
Services Trade

By international norms, the service sectors of Switzerland and the United States are already open. However, Swiss and US barriers still persist in some industries, such as financial services, network industries, and the audiovisual complex, and assorted obstacles hinder the cross-border delivery of professional services. A Swiss-US free trade agreement (FTA) could push the envelope of service-sector liberalization, especially at the canton and state levels, and promote freer movement of personnel. By removing barriers, both countries could benefit from faster transmission of advanced technology and management skills. Moreover, US firms could take better advantage of Switzerland's geography and commercial expertise. Foreign companies—IBM and Citibank, to name two—tend to establish headquarters in Switzerland, not so much to access the Swiss market, but to locate in the heart of Europe and draw on a pool of qualified personnel (Owen 2005).

In 2004, Swiss-US two-way services trade amounted to \$16.3 billion (table 5.1), only a little short of bilateral manufactures trade (\$17.0 billion; see table 4.1). Royalties and license fees (\$4.9 billion) and other private services (\$8.7 billion) are the largest components of US-Swiss bilateral trade. Among other private services, financial services, insurance, telecommunications, and professional services represent the main components (table 5.2). A Swiss-US FTA will lead to greater values of bilateral trade.¹

1. Results of the computable general equilibrium (CGE) model, presented in chapter 8, suggest that a Swiss-US FTA could lead to an expansion in bilateral trade in services of about 10 percent. This result provides a very conservative lower-bound estimate. Using a gravity model for trade in services, Ceglowski (2005) estimates that bilateral trade in services for

Table 5.1 Cross-border services trade between the United States and Switzerland (millions of current dollars)

Service category	US exports			US imports		
	2001	2002	2003	2001	2002	2003
Total private services	6,513	6,815	8,014	6,488	7,450	8,348
Travel	958	696	624	704	619	570
Other private services	3,192	3,548	4,005	2,646	3,814	4,700
Other transportation	510	353	485	611	422	525
Passenger fares	145	195	185	821	530	351
Royalties, license fees	1,708	2,023	2,715	1,706	2,065	2,202

Source: US BEA (2004b).

This chapter is divided into four sections. The first two analyze barriers to trade in the United States and Switzerland in the financial services, network industries (e.g., electricity, telecommunications), audiovisual complex, and professional services sectors. The third revisits services trade negotiations in selected US bilateral FTAs. The last section outlines our recommendations for further liberalization of services trade in the context of a prospective Swiss-US FTA.

A huge service sector not covered in this chapter is wholesale and retail trade. The advent of big-box self-serve retail outlets, such as Wal-Mart, Ikea, and Target, staffed by flexible nonunion employees—many of them part-time workers—has been a major source of efficiency in the US economy. Wholesale distribution has seen similar productivity gains, as supplies are routinely delivered to retail stores on a “just-in-time” basis, mainly at night, supported by sophisticated cash register systems that continuously report inventory needs.

While wholesale and retail productivity levels are generally much higher in the United States than they are in other countries in the Organization for Economic Cooperation and Development (OECD), in Switzerland, the difference from US distribution systems cannot be traced to trade or investment barriers. Swiss cities and cantons may, through zoning standards, restrict big-box retail outlets, and Swiss labor regulations may not

partners to a regional trade agreement is almost 40 percent higher than for nonpartners. The same researcher also estimates an expansion in two-way services trade by 6 to 7 percent for every 10 percent expansion in two-way merchandise trade. The gravity model for trade in goods presented in chapter 8 predicts a 100 percent expansion in two-way merchandise trade for a Swiss-US FTA. Hence Ceglowski’s results would lead to an upper-bound estimate of 60 to 70 percent increase in two-way services trade resulting from a Swiss-US FTA. The CGE and gravity models and empirical results are explored in more detail in chapter 8.

Table 5.2 US-Swiss trade in services by industry, 2003 (millions of dollars)

Industry	US unaffiliated trade ^a			US affiliated trade ^b		
	Exports	Imports	Two-way	Exports	Imports	Two-way
Transport, fares, passengers	1,294	1,446	2,740	n.a.	n.a.	n.a.
Royalties and license fees	313	348	661	2,402	1,854	4,256
Other private services	1,529	3,140	4,669	2,475	1,561	4,036
Business, professional, and technical	799	193	992	n.a.	n.a.	n.a.
Advertising	18	16	34	n.a.	n.a.	n.a.
Computer/information	129	22	151	n.a.	n.a.	n.a.
Construction, architecture, engineering	9	4	13	n.a.	n.a.	n.a.
Industrial engineering	7	n.a.	n.a.	n.a.	n.a.	n.a.
Installation, maintenance, repair	89	3	92	n.a.	n.a.	n.a.
Legal services	179	20	199	n.a.	n.a.	n.a.
Management, consulting, public relations	46	10	56	n.a.	n.a.	n.a.
Operational leasing	(D)	n.a.	n.a.	n.a.	n.a.	n.a.
Others	(D)	34	n.a.	n.a.	n.a.	n.a.
Research, development, testing	137	59	196	n.a.	n.a.	n.a.
Education services	36	15	51	n.a.	n.a.	n.a.
Financial services	537	219	756	n.a.	n.a.	n.a.
Insurance	64	2,680	2,744	n.a.	n.a.	n.a.
Telecommunications	42	21	63	n.a.	n.a.	n.a.
Film, TV tape, rentals	51	12	63	n.a.	n.a.	n.a.
Total services	3,136	4,934	8,070	4,877	3,415	8,292

(D) = not disclosed

n.a. = not available

a. Unaffiliated trade represents transactions between independent companies.

b. Affiliated trade represents transactions between related companies.

Source: US BEA (2004b).

permit the sort of staffing arrangements common in the United States. But zoning standards and labor regulations are clearly beyond the scope of trade agreements. These are sensitive matters, reserved to national and local legislative bodies, under the principles of sovereignty and subsidiarity.

Barriers to Trade in Services: United States

The United States is the premier producer and exporter of services. Constituting some 64 percent of GDP, the service sector is the largest component of the US economy; in 2004, services constituted 30 percent of total US exports (USTR 2005a). The main service exports are business, professional, and technical services, travel services, royalties and license fees, and financial services. Royalties and license fees and transportation and travel services constitute the main US imports.

Liberalization of the services sector in the United States began in the 1970s, when the transportation, banking, and natural gas sectors were gradually deregulated. However, barriers to foreign entry still persist in several sectors, including, as mentioned above, financial services, telecommunications, transportation, and professional services. In the General Agreement on Trade in Services (GATS) negotiations, responding to requests from US trading partners, the United States Trade Representative (USTR 2003c) affirmed US intentions to further liberalize financial, telecommunications, environmental, energy, and express delivery services. But it pointedly noted that certain subjects would not be open to negotiations. Off-limit sectors included government monopolies (e.g., the US Postal Service and the Bureau of Engraving); areas of keen regulatory interest (e.g., consumer safety, health-care, and education); programs restricted to US citizens and minority set-aside requirements (e.g., Overseas Private Investment Corporation guarantees, Trade and Development Agency financing, certain public contracts); and state and local education.

Financial Services

Two-way financial services trade between Switzerland and the United States is substantial, amounting to \$750 million in 2003. However, barriers remain, particularly against foreign insurance firms and foreign participation in securities markets. The USTR (2003c) indicates that the United States is willing to curtail registration requirements that discriminate against foreign-owned banks.

Banking

The Findlay-Warren (2000) restrictiveness index indicates that barriers to banking services are somewhat higher in Switzerland than they are in the

Table 5.3 Restrictions on foreign banking firms

Country	Foreign restriction index
Switzerland	0.08
United States	0.06
Current US partners	
Australia	0.12
Canada	0.07
Chile	0.40
Mexico	0.17
Singapore	0.37
Prospective US partners	
Colombia	0.23
Indonesia	0.55
Malaysia	0.65
New Zealand	0.06
Philippines	0.53
South Africa	0.19
South Korea	0.43
Thailand	0.39

Note: Index based on restrictions on establishment (licensing requirements for new firms, restrictions on direct investment in existing firms and on the permanent movement of people) and restrictions on ongoing operations (on firms conducting their core business, the pricing of services, and the temporary movement of people). Index measures all restrictions that hinder foreign firms from entering and operating in an economy.

