks by which host country services can be exported.

E. NEGOTIATING OBJECTIVES

- U.S. negotiators should press governments that have not made specific commitments on professional services to do so. The goal should be that all 139 WTO member governments apply the GATS rules to professional and business-related services. Some significant markets, such as India, Indonesia and the Philippines, are now missing.

- U.S. negotiators should press other governments to remove as many of the "exceptions" in their scheduled commitments as possible. The aim should be full application of the market access and national treatment rules to professional services.

- U.S. negotiators should champion "freedom of association" for U.S. and foreign professionals, seeking to eliminate requirements or prohibitions of professional associations in partnership or in other forms of "corporate" practice.

- U.S. negotiators should work to reduce or eliminate government measures which impede or prevent key business personnel from timely movement between, and temporary presence in, WTO member countries.

- U.S. negotiators should work for horizontal disciplines on domestic regulation of professional and business-related services under GATS Article VI that go beyond the disciplines developed for the accountancy sector. In particular, they should seek a meaningful "necessity test" under which onerous regulations could be challenged as "more burdensome than necessary", transparency rules that allow interested parties to comment in advance on proposed legislation, and pro-competitive regulatory structures.

- U.S. negotiators should seek an extension of the principles of the Agreement on Technical Barriers to Trade to service industries and professions.

- With respect specifically to legal services, U.S. negotiators should focus on two objectives: (1) adoption of the concept of "foreign legal consultants" whereby lawyers are permitted to practice their home country law (as well as third country and international law) in foreign jurisdictions; and (2) "model rules" on bar examinations that assure the exams are related the areas of law to be practices, follow transparent procedures, are based on information readily available (through training courses, etc.), and are administered in one of the working languages of the WTO.

XII. TELECOMMUNICATIONS

A. SECTOR STATUS

At the start of the millennium, it has become obvious that telecommunications networks provide the underlying infrastructure and services upon which the global economy depends. A robust, competitive telecommunications infrastructure is vital to the health and prosperity of the world economy. The physical marketplace has been forever changed by the information revolution and technological innovation brought about by a competitive marketplace. "In the end", according to Federal Reserve Chairman Allen Greenspan, "it is clear that all economic progress rests on competition." The US now has an economy that operates more efficiently than in the past because of the availability of information over the Internet. The telecommunications-enabled information infrastructure is the product of market liberalization and has the potential to extend knowledge and prosperity to people around the world.

Privatization and liberalization of the world's telecommunications markets will provide the most efficient and effective means of insuring the global telecommunications infrastructure's growth and enhancement. As experience in a number of countries now amply demonstrates, a liberalized market leads to significant increases in infrastructure development, more and better services, and lower prices for consumers. Moreover, a liberalized, modern telecommunications system should increase capital investment, thereby strengthening and facilitating growth of a nation's economy.

It now appears that much of the world's commerce in the future will be transacted over the Internet's network of networks. A good deal of the communications will be of the multimedia variety which will require advanced, broadband telecommunications services. Without liberalized open telecommunications markets, there will not be sufficient incentives to upgrade what is rapidly becoming in many parts of the world an inadequate, outdated telecommunications infrastructure.

WTO Agreement on Basic Telecommunications Services

The WTO Agreement on Basic Telecommunications Services (GBT), with its accompanying Reference Paper, truly represents a watershed event not only for the telecommunications industry, but also for the entire world economy. Seventy countries participated and agreed to move in varying degrees toward full, technology-neutral, liberalization of their telecommunications sectors through market access, foreign investment and adoption of pro-competitive regulatory principles.

The GBT came into effect February 5, 1998; it was a landmark agreement in a number of ways. It was the first successful sectoral negotiation -- the agreement dealt only with telecommunications. In addition, a Reference Paper containing pro-competitive regulatory

principles was developed and was incorporated into a majority of the countries' offers. This Reference Paper legally binds the countries into "how" they will implement many parts of the agreement. Thus, promulgation of regulations in accordance with the Reference Paper's principles must be considered an integral part of a country's implementation of the GBT.

Under a comprehensive definition employed for the negotiations, basic telecommunications was considered to be a telecommunications transport network or services, and the schedules of commitments cover essential services fitting this definition. Some examples of basic telecommunications include: voice telephone services, packet-switched data transmission services; circuit-switched data transmission services, telex, telegraph, facsimile and private leased circuit services, analog/digital cellular/mobile telephone services, mobile data service, paging, personal communications services, satellite-based mobile services, fixed satellite services, VSAT services, gateway earth station services, teleconferencing, video transport and trunked radio system services. Categories of service included: local, long distance, international, wire-based, radio based, resale, facilities-based, for public use, and for non-public use (closed user groups).

In sum, the GBT and accompanying Reference Paper, which was designed to address specific telecommunications issues, represents a tremendous first step toward the ultimate goal of a fully open, competitive telecommunications market worldwide. A good deal of work remains to be done, however. In addition, it is important that new negotiations do not provide for countries to re-evaluate or back away from existing commitments. New negotiations should build on existing commitments.

