



Framework for the International Services Agreement

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EXECUTIVE SUMMARY

Services trade continues to be the most dynamic part of world trade, and service sectors have long been the largest destination of foreign direct investment (FDI) flows. Higher GDP growth goes hand-in-hand with service sector growth. Yet, despite these positive attributes, little progress has been achieved in multilateral talks to liberalize services trade and investment. There is something very wrong about this picture—the disjuncture between stalled service negotiations in Geneva, the excessive focus on other components of the Doha Round to the neglect of services, and the rapid expansion of services trade and investment across borders. The time has come for an International Services Agreement (ISA) in which self-selected World Trade Organization (WTO) members voluntarily agree to new rules and market access commitments. The ISA would be distinct from a multilateral undertaking, like the Doha Round, that must gain the consent of all WTO members. Instead, it would

be akin to the Agreement on Government Procurement, in which the market access benefits are confined to the agreement's members, but the agreement itself is open to all WTO members that are willing to accept its disciplines and commitments.

The service sector is an “enabler” of economic activity, permitting production processes in agriculture, manufacturing, and even final service industries to move forward smoothly. Often overlooked is the importance of service productivity to productivity growth across the entire economy. In some countries, the impact of service sector growth on GDP growth is almost double that of manufacturing (Ghani 2010). And in Organization for Economic Cooperation and Development (OECD) economies where productivity contributions have been measured, labor productivity growth in services outweighs labor productivity growth in manufacturing for its contribution to GDP growth (PECC and ADBI 2011).

Huge potential gains to be reaped through greater liberalization of services trade and investment take various forms: job creation, greater economic efficiency, more variety, and lower costs of doing business. These advantages argue strongly for moving forward, but liberalization of services at the multilateral level has been stuck in the ill-fated Doha Development Round for over ten years now. Services trade has become a hostage both of institutional deficiencies in the General Agreement on Trade in Services (GATS) and of political dissent over the broader Doha agenda. Regional trade agreements (RTAs) have taken up some of the slack in terms of negotiating interest and innovative outcomes.

Although the large majority of RTAs simply codify the status quo for regulatory systems and foreign access to local service markets, some manage to go further in selected sectors. When RTAs entail market opening for services, the resulting liberalization is often extended to the whole world, not through an explicit most favored nation (MFN) clause but through two other channels. On the one hand, relaxed rules of origin included in most services agreements—based on the notion of “substantial business operations”—allow companies that invest within the region to take advantage of the relevant chapters and sell services to all markets in the RTA group, whatever the nationality of the parent firm.¹ On the other hand, when governments

1. “Rules of nationality” for services and related investments are akin to “rules of origin” for goods shipped from one RTA partner to another. Fortunately rules of nationality are typically far less strict than rules of origin.

change their domestic regulations, the new regulatory structure is normally applied to all service firms, not just firms based in the regional trade group, owing to the difficulty of discriminating between firms when applying regulations behind the border. This means that free trade agreements covering services generate fewer discriminatory effects toward outside parties (“trade diversion”) than do free trade agreements covering goods. Additionally, opening up service markets to foreign firms seldom involves the loss of customs revenue as is the case for goods. Therefore the need to identify alternative sources of fiscal revenue does not present itself in the case of services. Services trade liberalization has the strong characteristics of a “win-win” proposition for both governments and the private sector. Governments can make regulatory reforms and reduce discrimination against foreign service firms without incurring revenue losses, yet still deliver enhanced efficiency to their economies. Domestic firms can gain through lower regulatory costs and greater market expansion, and foreign suppliers can gain through greater export opportunities.

The idea of moving the trade agenda forward in services on a plurilateral basis has been widely endorsed. Trade policy experts, business groups, and officials have argued convincingly in its favor. In fact a first “brainstorming” session was held in Geneva on January 17, 2012, by representatives of 16 industrialized and advanced developing country members of the WTO (counting the 27 members of the European Union as a single country). The self-selected group examined ways to develop an International Services Agreement under the provisions of the GATS but outside the Doha Development Agenda negotiations.² Notably absent from the talks were the BRICS (Brazil, Russia, India, China, and South Africa), who have steadily opposed a plurilateral agreement within the WTO as this would relinquish the objective of a “single undertaking” for the Doha Round and, not incidentally, would dilute their own negotiating power. Trade ministers from Brazil, India, and South Africa have voiced their opposition to the plurilateral approaches to negotiations on the grounds that they “go against fundamental principles of transparency, inclusiveness and multilateralism.”³