Source: Findlay and Warren (2000).

United States (table 5.3). This difference arises from disparities in ongoing operations, mostly limits on extending the network of branches, and restrictions on establishing a firm, mainly due to visa and work permit differences for professional personnel.

For the most part, legislation permits the cross-border supply of banking services. Accordingly, foreign banks without a commercial presence in the United States may deal directly with US customers. As a consequence of the US dual banking system—both federal and state governments can charter and supervise banks—foreign banks can establish a commercial presence by opening either a federal or a state-licensed branch, agency, or representative office, or by creating or acquiring a national or state bank as a corporate subsidiary (WTO 2004c).

Nevertheless, the EU Commission has identified US impediments to foreign participation in banking services. First, the majority of directors of national banks (i.e., federally chartered banks) must be US citizens; likewise, half of the states require either all or the majority of bank directors to be US citizens. Also, the federal regulator—the Office of the Comptroller of the Currency (OCC)—and some state banking supervisors require foreign banks to maintain “asset pledges” for funds readily available under US jurisdiction. These pledges are in addition to the paid-up capital that foreign banks are already bound to maintain in their home country. Legislation has been proposed that would permit the OCC to vary its asset pledge requirements to reflect the risk characteristics of different institutions (European Commission 2004a).

Another limitation is that banks cannot automatically expand through establishing or acquiring branches. Some states limit the issuance of branch licenses for foreign banks; others restrict the opening of representative offices by foreign banks (WTO 2003c). The European Union has requested that these restrictions be relaxed. Finally, US legislation prohibits a foreign bank branch from accepting a domestic retail deposit of less than \$100,000 if the branch was established after 1991. The European Union has requested a reduction in this threshold.

Despite these various restrictions, representatives of both the Swiss Banking Association in Switzerland and Swiss banks operating in the United States question whether a Swiss-US FTA would bring much to the table for their industry, since Swiss banks are generally satisfied with US market access (Owen 2005). Moreover, given that bank secrecy is an important feature of the banking system, Swiss banks ask whether a Swiss-US FTA would disturb the existing arrangements for exchanging sensitive financial information. However, the US Treasury does not seem inclined to address the issues surrounding the exchange of financial information in an FTA.

Insurance

The United States has the largest insurance market in the world. It is also a net importer of insurance in its trade with Switzerland (Switzerland is especially prominent in the reinsurance market).² The US retail insurance market is highly segmented because regulations are made at the state level: Each insurance company must be licensed under the laws of each state where it intends to offer insurance (WTO 2004c). Hence, each company must deal with solvency, licensing, and operating requirements on a state-by-state basis. In addition, unlike banking, there is no such thing as a federally licensed or regulated insurance company. Market segmentation may impede

2. For unaffiliated companies, US insurance premiums paid to Switzerland from the United States amounted to \$2.7 billion in 2003; US premium receipts from Switzerland amounted to \$64 million.

foreign firms as it entails higher compliance costs. If a foreign insurer wants to offer nationwide services, the insurer would have to fulfill the licensing requirements of all 50 states.

The European Commission (2004a) notes that foreign insurance companies face discrimination on two main fronts. The first involves the absence of “port of entry” legislation in many states. If a foreign insurance company wants to underwrite risks in a state that does not offer a port of entry, it must first seek a license in another state that does offer such a port before seeking a license in the targeted state. Second, some states require their insurers to buy reinsurance from state-licensed companies before allowing reinsurance premiums to leave the state.

Most states do not allow insurance companies that are not licensed in the state to transact business there. Nevertheless, certain prominent insurers are exempted from licensing requirements and allowed to operate on a cross-border basis.³ These prominent insurers, such as Lloyd’s, are part of the \$9 billion US “surplus lines” market. However, they face some important constraints. To participate in surplus lines business, foreign insurers and reinsurers have to be “white-listed” by the National Association of Insurance Commissioners (NAIC). In addition—and this is minor—they must name a US attorney and hold a local trust fund in a US bank of up to \$60 million. That some foreign companies are effectively regulated in their home country carries little weight in the NAIC’s determination (European Commission 2004a).

A federal excise tax on all insurance premiums ceded abroad is levied on companies that are not incorporated in either the United States or a country with which the United States has signed a double taxation treaty.⁴ The European Union has requested the United States to eliminate this discriminatory tax. Since the United States and Switzerland have a double tax treaty, this is not a bilateral issue.

Most states also require US citizenship and in-state residency for key personnel in insurance companies. Some require that a majority of directors, lawyers, and brokers be US citizens or permanent US residents (Mexico and Canada are exempted). Moreover, local brokers must be used in all states where a risk has been underwritten.

Securities

Foreign and domestic security firms are both subject to regulation by the Securities and Exchange Commission (SEC). Broker-dealers and investment

3. By this means, various types of insurance related to maritime shipping, commercial aviation, space launchings, and other hard-to place risks are exempted from licensing requirements.

4. The tax rates are 1 percent for reinsurance and life insurance, and 4 percent for nonlife insurance.

advisers are required to register with both the SEC and state regulatory authorities. Out of 25 “primary dealers”—a designation that the Federal Reserve gives to select firms that are eligible to participate in Treasury bill and bond auctions—two-thirds of them are US subsidiaries of foreign firms based in seven countries (WTO 2001a). In general, foreign securities firms are granted national treatment.⁵

Current legislation allows a foreign securities firm to establish a branch in the United States. However, this process is impractical for many foreign firms, since opening a branch subjects them to SEC regulation, which entails costs and might conflict with home-country regulation (European Commission 2004a). The Investment Company Act of 1940 (as amended) does not allow foreign investment companies, such as mutual funds, to conduct direct public offerings in the United States unless the SEC permits the company to register. Thus, few foreign funds are registered in the United States,⁶ and the Act is a substantial barrier to foreign services trade in this regard.

However, foreign firms may register as investment advisers under the Investment Advisers Act of 1940. Thereafter, they may organize a mutual fund under US law and register the fund under the Investment Company Act. The managers and directors are not subject to residency or citizenship requirements, and the fund can be managed from abroad. Despite this end run, the European Union has requested the United States to open its market to foreign mutual fund sales, and has also sought US market access for foreign financial derivatives (European Commission 2004a).

Finally, regulatory requirements for listing on US stock exchanges became more burdensome in the aftermath of corporate scandals. The Sarbanes-Oxley Act of 2002 has increased the cost of access to the US market.⁷ Several companies are said to have considered delisting from US stock exchanges. However, it is very difficult for foreign firms to delist under current SEC rules (European Commission 2004a). Moreover, firms that have more than 300 US shareholders would still be subject to SEC scrutiny even after delisting.

Telecommunications Services

The restrictiveness index for telecommunications services (table 5.4) shows that the United States has a more open market than its current and prospec-

5. However, the United States took a most favored nation (MFN) exemption in its General Agreement on Trade in Services (GATS) schedule for participation by foreign firms in the issuance of new government-debt securities, mainly Treasury bills and bonds (WTO 2004c).

6. Only 19 foreign funds, most of them from Canada, have been permitted to register. The last permission was issued in 1973 (European Commission 2004a).

7. It is claimed that Sarbanes-Oxley raises costs by imposing stiff accounting and disclosure requirements. Empirical evidence, however, remains scarce.