B. BARRIERS

Although a monopoly telecommunications environment provided a fairly reliable, working telephone system which served the world well for almost 100 years, most of the rapid technological developments of the past two decades have resulted from the increasingly competitive marketplace in a number of countries. Experience has shown that the more open the market, in terms of free entry and exit and the number of competitors present, the more robust the competition and the better the result for consumers.

Unfortunately, even in the wake of the GBT, most of the world's telecommunications markets still contain barriers that restrict access, curtail the scope of the playing field, or tilt it in a variety of ways. In accordance with their GBT commitments, many countries already have privatized their national telecommunications carriers, and others plan to do so in the near future. Privatization is an important step toward introducing competition into markets, but privatization by itself will not produce an open and fair competitive environment. Whether the incumbent carrier is controlled by the government or is privately held, new entrants cannot effectively compete in the market without full liberalization. In order for competition to flourish, the regulator must be completely independent of the dominant carrier and must

actively implement and enforce pro-competitive principles such as those enumerated in the GBT Reference Paper.

Barriers remain even under the current commitments of some countries. Restrictions on foreign ownership and requirements for local partners of varying descriptions hamper the ability to provide telecommunications services seamlessly in these countries or worldwide. In addition, requirements to use public networks and restrictions on the use of leased lines provide barriers to true global market access. Nor is national treatment a reality in every country.

Industrialized and developing countries have inscribed market access limitations in their telecommunications services schedules. The U.S. should work with WTO Members to clear their schedules of limitations and achieve optimal market access. Those limitations that restrict the number of suppliers, limit types of legal entities, and restrict participation of foreign capital should be removed. Exceptions in national schedules that constrain the bypass of monopoly network facilities as well as requirements to use monopoly network facilities should be lifted. Scheduled limitations that restrict the resale of excess capacity of leased circuits and prohibit interconnection with other leased circuits should be eliminated.

The licensing schemes of many countries pose another significant barrier to the market and to full and fair competition. Restrictions on the number of licenses awarded per geographic area, onerous qualifications for licensees, exorbitant fees, and lack of transparency in the bidding and award process must be eliminated. In many cases, the totality of these requirements effectively limits participation to a handful of large carriers and prevents smaller, perhaps more responsive or innovative carriers from participating.

Variations on the same theme are regulations that favor facilities-based providers over resellers. Many countries that have otherwise committed to liberalize their telecommunications in the GBT have adopted policies designed to encourage infrastructure investment. For example, carriers may be required to implement a certain number of switches before they are permitted to interconnect with the incumbent. These sorts of requirements, while attempting to achieve an arguably laudable goal, act as a barrier by depriving consumers in these markets of a very valuable source of supply --resellers.

As experience has shown in this country, resellers continue to play a vital role in the telecommunications marketplace. There are literally hundreds of these entities, with their numbers increasing every month. These companies are usually small by comparison with the giant facilities-based carriers, but they are able to stay ahead of their much larger competitors by constantly introducing new pricing arrangements, new services, and innovations for consumers.

Another barrier to competition in many countries is the lack of number portability. Number portability is essential in order for competition to develop because it allows customers to keep their telephone numbers when changing carriers. Where no number portability exists,

residential consumers in particular are much more reluctant to shift their business away from the incumbent, even when they are offered a significant price break.

The lack of portability acts as a major deterrent to competition. In particular, business customers are reluctant to switch due to the significant expenses incurred to reprint stationery and business cards and to inform customers, suppliers, and others that they have changed telephone numbers. For example, before portability was implemented in the domestic 800 service market, some competition did exist. However, soon after the introduction of portability, overall demand rose and prices dropped.

C. NEGOTIATING OBJECTIVES

We urge the USTR to set the following negotiating objectives:

- Expand and deepen the commitments of countries that agreed to partial liberalization in the GBT to include full liberalization and adoption of the Reference Paper, by a date certain in the near future.

- Accelerate the scheduling of commitments to full liberalization and adoption of the Reference Paper, by a date certain in the near future, of countries that are WTO Members but have not made commitments under the GBT.

- Seek commitments to full liberalization and adoption of the Reference Paper by countries wishing to accede to the WTO.

- Optimize market access by lifting limitations inscribed in WTO Members' telecommunications schedules.