Now that talks have started, the challenge ahead is to consider what the ISA might contain. As the best path forward, we recommend negotiations under GATS Article V by the self-selected group of WTO members. Under GATS Article V any interested WTO member may enter into the agreement provided that the agreement has “substantial sectoral coverage,

and provides for the absence or elimination of substantially all discrimination [...] between or among the parties.” We also recommend that the ISA members seek to bring their agreement, once concluded, within the WTO framework through a waiver by three-quarters of WTO members. This will enable WTO panels and the Appellate Body to arbitrate disputes between ISA members with respect to all provisions in the ISA text; it will also help rejuvenate an institution that has suffered from the prolonged agony of Doha talks. We believe that a “grand bargain” can join the waiver for the ISA (and other plurilateral agreements) with implementation of most elements provisionally agreed in the Doha Round. However, if the grand bargain does not come together, and if a waiver is not forthcoming, the second alternative is a stand-alone ISA negotiated under GATS Article V and notified to the WTO. Parallel to the Article V talks, countries may, of course, write strong service and investment chapters within their regional agreements. Indeed some RTA chapters along these lines are already in place, and the Trans-Pacific Partnership (TPP) is on the way to doing more. A future transatlantic accord could certainly complement the TPP chapters on services and investment. Progress within RTAs in no way conflicts with an ISA negotiated under GATS Article V.

The ISA should, in our view, include several provisions. First among these is the negative list approach for scheduling commitments. Under the negative list approach all service sectors and measures are included in the scope of the agreement, and usually all of the disciplines apply to these sectors and measures without limitations—unless otherwise specified. Such an approach obliges trade negotiators and interested business groups to review the entire range of regulatory measures and restrictions in the service sector and to identify which measure or sector and mode of delivery should be placed in a list of exceptions when the measure or sector cannot meet the obligation of nondiscriminatory treatment for the core disciplines (market access, national treatment, no local presence, and unconditional MFN).⁴ The negative list approach moves the political arithmetic away from the problematic calculation of the mercantilist balance of benefits arising from “concessions” by partner countries to the somewhat less daunting task of identifying opportunities lost as a consequence of exceptions.

The second essential provision is a conditional MFN approach for extending ISA benefits to all WTO members. This means that countries that are not members of the ISA will not automatically benefit from ISA liberalization. Given the extensive restrictions on services trade in many developing countries, and the fact that many countries are not

2. *Washington Trade Daily*, January 18 and February 2, 2012.

3. India's trade minister clarified that the statement on plurilaterals was made in the context of the WTO and the Doha Round negotiations. He said that India—as well as Brazil and South Africa—is aware that such approaches can be adopted outside of the WTO, but that they would likely destroy the Doha Round. See *Washington Trade Daily*, January 30, 2012.

4. “No local presence” refers to the requirement that the benefits of market access should not be conditioned on maintaining a local establishment or entering into a joint venture with a local firm.

yet convinced of the benefits of liberalizing service imports, free riders are an overwhelming problem with an unconditional MFN approach. While many of the actual regulatory changes that are undertaken in the service area are de facto applied on a nondiscriminatory basis, it would be a diplomatic nonstarter for the self-selected countries to negotiate a services agreement without a strong reciprocity requirement. Nor would unconditional MFN provide an incentive in the future, after the agreement is concluded, for others to join in. In our view, the ISA will only be concluded as a conditional MFN agreement.

Third, the ISA should aim to create competitive and modal neutrality so that service suppliers will be able to choose freely between providing services to the markets of members on a cross-border basis or through their own local commercial presence or through a combination of both.

Finally, we recommend liberal rules for the temporary movement of workers (Mode 4) between ISA members. Here we suggest the ISA continue to emphasize temporary movement of highly skilled persons but also include the possibility of covering other workers, including semi-skilled personnel, where it was felt appropriate, through inclusion of a bonding requirement to ensure the temporary worker returns home.

In addition to the four provisions mentioned above, at least four GATS disciplines should be renegotiated with stronger language:

- *Government procurement of services.* Other than services vital to the security of a nation or its essential law enforcement and judicial functions, foreign suppliers should not be excluded when services are contracted from private firms.
- *Competition policy.* When monopoly providers occupy service sectors, the ISA provisions should ensure market access on equivalent terms to competing private firms. This is especially true in sectors such as telecommunications, health, and utilities, which are typically highly restricted with respect to foreign competitors.
- *Mutual recognition of professional credentials.* While this will take many years, processes should be established for mutual recognition of equivalent credentials in the licensed professions, such as engineering, medicine, and law.
- *Oversight of regulations to ensure that they protect consumers but do not act as barriers to foreign suppliers.* The balance between consumer protection and market access must be considered case by case, but the ISA should establish oversight machinery to ensure that foreign suppliers are not unnecessarily excluded from the market under the cloak of consumer protection.