Table 5.4 Restrictiveness index for telecommunications services^a

Country	Domestic index^b	Foreign index^c
Switzerland	0.10	0.20
United States	0.03	0.03
Current US partners		
Australia	0.02	0.04
Canada	0.13	0.44
Chile	0.08	0.09
Israel	0.15	0.53
Jordan	0.37	0.92
Mexico	0.21	0.53
Morocco	0.33	0.90
Singapore	0.19	0.44
Prospective US partners		
Bahrain	0.35	0.89
Bangladesh	0.23	0.58
Bolivia	0.15	0.49
Botswana	0.17	0.52
Colombia	0.17	0.46
Costa Rica	0.37	0.93
Ecuador	0.23	0.80
Egypt	0.27	0.63
Guatemala	0.17	0.33
Honduras	0.23	0.77
Indonesia	0.26	0.67
Jamaica	0.35	0.91
Malaysia	0.22	0.58
Namibia	0.30	0.65
New Zealand	0.03	0.03
Nicaragua	0.17	0.62
Oman	0.30	0.87
Pakistan	0.26	0.55
Panama	0.28	0.63
Peru	0.18	0.51
Philippines	0.13	0.45
Qatar	0.30	0.87
South Africa	0.26	0.59
South Korea	0.26	0.68
Swaziland	0.30	0.87
Thailand	0.27	0.79
Trinidad and Tobago	0.23	0.69
United Arab Emirates	0.29	0.84

a. Index based on restrictions on establishment (licensing requirements for new firms, restrictions on direct investment in existing firms and on the permanent movement of people) and restrictions on ongoing operations (on firms conducting their core business, the pricing of services, and the temporary movement of people).

b. Domestic index measures restrictions on domestic firms.

c. Foreign index measures restrictions on foreign firms.

Source: Findlay and Warren (2000).

tive FTA partners do. Moreover, the US telecommunications market is the largest in the world and highly competitive, with mobile, fixed line, cable, and VOIP (voice over Internet protocol) all fighting for market share. Table 5.2 indicates that, based on current accounting or settlement rates, the United States is a net exporter of telecommunications services to Switzerland and the rest of the world.⁸ Given the volume of present and prospective traffic, conditions of access to the telecommunications sector will probably be an important issue in FTA talks between Switzerland and the United States.

The Federal Communications Commission (FCC), in cooperation with the USTR, began to liberalize internationally in 1996. One element of the US strategy was the General Agreement on Trade in Services (GATS) Basic Telecommunications Agreement, which entered into force in February 1998. That agreement committed the 69 signatory countries to significant market access. However, the European Community (EC) identifies important US barriers in the satellite and mobile sectors. These barriers include investment restrictions, lengthy regulatory proceedings, conditionality of market access, reciprocity procedures, and certain congressional attitudes (European Commission 2004a). In April 2003, the USTR stated that the United States will offer further liberalization in the telecommunications and information services in the Doha Round. This offer contemplates foreign ownership of cable television networks and direct broadcast by non-US satellite companies to American viewers. In May 2003, the FCC started a reform program aimed at faster licensing procedures in the satellite sector. The USTR also seems willing to push for expanding foreign companies' ability to provide information services directly to consumers (USTR 2005a).

Despite these offers and initiatives, US market access restrictions are still a matter of contention (European Commission 2004a). First, the US offer schedule in the GATS refers only to the liberalization of common carrier networks, excluding cable networks. Second, the United States maintains restrictions on foreign ownership. In 2002, the European Commission requested that restrictions on direct foreign ownership of common carrier radio licenses be removed.⁹ Meanwhile, the US firm Comcast retains its exclusive right on satellite-based services that link up with Intelsat and Inmarsat (European Commission 2004a). Finally, the United States has retained its most favored nation (MFN) exemption on one-way transmis-

8. In 2003, US exports of telecommunications services amounted to \$5.5 billion, while US imports amounted to \$4.7 billion (US BEA 2004a). These payments represent "settlement charges" on incoming and outgoing telecommunications traffic respectively.

9. The EC claims that non-US citizens and any corporation that was not organized under US laws face restrictions on direct foreign ownership of a common carrier in the communication sector. For example, radio licenses may not be granted to these legal persons (European Commission 2004a).

sion of direct-to-home (DTH) and digital broadcast satellite (DBS) television services, as well as digital audio services (European Commission 2004a).¹⁰

Professional Services

In 2004, US professional services accounted for 11 percent of GDP and approximately 5 percent of US exports of goods and services. US exports of professional services are geographically diversified, with 25 percent of revenues originating from Asia and 16 percent from Latin America. Imports, however, are highly concentrated, the OECD being the main destination of US payments (WTO 2004c).

The Findlay-Warren (2000) restrictiveness index for professional services (table 5.5) indicates that trade barriers to accounting, architectural, and engineering services are higher in the United States than they are in Switzerland, though legal services are an important exception. Table 5.2 shows that, in 2003, the United States exported \$800 million in professional services to Switzerland, with legal services being the largest single category. US imports of professional services from Switzerland amounted to \$200 million and are highly diversified. The relative severity of restrictions may not be a major explanation for the favorable US trade balance, since US exports of legal services face higher barriers in Switzerland than vice versa (see table 5.5). For the most part, US net exports very likely reflect US comparative advantage (Mann 2006).

An important feature of service delivery to foreign markets is the fly in–fly out (FIFO) mode of professional services. Lawyers, accountants, engineers, and certain other professionals work with clients abroad predominantly through short-term visits.¹¹ This type of work raises distinctive issues, such as the unauthorized performance of professional duties, or malpractice that harms the client or the public at large. The question of how clients and the public can be protected internationally from unauthorized or incompetent lawyers and other professionals is gaining importance,¹² and by resolv-

10. However, the USTR has communicated its willingness to open a new round of negotiations on this issue.

11. This probably results in an understatement in official statistics of services exports. The US Bureau of Economic Analysis 2004 figures for the export of legal services are probably too low, since they do not include payments made by foreign clients for FIFO services.

12. “Rules of professional conduct,” for example, relate to a lawyer’s competence, requiring that a lawyer fully understand the factual basis for his advice and the legal principles to be applied. Bearing these rules in mind, the American Bar Association’s Commission on Multi-Jurisdictional Practice has been concerned with the “unauthorized practice of law.”

Table 5.5 Restrictiveness index for foreign professional services firms

Country	Engineering	Accountancy	Architecture	Legal
Switzerland	0.18	0.15	0.27	0.50
United States	0.23	0.19	0.33	0.48
Current US partners				
Australia	0.15	0.08	0.41	0.42
Canada	0.33	0.16	0.42	0.52
Chile	0.14	0.24	0.35	n.a.
Mexico	0.31	0.33	0.36	0.49
Singapore	0.08	0.11	0.41	0.42
Prospective US partners				
Indonesia	0.30	0.24	0.56	0.57
Malaysia	0.33	0.26	0.51	0.54
New Zealand	0.34	0.19	0.39	0.47
Philippines	0.33	0.15	0.63	0.54
South Africa	0.11	0.10	0.44	n.a.
South Korea	0.19	0.12	0.48	0.44
Thailand	0.12	0.11	0.49	0.44

Note: Index based on restrictions on establishment (licensing requirements for new firms, restrictions on direct investment in existing firms and on the permanent movement of people) and restrictions on ongoing operations (on firms conducting their core business, the pricing of services, and the temporary movement of people). Index measures restrictions on foreign firms.

Source: Findlay and Warren (2000).

ing these issues, the scope of two-way trade in professional services can be substantially increased.

The European Commission (2004a) notes that, since the implementation of the GATS schedules for professional services, access terms for foreign suppliers to the US market for professional services have improved. Freeman, Plascencia, and Setzler (2003) argue that citizenship requirements for these occupations have dropped significantly, and that requirements still on the statute books appear to be poorly enforced.¹³ However, foreign access is still restrained by differing regulatory and licensing requirements from state to state. As the Commission report adds, “the application of Buy America and positive discrimination provisions as well as burdensome visa procedures for registration and for obtaining work permits, make it difficult for foreign suppliers of professional services to enter the US market” (European Commission 2004a).

13. This change is attributed to federal court decisions, advisory opinions of state attorneys general, and state legislative and administrative action.