XIII. TRAVEL AND TOURISM

A. BENEFITS OF LIBERALIZATION

The travel and tourism industry is the world's largest industry, employing over 192 million people worldwide, and is expected to grow to almost 256 million by 2010. The travel and tourism industry is growing faster than world GDP. Its share of gross domestic product is expected to increase from about 10.8 percent or $4.5 trillion in economic activity in 2000 to 11.6 percent or $8.5 trillion by 2010. Travel and tourism exports are expected in 2000 to generate $984 billion in exports, which is 12.6 percent of the world's total, and the industry's exports are projected to grow to $2 trillion or 12.8 percent by 2010.[23]

The travel and tourism industry creates good jobs spanning the spectrum from entry-level positions to executives. It is clearly a driver of economic growth in the world, especially in many developing countries' economies. Liberalization of the industry will lead to faster industry growth, which will not only spur direct growth in the industry, but also growth in related industries, such as manufacturing of transportation equipment, construction and other infrastructure development services. Moreover, the travel and tourism industry represents sustainable and ecologically friendly development.

B. SECTOR STATUS

In general, the tourism and travel related services sector tends not to be heavily regulated and competition tends to be vigorous. The Uruguay Round negotiations yielded commitments in travel and tourism related services that were significantly superior to those of all other sectors. Nevertheless, improvements can be made, as there are exceptions.

C. CLASSIFICATION

This sector includes hospitality, restaurants, travel agencies, tour operators, tourist guides services and other travel related services. The industry has developed since these classifications were drawn up, and the specific services covered under these broad categories need to undergo a thorough review and analysis to ensure that all services that should be covered are included. The GATS should recognize the breadth of hospitality services (including full-service, limited-service, extended-stay and timeshare formats whether managed or franchised) extending from the acquisition and improvement of real estate to the day-to-day operations of a hospitality facility. The GATS should also clarify that this sector includes

[23] WTTC Year 2000 TSA Research

travel reservation services. (The tourism and travel related services sector does not include air or other transportation sectors, which are covered under the transport services sector.)

The development of a Travel and Tourism Annex would allow countries to focus more sharply on travel related services. Such an annex would also enable countries to examine more effectively the interrelationship among transportation sectors and the traditional travel and tourism related services described above. The basis for such a comprehensive annex covering all aspects of travel and tourism could be the Tourism Satellite Accounting system recently agreed to by the United Nations. Such an annex would also facilitate the monitoring of countries' compliance with commitments undertaken and help meet the objectives of Article IV of the GATS. Use of the TSA classification would address many of the problems inherent in the current classification system.

D. BARRIERS

Two of the most prevalent types of barriers fall under the rubrics of competition and investment, which could be addressed either horizontally or on a sectoral basis. Needless to say, this industry, like many others, has substantial investments in trademarks and intellectual property, and has an interest in the outcomes on these and other general business concerns.

- *Competition*. Many countries impose significant restrictions on marketing and promotional initiatives, including loyalty programs, often only against foreign firms or countries enforce them in ways that favor domestic firms.

- *Investment*. One hundred percent foreign ownership is often prohibited, and the form of doing business is commonly restricted or controlled. In addition, when operating through franchise networks, repatriation of profits, payment of royalties, and other similar issues frequently become problematic.

Two horizontal issues are of particular concern to the industry:

- *Consumption Abroad.* The negotiations should address Mode 2 restrictions and disincentives to “consumption abroad”, which is the heart of the travel and tourism economy. Some countries penalize their citizens when they travel abroad by imposing taxes or restrictions on overseas spending, often in ways that unfairly discriminate among payment products. Brazil, for example, imposes a 2 percent transaction tax on credit and charge card spending abroad, but imposes no special taxes on cash purchases. As a large proportion of spending by international travelers is transacted through credit card payment systems, this tax discourages international travel and tourism.

- *Movement of Personnel.* The ability of travelers to move freely around the world is the lifeblood of the travel and tourism industry. The industry has an abiding interest in

liberalizing the restrictions, not only on tourists and the industry's own management, but generally on businesses' ability to locate the proper personnel in the locations where they are most needed. In addition, the Travel and Tourism industry relies heavily on seasonal and temporary workers at all levels to staff facilities such as ski resorts and summer recreational areas. Visas and work permits create cumbersome and time-consuming requirements with procedures that often lack sufficient transparency. Moreover, restrictions, such as pre-employment requirements, economic needs tests and numeric quotas, create significant mode four trade barriers.

One last barrier not covered in the general issues is privacy. Many companies in the travel industry maintain records regarding customers' travel preferences in order to serve particular needs better. Many countries are proposing, or have already enacted, potentially onerous restrictions on the international flow of this type of information. Many countries also require the disclosure of overseas spending by customers, thereby discouraging foreign travel by their citizens.

E. NEGOTIATING OBJECTIVES

The US objective should be the removal of as many barriers to trade in travel and tourism related services as possible. In addition, one of the US Government's top priorities should be the reduction of measures that impede or prevent the timely movement of business personnel on a temporary basis among WTO Member Countries. The creation of a multilateral framework for facilitating the temporary movement of personnel would be a significant accomplishment.

Internal Issues: The US market in trade in travel and tourism related services is open and competitive and should not require concessions during the negotiations. However, the US does impose a number of restrictions regarding the temporary assignment of foreign workers.

Sector-Driven Architectural Issues: None at this time.