Legal Services

In 2002, total cross-border exports of legal services amounted to \$3.3 billion, while imports amounted to \$1.2 billion (WTO 2004c). In 2000, the United States committed to liberalize its citizenship and residency requirements for licensing, scope of practice,¹⁴ association of foreign-qualified lawyers with local lawyers (only possible in 24 states), and association of foreign partner law firms with local law firms (WTO 2004c). US courts have held that nationality requirements for licensing are prohibited by the US Constitution.¹⁵ As of 2003, nine jurisdictions require in-state offices for licensing, and 16 require in-state or US residency of practitioners (WTO 2004c). The European Union has requested the United States to remove in-state residency requirements for commercial companies and natural persons (GATS modes 3 and 4) in Michigan, Texas, and Washington for consultancy practice on the law of foreign jurisdiction for which the service supplier is already a qualified lawyer (GATS 2002).

The market for legal services in the United States is currently segmented by different regulatory requirements across states. The US GATS schedule specifies that legal services must be supplied by a natural person as opposed to a company. In turn, this means that barriers to international labor mobility are important—and the United States is not disposed to grant additional work visas in the context of trade negotiations (WTO 2004c). However, the United States is willing to address barriers that take the form of state requirements for residency, minimum age, diploma or title, professional examinations, and registration with a professional body (WTO 2001a, 2004c).

Accounting and Auditing Services

Foreign accountants who wish to practice in the United States are required to pass the CPA Uniform Examination, comply with state laws (which differ across states), and meet state board educational or continuing professional education requirements. The European Union has challenged residency and citizenship requirements, and the obligation to create an in-state office, in several states (GATS 2002).

14. US willingness to liberalize citizenship and residency requirements does not, however, imply greater US willingness to extend work visas (e.g., H1-B visas) to foreign lawyers. It only means that, once legally admitted to the United States, foreign-born lawyers should not be denied the right to practice because they are not US citizens, or because they have not resided in a certain state for a period of years.

15. The California Supreme Court held in *Raffaelli v. Committee of Bar Examiners*, 7 Cal.3d 288, May 24, 1972. S.F. No. 22841. (1972) that the citizenship requirement for attorneys was unconstitutional. The US Supreme Court issued a similar finding in *Application of Griffiths*, 413 U.S. 717 (1973), holding that “Connecticut’s exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment.”

The European Union may also challenge the requirement that accounting firms operating in the United States abide by US accounting standards, as opposed to the international standards used in Europe (European Commission 2004a). The SEC has rejected several requests to allow the domestic use of international accounting standards. The European Union argues that this “regulatory trade barrier” must be resolved (GATS 2002).

Finally, the Sarbanes-Oxley Act could have a substantial impact on US-listed Swiss companies and Swiss auditing firms. New provisions for audits and corporate governance might conflict with the laws that Swiss firms face at home (European Commission 2004a) and even if it does not, the Sarbanes-Oxley Act will likely entail higher costs. Essentially, foreign firms that list their shares on US security markets need to comply with US governance and auditing standards, as well as standards in their home country. Moreover, the law obliges all accounting firms that do business in the United States, such as by auditing foreign firms that list their shares on US security markets, to register with the Public Company Accounting Oversight Board (PCAOB). This requirement conveys an objectionable “extraterritorial” flavor to some foreign firms (WTO 2004c).

Engineering Services

As with other services, engineering services face market segmentation owing to different regulations from state to state, and several states have citizenship and in-state residency requirements. The European Union has requested the United States to abolish citizenship requirements in the District of Columbia and in-state residency requirements in Idaho, Iowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and West Virginia (GATS 2002).

Barriers to Trade in Services: Switzerland

Switzerland’s service sector accounts for more than two-thirds of GDP, with financial services—banking and insurance—representing 11 percent, and tourism another 6 percent. However, certain service sectors are shielded from competition through market segmentation and border barriers. Switzerland’s FTA with the European Union triggered some reforms, but further liberalization remains a goal. The conclusion of a Swiss-US FTA could prompt reforms in the Swiss market, to the benefit of both parties.

The analysis covers two network utilities, electricity and natural gas; two other network activities, the postal services and telecommunications; professional and audiovisual sectors; and financial services. Several of these have elements of natural monopoly, so we start with a discussion of competition law.

Switzerland's Competition Law

Compared with other industrial countries, Swiss legislation designed to increase market competition is relatively new. The main texts were adopted in the mid-1990s in the context of an economic “revitalization program” to align Switzerland with the European Union and other OECD members. The main pieces of legislation include the Federal Act on Cartels and Other Restraints of Competition (LCart, adopted in 1995); the Regulation on Business Merger Control (1996); the Domestic Market Act (DMA, 1995) and the Act on Technical Hindrances to Trade (1996).

LCart was the first legislation to give decision-making powers to competition authorities. It was amended in June 2003, and the new version entered into force in April 2004. One amendment enabled the authorities to immediately impose sanctions. Another gave them a leniency option. Prior to the 2003 amendments, sanctions could only be imposed in the event of repeated offences, which never occurred (OECD 2004a). In other words, before 2003, companies had a free pass to break the competition law, and be caught once or twice, before facing any penalty.

The competition authority comprises both the Competition Commission (Comco) and its Secretariat. The former is the decision-making body, while the latter conducts investigations. The authority is responsible for applying LCart by rendering decisions on antitrust and merger cases. Comco can make recommendations to the political authorities, and answer general questions relating to competition; it is also empowered to ensure that the Confederation, cantons, communes, and other bodies with public responsibilities comply with the provisions of the DMA.

Many areas are subject to additional regulation, such as imposing a state pricing system or granting special entitlements to certain companies to carry out public tasks. They are not formally excluded from LCart. The telecommunications incumbent Swisscom has faced several investigations by Comco.

Financial Services

One of the most stable and sophisticated countries in the world, Switzerland is a key financial center. Financial services represent approximately 11 percent of Swiss GDP. In 2004, Swiss-US commerce in financial services amounted to approximately \$800 million in two-way trade.

Banking Services

Switzerland requires all branches, subsidiaries, and agencies of foreign banks to obtain a license from the Swiss Federal Banking Commission (SFBC) as a condition of operation. Once a license has been granted, foreign

banks enjoy the same status that Swiss banks do (WTO 2004b). In 2000, the SFBC extended its licensing requirements to Internet-exclusive banks and securities dealers. While the SFBC has the right to supervise foreign banks, it also allows foreign supervisory agencies to inspect their banks in Switzerland. The Investment Fund Act (IFA) regulates investment funds. Foreign funds can be established if the representative agent is a Swiss resident and has a license (WTO 2004b).

Secrecy is important to the Swiss banking system, and while it does not affect market access, and lies well outside the scope of an FTA, the issue has come up in other international settings. The European Union in particular has pressured the Swiss government to modify its banking secrecy laws. In January 2003, EU members reached a political agreement to introduce a system of information exchange to avoid tax evasion within the European Union. Under the agreement, national regulators in Austria, Belgium, and Luxembourg will be allowed to maintain bank secrecy contingent on the collection of a withholding tax on interest and dividends paid to EU residents (OECD 2004a). The European Union and Switzerland reached a similar agreement that entered into force on July 1, 2005. The agreement was accepted by popular vote in a referendum. A prospective US-Swiss FTA could also face a referendum when dealing with the Swiss banking sector. However, the US Treasury seems disposed to deal with the tax-evasion and anti-money laundering aspects of information exchange outside of FTA negotiations.

Insurance Services

Since it has the highest per capita insurance expenditure in the world, Switzerland's insurance market is extremely appealing to foreign competitors. However, certain barriers to foreign entry persist. Foreign insurers attempting to do business in Switzerland are required to establish a subsidiary or a branch in Switzerland and may offer only the types of insurance for which they are licensed in their home countries. The manager of the foreign-owned branch must reside in Switzerland, and the majority of the board of directors of the Swiss subsidiary must have European Free Trade Association (EFTA) citizenship. However, foreign companies offering only reinsurance are not subject to oversight by the supervisory body, the Federal Office of Private Insurance (FOPI).

Public monopolies exist for fire and natural damage insurance in 19 cantons, and for the insurance of workplace accidents in certain industries (WTO 2004b). Private insurance firms must establish a fund, amounting to between 20 percent and 50 percent of their minimum capital requirement, available at short notice to cover potential losses. As part of Switzerland's bilateral agreement with the European Union, EU life insurers are required to deposit a certain percentage of their assets with the Swiss National Bank (SNB), though non-life insurers are not. All other non-EU insurers are required to make this deposit, and US insurers face this requirement (OECD 2004a).

Network Industries

Most network industries are only partially liberalized, and the degree of liberalization differs among them. The absence of competition abets higher prices that exceed the OECD average and probably limits productivity gains. As the Swiss-EU FTA concerns only goods, the liberalization process of services has been slower and pursued less aggressively in Switzerland than in the European Union. Nontrade barriers still insulate four of Switzerland's network industries: electricity, natural gas, telecommunications, and postal services.

Electricity

Electricity is the main source of energy produced in Switzerland. Switzerland counts 350 hydroelectric plants and five nuclear power plants. Electricity is considered as a good; imports are duty free and, like exports, they are not curtailed by licensing requirements. Production is competitive, but public monopolies dominate electricity transmission and distribution within Switzerland. As they are only factual monopolies as opposed to public legal monopolies, they are nullified by LCart, as the Swiss Supreme Court confirmed in 2003. Cantons and municipalities own 72 percent of capital invested in the electricity industry. Energy revenues are a substantial source of financing for local governments at 700 million Swiss francs a year, or some 0.2 percent of GDP. The noncompetitive character of this sector, along with the high taxes set by cantons and municipalities, make electricity rates for the Swiss industry the fourth highest among countries that belong to the International Energy Agency (WTO 2004b). Many regional and local activities are cross-subsidized by cantons, on the basis of revenues and taxes collected on electricity generation and transmission.

In a referendum launched by Swiss labor unions in 2002, the population rejected a proposed energy market law (EML) that would have permitted third-party access to the grid. In part, this reflected a general lack of confidence in liberalization, owing to private-sector management problems, particularly the collapse of Swissair and scandals in the United States (OECD 2003). However, most experts argue that lower energy power prices in neighboring countries will eventually force Switzerland to adapt, triggering a restructuring process. Consequently, the Federal Council proposed a new electricity supply law and an urgent temporary amendment to the Electricity Law (EIU 2005). The goal is to nest the Swiss electricity industry within the European Union. The proposals encompass two phases. The first, which is supposed to start in 2007, will allow commercial users to choose their electricity supplier (EIU 2005), and envisages legal unbundling of transmission from commercial activities; merging of transmission operators into a single system, Swissgrid; and establishing an independent regulatory agency for the electricity sector.

Originally, a second phase foresaw full market liberalization in 2012, unless it was defeated in a referendum. In the course of parliamentary debate, the second-phase proposal has now been modified. Full liberalization—regulated third party access (rTPA) according to the EU model—is proposed from the moment of entry into force of the law in 2007, accompanied both by extensive security of supply provisions (the so-called “Oregon model”) for households and small business enterprises consuming less than 100 MWh per year, and by measures favoring electricity from renewable sources.

Natural Gas

The natural gas sector faces many of the same restrictions and challenges as the electricity sector does. Liberalization of the natural gas market is high on the Swiss government’s reform agenda. However, after the failed attempt to restructure electricity, the project of liberalizing gas was aborted. Unlike the electricity sector, the legal regime governing the gas sector already applies negotiated third party access, by virtue of the law on pipelines. However, current initiatives by a few private companies to create a gas market and enable third-party access to the pipeline grid are making little headway. The initiatives do not provide for creating an independent regulator, and consequently, they could raise competition law issues. Moreover, the lack of unbundling between noncommercial and commercial activities, as well as the need to negotiate transport tariffs on a case-by-case basis, are both handicaps for gas trade.

Telecommunications

The telephone network in Switzerland is one of the densest in the world, and Internet usage is growing at a fast rate (WTO 2004b). The Swiss telecommunications sector was liberalized in 1998. After the sector was open to foreign investment and competition, three different operators—Swisscom, TDC Switzerland (sunrise), and Orange—became the main players in the mobile telephone market.¹⁶ With a stake of about 63 percent in Swisscom’s capital, the Swiss Confederation still plays a leading role (WTO 2004b). The foreign restrictiveness index for telecommunications services (Findlay and Warren 2000) indicates that discrimination against foreign firms persists in Switzerland, and that entry barriers are higher in Switzerland than they were in the United States (table 5.4). However, the values calculated in this study are based on 1996 barriers, which was before Switzerland’s telecommunications liberalization. Most probably, Switzerland’s barriers are nearly as low as US barriers today. Table 5.4 also shows that Switzerland’s barriers to trade in

16. Since 1998, liberalization has attracted approximately 40 providers for mobile network services (WTO 2004b).

telecom services are low compared with most other current and prospective US FTA partners.¹⁷

New foreign entrants were able to gain substantial shares of the Swiss national long-distance and international markets for fixed-line services; in 2002, 32 and 46 percent respectively (WTO 2004b). However, Swisscom retains a dominant role in the local market.¹⁸ In 2001, the independent regulator, the Federal Communications Commission (ComCom), attempted to unbundle the local loop and dismantle the federal monopoly on network infrastructure. Those efforts were defeated in Swiss courts. The Swiss Federal Council then approved a telecommunications reform package.

The first part of the reform proposal, which took effect in April 2003, gave ComCom the legal authority to order Swisscom to provide leased lines at cost-oriented prices. ComCom then ordered Swisscom to lower its inter-connection rates by between 25 percent and 35 percent, starting in January 2004 (WTO 2004b). As the USTR report notes, “The ComCom decision is retroactive for the past three years and will ultimately force Swisscom to reimburse tens of millions of Swiss francs to Sunrise and MCI WorldCom, Swisscom’s direct competitors” (USTR 2005c). However, claiming that its rates were already aligned with those of EU members, Swisscom took the ComCom decision to Federal Court, which approved the appeal for formal reasons in October 2004 and referred the matter back to ComCom for reassessment. In an order issued mid-June 2005, ComCom made a fresh decision that is, however, largely identical in content to its 2003 decision. Swisscom has announced that it will challenge this decision in Federal Court.

In the second part of the reform proposal, the Swiss Federal Council recommended amending the Law on Telecommunications to unbundle Swisscom’s local loop, eliminate state authorization requirements for market access, and establish an independent body to resolve disputes between users and providers of telecommunications services simply and quickly. After deliberating on these proposals, in October 2004, the lower house of the Parliament (the National Council) passed legislation to allow telecom operators to set their own fees and charge their clients directly for the use of subscriber lines, to unbundle the local loop, and to allow operators physical access to the cabling network. In its resolution of June 2005, the Senate (Council of States) went a step further with liberalization. The two Parliamentary Councils will have to reconcile their differences in the coming months.

The USTR has evaluated the issue of termination charges for mobile calls in Switzerland. Switzerland’s rates are said to be particularly high, and there is no regulatory oversight. Swisscom still retains substantial monopoly power, and has succeeded in blocking any attempts by ComCom to change

17. Rankings are better for Chile, Australia, and New Zealand.

18. According to the WTO (2004b), Swisscom operates 99 percent of subscriber lines and 72 percent of the local traffic.

the current regulation (USTR 2005c). However, Swisscom announced in May 2005 that it will reduce its termination charges.

Postal Services

Switzerland has a dense network of post offices of different sizes. Only a quarter of them record an accounting profit. Die Post/La Poste/La Posta has estimated its annual operating loss to be 500 million Swiss francs (OECD 2004a). This loss is covered by profitable business in reserved areas such as domestic first class mail and inbound international letters.¹⁹ At prevailing exchange rates, postal service prices remain the highest in the OECD (2004a).

Swiss postal services are divided into three market segments: reserved services, offered exclusively by Swiss Post as a monopoly under its universal services obligations; nonreserved services, also offered by Swiss Post under its universal services obligations, but in competition with other suppliers; and liberalized services. The first segment, reserved to Die Post/La Poste/La Posta, consists of domestic and incoming international mail for letters. In September 2005, the Federal Council of the Swiss Federation announced that the maximum weight of letters subject to the postal monopoly would be reduced to 100 grams, beginning in April 2006.²⁰

The second market segment includes outbound international services for letters, and all postal services (domestic and international) for packages of up to 20 kilograms. Licenses are required for all nonreserved services if turnover exceeds 100,000 Swiss francs, newspaper and magazine subscriptions exempted (WTO 2004b). Smaller services are open to competition and do not require licensing. Unlike its private competitors, Die Post/La Poste/La Posta is obligated to provide universal service, implying that it must serve the reserved and nonreserved market segments in the whole country at the same price (OECD 2004a).

The third market segment includes express delivery services and parcels of more than 20 kilograms. This segment is already fully liberalized, and Die Post/La Poste/La Posta is not obliged to provide these services universally (OECD 2004a).

Audiovisual Services

Switzerland does not set quotas on non-Swiss or non-European programming. However, film distributors and cinema companies are expected to

19. Letters are defined as any mail of dimensions not exceeding 353 × 250 millimeters, a thickness of 2 centimeters, and a weight of 1 kilogram.

20. See Confoederatio Helvetica (2005b) for the announcement. At present, the incumbent firms in the EU member states and Switzerland retain monopoly rights over letters up to 100 grams (first-class mail, in US terminology). The EU limit is supposed to be reduced to 50 grams by 2006. Full liberalization of the market for EU letters is planned for 2012 (OECD 2004a).

maintain a certain diversity in the programs they offer. Since 2002, a law permits the government to levy a nominal development tax on tickets sold by a region's movie theater if the government judges that the content is not sufficiently diversified. The proceeds of the development tax will be re-directed toward the financing of new theaters within the region that are willing to offer greater diversity (USTR 2005c).

Professional Services

The Swiss-EU Agreement on Free Movement of Persons, signed in 2002, marginally facilitated the employment of foreign workers by domestic Swiss firms.²¹ However, professional services perfectly illustrate activities facing market access barriers within Switzerland. Professional services are subject to regulations in different cantons, leading to entry barriers not only against foreigners, but also between cantons. A Swiss-US FTA could have a positive impact on the free movement of people, as it would increase mobility between cantons (Owen 2005).

While barriers to entry differ from profession to profession, they are pervasive for accountants, lawyers, architects, and engineers. Barriers include compulsory certificates to exercise a profession, special permits to work in a given canton, and fixed or recommended prices. The cantons grant more certificates, but authorizations to exercise a profession are still required, often conditioned on solvency and insurance. Moreover, the Swiss Federal Tribunal has refused to recognize the right of establishment by professional firms, and supports cantonal decisions that reject certificates issued either by another canton or by a foreign government. Hence, a professional firm may not be able to practice in a given canton, even though the applicant has already been recognized in another one (WTO 2004b). All of this adds up to formidable entry barriers.

Fortunately, from a Swiss standpoint, it appears that all professional services can be negotiated in the FTA with the United States, except for the medical profession (Owen 2005). The Swiss health system entails compulsory health insurance and is heavily regulated. These features, along with medical licensing standards, will hamper any effort to liberalize the medical market.

Accounting and Auditing

Federal law stipulates that each audit firm must have at least one auditor with Swiss residency, and that the firm itself must be registered in the Swiss commercial register (WTO 2004b). Qualification of foreign professionals is

21. IMF (2005b) reports that the foreign labor force increased by 2 percent annually in 2003 and 2004.

contingent on Swiss recognition of foreign diplomas by the Office for Professional Education and Technology, although there is as yet no system of accreditation within Switzerland (WTO 2004b).

Legal Services

Access to the legal profession improved following a federal law, enacted in June 2002, aimed at harmonizing requirements across cantons. The law requires a period of practice of at least a year in Switzerland, and an equivalent law diploma for foreigners (WTO 2004b) awarded by a country that Switzerland recognizes: mainly EU and EFTA states. There is no indication that US legal diplomas are currently recognized.

Architecture and Engineering

Practicing architecture and engineering does not require a license. Entry may be difficult for foreigners, but under the law, they are accorded national treatment if they have worked for two years in Switzerland (WTO 2004b). However, prior practice requirements may differ across cantons. The European Union has requested the removal of prior practice requirements in the canton of Lucerne (European Commission 2002), and the federal government is now trying to harmonize requirements at the federal level to comply with EU standards (EIU 2005a). Recommended prices are published every year by the professional association, the Swiss Society of Engineers and Architects (SIA) (WTO 2004b).

Other Service Sectors

Other service sectors, such as taxis, restaurants, and hotels, are highly regulated. Licenses are exclusively valid in a given canton (OECD 2004a). For arts and crafts, a Switzerland Ministry of Economy report found that not one of the 15 different categories is harmonized across the 26 cantons (OECD 2004a). Finally, as mentioned above, the medical profession is protected by strong entry barriers, with fees usually fixed at the cantonal level (WTO 2004b).

Recent Developments

The process of changing Swiss legislation regarding the service sector was launched in 2002, and should continue in 2005 or 2006. While residency requirements are bound to persist, other restrictions are expected to be removed. Switzerland Ministry of Economy officials expect better terms for intracorporate transfers, allowing personnel to remain for five years in Switzerland (Owen 2005). In addition, the nationality requirement for the composition of boards may be lifted in the near future. The Swiss-American

Chamber of Commerce has recommended that members of a governing board have any nationality within the range of WTO members (Owen 2005).

Services Trade Negotiations in Selected US Bilateral FTAs

For the most part, we focus our analysis of phaseouts on those in US FTAs because the United States has pushed the envelope furthest in bilateral negotiations on services. In recent negotiations, such as US-Australia (2004) and US-Singapore (2003), the parties have used a “negative list” approach, meaning that all services are covered except for those specifically reserved. By contrast, Switzerland and EFTA have adopted the “positive list” approach, meaning the covered services must be specifically identified. The negative list approach inherently leads to broader coverage.²² However, some of EFTA’s bilateral pacts, such as EFTA-Singapore (2003), go well beyond commitments at the multilateral level.

As we hold high expectations for the potential liberalization of services in a Swiss-US FTA, we concentrate on US negotiating results to establish a benchmark. This section reviews the main points regarding services trade in the US-Australia and the US-Singapore FTAs. The first part reviews the critical points of the US-Australia FTA provisions related to audiovisual, financial, express delivery, telecommunications, and professional services. The second part reviews the US-Singapore FTA provisions for similar service industries, and compares selected features of the US-Singapore FTA with the EFTA-Singapore FTA.²³

US-Australia

In broadcasting and audiovisual services, the Australian commitment to give US films and television programs some access to cable, satellite, and the Internet was seen as a major accomplishment (USTR 2004b). However, Australia’s list of reservations ranked among the most detailed and complex of all negative lists in the audiovisual sector (Bernier 2004). Australia retains its existing commercial television quotas: 55 percent of programs must have Australian content. Content quotas for commercial radio remain at levels of up to 25 percent, and subscription television firms—pay TV—must spend 10 percent of their budgets for drama and general entertainment channels on new

22. The GATS uses a positive list approach.

23. We selected Singapore as the case study for comparison based on the statement by the EFTA Secretariat that Singapore is the most advanced EFTA agreement on services, and because both parties are developed countries.

Australian drama.²⁴ Finally, minimum “subquotas” for dramas and documentaries for adults and children are permitted to ensure the preservation of local culture (Bernier 2004). The only thing Australia conceded in the audiovisual sector was its ability to implement tighter quotas or more restrictive measures, especially with respect to new media services (USITC 2004b).

In financial services, the agreement guarantees that Australia will extend national treatment and MFN status to private-sector management of its civil service pension funds. It allows US asset management firms to sell portfolio management services to Australian mutual funds, and improves the transparency of financial services regulations (USTR 2004b). Australia retains the international investment screening mechanism embodied in its old foreign investment policy. As implemented by the Foreign Investment Review Board (FIRB), the policy creates modest barriers against inbound investment. However, investments in new financial services companies and acquisitions of existing ones of less than 800 million Australian dollars are exempted from the investment screening mechanism (the threshold was previously set at 50 million Australian dollars). Australia also agreed to lock in existing “good practice” regarding its review of acquisitions in the banking and insurance sectors. A side letter on financial services commits Australia to pursue the current practice of a restrained approach by the FIRB.²⁵

In insurance, the FTA covers life, nonlife, reinsurance, intermediation (brokerage) for marine, aviation, and transport (MAT) services that are auxiliary to insurance but not covered by GATS, and key cross-border insurance products. Under the agreement, US life insurers may expand their branches in Australia, a practice that was previously prohibited.

The agreement recognizes express delivery services as a unique service sector, and makes important commitments to maintain market access. It also contains provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers.

In telecommunications, the USITC (2004b) describes several important “WTO-plus” obligations for major suppliers included in the agreement, including resale, provisioning of leased circuits and co-location. The agreement guarantees the independence of regulatory bodies and ensures that the regulatory agency cannot have a financial interest in any supplier of public telecommunications services. It also commits Australian regulatory bodies to consult with interested parties before issuing regulations, to seek public remarks on prospective rules, and to publish all relevant regulations. Improved transparency is intended to ensure nondiscriminatory access for US firms on public telephone networks operated by major carriers. As with the Singapore FTA, however, the definition of “major

24. The agreement allows Australia to increase the funding requirement up to 20 percent, and to extend the 10 percent requirement to other genres.

25. The side letter encourages a process of government-to-government consultation and periodic revisions of the investment screening mechanism (USITC 2004b).

carriers” excludes mobile service providers, which means that cost-based interconnection rates are not the norm for these providers.²⁶ In fact, Australian mobile carriers have recently demanded higher termination rates (USITC 2004b).

In professional services, the agreement creates a working group that encourages the relevant bodies to harmonize their criteria for licensing and certifying professional service suppliers and recognizing professional credentials (USTR 2004b). However, the agreement does not directly alter state regulation of professional services in either Australia or the United States. Nor does it contain commitments for the temporary entry of businesspersons. The professional services commitments in the FTA are limited by its annexes, which reiterate that the two countries’ commitments need not exceed those accepted under the market access provisions of Article XVI of the GATS (USTR 2004a).

In addition, the commitments made in the FTA are explicitly precluded from impinging on the existing rules of subfederal units. This limitation applies to commitments on national treatment, MFN treatment, local presence requirements, performance requirements, and senior management provisions (USTR 2004b). However, since the FTA makes no reference to new rules enacted by subfederal units after the FTA is ratified, there appears to be some scope for future federal-level agreements that could override new subfederal rules.

US-Singapore

In banking services, the US-Singapore chapter on financial services contains core obligations regarding nondiscrimination, MFN treatment, and additional market access obligations, and guarantees several conditions of access in the banking sector. Singapore must remove its ban on new licenses for full-service banks within 18 months, and within three years for wholesale banks. US banks must have access to Singapore’s local ATM network within two and a half years for locally incorporated Singapore banks, and within four years for all other banks. Qualified US banks can open up to 30 branches and service locations; before the FTA, they could only open up to 15. US firms can offer asset and portfolio management and securities services in Singapore by establishing or acquiring local firms. Finally, US firms can offer pension services under Singapore’s privatized social security system, with more liberal requirements regarding the number of portfolio managers who must reside in Singapore.

For insurance, all US and Singapore suppliers are assured fair and nondiscriminatory treatment and market access. Singapore has generally

26. However, mobile service providers are required to comply with the country’s WTO commitments.

been recognized for its open insurance market. However, the FTA ensures further liberalization in the sector. It guarantees US firms access to customers in Singapore through subsidiary or branch offices located there; this covers life and nonlife insurance, reinsurance, insurance intermediation, and insurance auxiliary services. Significantly, the FTA also allows US insurance companies to sell MAT insurance, intermediation of reinsurance and MAT insurance, and insurance auxiliary services to customers in Singapore from offices in the United States. US firms can continue to sell reinsurance services to Singapore customers in the same manner. Finally, the FTA includes an innovative provision that allows licensed US insurers to provide new insurance products to their business customers in Singapore without prior regulatory approval. Meanwhile, the United States took a reservation: "The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises or foreign-controlled domestic enterprises" (USTR 2003a, Annex 8A).

In securities, the FTA guarantees market access, national treatment, and MFN treatment, opening Singapore's market to US investment firms. US investment firms that establish mutual funds in Singapore can use personnel based in the United States to manage the securities held in the fund portfolios. In addition, Singapore commits to easing the local staffing rules for US asset management and insurance companies that offer market access for their investment products to the Central Provident Fund, Singapore's mandatory national savings scheme (USITC 2003).

For telecommunications, the US-Singapore FTA addresses interconnection, resale of services, regulatory procedures, and nondiscriminatory access to the market. It ensures that all US telecommunication companies have market access to all of Singapore's telecommunications sectors,²⁷ and those companies are permitted to access the market in different ways: They can acquire or build local facilities, link their US network with a network in Singapore, or lease lines from Singapore firms. Singapore's telecom regulatory authorities commit to open and transparent administrative procedures (USITC 2003). However, the United States took a reservation to protect its restrictions on ownership of US radio licenses (USTR 2003a, Annex 8A).

The agreement guarantees that Singapore will improve market access to US providers of professional services and ease entry procedures for legal, architectural, engineering, and other professions. Singapore reduced the fraction of directors of engineering and architectural firms that must be professionally accredited in Singapore from two-thirds to more than half. It commits to entirely eliminate local ownership requirements for US land-surveying firms by 2004, to ease restrictions on US law firms that

27. By contrast, under the WTO, Singapore has committed to giving market access in select telecom markets to only three foreign telecom providers.

form joint law practices in Singapore, and to recognize degrees earned from certain US law schools to be able to admit their graduates to the Singapore bar (USTR 2003a, 2003e). However, it included reservations regarding the residency requirements of architects, registration and residency requirements for auditing services, and national treatment for engineering services.²⁸

While Singapore took a reservation regarding its postal services, the FTA guarantees further liberalization of Singapore's express delivery services by giving market access to US services suppliers and improving customs administration.²⁹ The FTA guarantees national treatment and MFN status to all US audiovisual services.

However, Singapore took two reservations concerning cultural services in Annex 8B. These apply to basic obligations regarding national treatment, MFN treatment, and market access, and cover existing as well as future measures. The first reservation relates to broadcasting services, meaning that Singapore limits its obligation regarding television content broadcasts for local audiences (USTR 2003a). The second reservation applies to distribution and publication of printed media, meaning "any publication containing news, intelligence, reports of occurrences, or any remarks, observations or comments relating thereto or to any matter of public interest, printed in any language and published for sale or free distribution at intervals not exceeding one week" (Bernier 2004). The purpose of these reservations appears to be to protect Singapore's public from provocative US television shows or arguably defamatory media reports (Bernier 2004).

Comparing US-Singapore with EFTA-Singapore

The US and EFTA FTAs with Singapore are contemporary agreements, and in both cases, most of the negotiation took place in 2002. Both agreements address key service issues in a chapter of general commitments, accompanied by specific chapters or annexes dealing with financial services and telecommunications.³⁰ In their comments on services provisions, US and

28. The first reservation relates to restrictions on the temporary entry of professionals. The second reservation relates to the requirement for 51 percent local ownership of services in engineering corporations and, in the case of engineering partnerships, full local control of assets and profits. The USTR (2003e, 10) argues that these reservations "severely constrain US firms trying to open a Singaporean operation for single projects and requires them to give technical, managerial and financial control to outsiders in order to establish a long term presence."

29. For example, the agreement requires Singapore to prohibit its postal authority from subsidizing its express letter service in a way that gives the authority an unfair commercial advantage in express delivery services.

30. Unlike the EFTA-Singapore FTA, the treatment of "Temporary Entry of Business Persons" receives a full chapter in the US-Singapore FTA.

EFTA authorities stressed that they broke new ground, well beyond what has been achieved at the multilateral level. Chapter appendix table 5A.1 compares of the treatment of the core provisions on general services in both agreements. While the negotiated texts are quite similar, there are important differences in the scope of the two agreements.

As mentioned above, the US-Singapore FTA adopts a negative list approach to the core provisions, namely market access, national treatment, and MFN treatment. There are relatively few exclusions for domestic regulation and the entry of business persons. US-Singapore also goes beyond the EFTA-Singapore FTA in areas such as local presence and transparency measures (chapter appendix table 5A.1). By contrast, the core services provisions in EFTA-Singapore were negotiated on the basis of positive lists that identify sectors and measures where the commitments apply. EFTA-Singapore also applies the positive list approach to other provisions, such as the entry of businesspersons and domestic regulations (chapter appendix table 5A.1).

Recommendations for Services Trade

Working together, Switzerland and the United States can set a high standard for future bilateral FTAs as well as WTO negotiations in the Doha Round and beyond. With these ambitions in mind, we offer the following recommendations.

- Both countries should abolish citizenship and residency requirements for senior professionals, managers, and directors, except in very short (negative) lists of reserved activities. In particular, financial firms based in each country should be able to offer mutual funds and portfolio management services in the other country without establishing a physical presence there.
- As a general rule, again with negative lists, each country should extend umbrella national treatment and unconditional MFN rights to the other for their service sectors. The negative lists could contain state and cantonal exceptions to the national treatment requirement. However, a state and cantonal working group should be created to work on the progressive abolition of these subfederal exceptions.
- As in the US-Australia FTA, the Swiss-US FTA should establish a professional services working group to review professional diplomas and credentials, and recommend the mutual recognition of those degrees and standards that the working group determines are essentially equivalent. It should have an adequate budget to engage experts to assist in making these determinations.

- To deal with issues raised by FIFO delivery of professional services, the European Union is gradually adopting a “driver’s license model” to facilitate the practice of law among member states.³¹ American lawyers are generally excluded from the EU system.³² However, something akin to the driver’s license model might be adopted for FIFO services between the United States and Switzerland in the context of the FTA.
- The FTA should extend the scope of insurance and reinsurance that can be sold in one country by properly capitalized and regulated firms based in the other country, without additional capital or regulatory requirements. In other words, for designated lines of insurance, Switzerland and the United States should accord mutual recognition to firms based in the other country. For the United States, this provision will require the assent of key states, which should be obtained before the insurance mutual recognition clause comes into effect.
- Switzerland should commit to enacting its proposed new electricity supply law and comparable natural gas legislation as auxiliary provisions to the FTA. Similarly, it should commit to pursuing the initiatives launched by ComCom with respect to interconnection terms and rates.
- Although Swiss firms might have limited interest in enhanced access to the US telecommunications and information services market, nevertheless, the United States should use the FTA to advance its liberalizing agenda. In particular, the United States should permit ownership of cable networks, direct satellite broadcast, provision of satellite services, and provision of information services by bona fide Swiss firms.
- Although Switzerland does not set quotas on programming of non-Swiss origin, the new nominal development tax that was enacted in 2002 could have a negative impact on US film distributors and cinema companies. Switzerland should commit to consult with the United States before imposing this tax.

We believe that the Swiss-US FTA can push the envelope of services liberalization well beyond what has already been accomplished in GATS,

31. Once a driver’s license is issued, it remains valid until it expires (a time limit) or until it is revoked (for bad driving). Following this approach, the EU approach allows lawyers to practice among the member states, once they pass a qualifying test. The legal license may need to be renewed periodically, and may be revoked upon a showing of incompetence or malpractice.

32. By contrast with continental Europe, Britain has a more open market for legal services.

and even beyond the US-Australia and US-Singapore FTAs. Both Switzerland and the United States have already reduced or eliminated the most obvious barriers to services trade, so the field is clear to attack the more subtle barriers. Both countries are also highly service-oriented, in shares in GDP, drivers of productivity, and prospective growth in international trade. Bilateral exchange of services can only flourish with further liberalization. But this includes the public as well as the private sector, and so we turn to the issue of government procurement.

Appendix 5A

Table 5A.1 Selected general provisions in services

Item	US-Singapore FTA	EFTA-Singapore FTA
Scope of measures	Measures by central, regional, or local government affecting cross-border trade in services (negative list).	Measures by central, regional, or local government affecting trade in services in committed sectors only (positive list).
Schedules	Annex 8A (measures) and 8B (sectors) include schedule-exceptions to national treatment and most favored nation treatment, market access, local presence, performance requirements, or senior management and boards of directors.	Each schedule specifies country-specific (a) terms, limitations, and conditions on market access. (b) conditions and qualifications on national treatment. (c) undertakings relating to additional commitments. (d) time frame for implementation of commitments.
Market access	Applies to all sectors except those specified in the agreement. Removal of limitations on number of services providers; value of services transactions; quantity of services output; number of persons that may be employed in a particular sector; and measures that restrict or require specific types of legal entity or joint venture.	Applies to sectors in which specific commitments are undertaken. Removal of limitations on number of services providers; value of services transactions; quantity of services output; number of persons that may be employed in a particular sector; and measures that restrict or require specific types of legal entity or joint venture. Removal of limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding.

(table continues next page)

Table 5A.1 Selected general provisions in services (continued)

	US-Singapore FTA	EFTA-Singapore FTA
Most favored nation (MFN) treatment	Unconditional MFN treatment in like circumstances.	Exceptions to MFN: (a) Agreements and mutual recognition agreements (MRAs) in accordance with articles V and VII of GATS. (b) Annex VI.
National treatment	Yes, unless specified in Annexes 8A and 8B.	Only in sectors considered under the agreement.
Local presence	A party shall not require a service supplier of the other party to establish or maintain a representative office or any form of enterprise, or to be resident in its territory, as a condition for the cross-border supply of a service.	No equivalent provision other than general reference on market access.
Domestic regulations	Commitment to inform about status of requests and final decision in cases where a party requires authorization. Measures relating to qualification and license requirements should be based on objective and transparent criteria not more burdensome than necessary to ensure the quality of the service, and should not in themselves be restrictions to the provision of the service.	Applies to sectors in which specific commitments are undertaken. Commitment to inform about status of requests and final decision in cases where a party requires authorization. Measures relating to qualification and license requirements should be based on objective and transparent criteria not more burdensome than necessary to ensure the quality of the service, and should not in themselves be restrictions to the provision of the service.
		Each party establishes an arbitration instance to review at the request of the party administrative decisions affecting trade in services. Joint review of results of negotiations pursuant to Article VI.4 of GATS.

Transparency measures	<p>Establishment of mechanisms to respond to inquiries of persons regarding measures included in the chapter.</p> <p>Mandates publication of laws, regulations, procedures, and administrative rulings affecting trade in services or reasons for failure to comply with these mandates.</p> <p>Addresses substantive comments received from interested persons with respect to proposed regulations and allow reasonable time between publication of final regulations and their effective date.</p>	No equivalent provision other than general references on other articles of the chapter.
Entry of business persons	<p>Secures temporary access for business visitors and investors for up to 90 days without need for labor market tests. Additional grant, not subject to labor market tests, of 5,400 work visas for different categories of Singaporean professionals. This concession was reciprocated by Singapore.</p>	<p>Temporary access is granted to service suppliers and natural persons of a party who are employed by a service supplier of a party, with respect to the supply of a service. Commitments are based on conditions and qualifications stipulated under each national schedule.</p>
Full set of provisions on services	<p>Chapter 8 Trade in Services</p> <p>Chapter 9 Telecommunications</p> <p>Chapter 10 Financial Services</p> <p>Chapter 11 Temporary Entry of Business Persons</p> <p>Annexes to chapters 8, 10, and 11.</p>	<p>Articles 21–36</p> <p>Annex on Telecommunications</p> <p>Annex on Financial Services</p> <p>Annex on Most-Favored-Nation Treatment</p> <p>Annexes with Country-Specific Commitments</p>

Sources: USTR (2003a) and Singapore Ministry of Trade and Industry (2003).