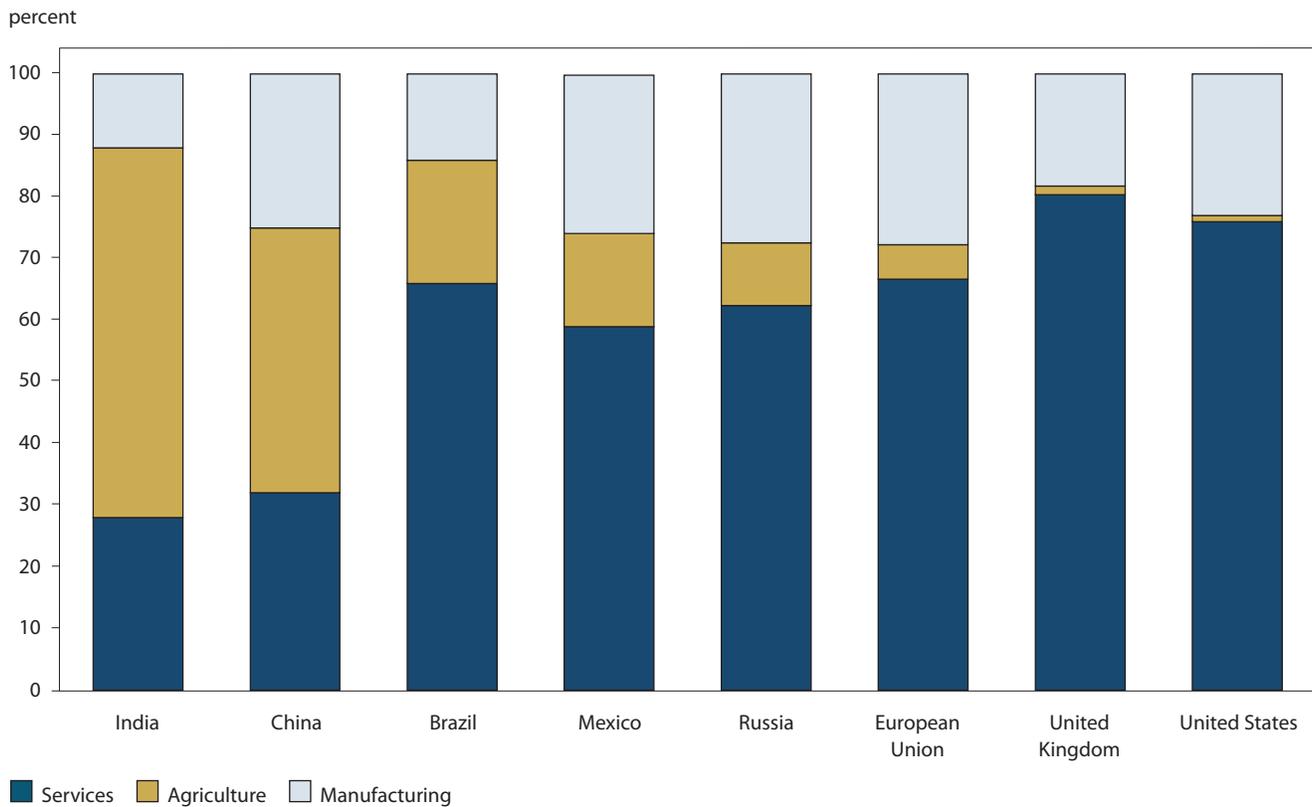
Beyond these prescriptions, we recommend that ISA provisions should reach beyond topics covered in GATS to address new areas: state-owned enterprises, cross-border data flows, and forced localization practices.

In the post-Doha era, the International Services Agreement should become a top priority for supporters of the multilateral trading system. Services are where 21st century trade and investment gains promise to be greatest. The benefits will potentially reach all countries, regardless of regional boundaries. Yet services are the subject on which least progress has been made during the past decade of Doha Round talks. The conspicuous absence of progress on liberalizing services trade and investment did a great deal to erode American and European support for the entire Doha Development Agenda. The time has come to join trade and investment liberalization with the realities of 21st century market opportunities.

INTRODUCTION

The International Services Agreement (ISA) is an excellent idea whose time has come. It is an essential initiative for the world economy and the multilateral trading system. After a difficult decade, the Doha Development Round of multilateral trade negotiations in the World Trade Organization (WTO) has now been put in the deep freeze for an indefinite rest. Like Rip van Winkle, the round may be awakened in the future, but in the meantime many nations are advancing the agenda of trade and investment liberalization through other channels, mostly autonomous reforms that are subsequently captured in bilateral and regional trade agreements (for convenience, grouped under the label RTAs). Services and related investment reforms are covered—but not always further liberalized—in the more rigorous and comprehensive RTAs.

Services are both the backbone and the growth engine of economies in the 21st century, developed and developing alike. Services are key to all economic output and are behind more dynamic economic growth patterns. The conventional wisdom is that developing countries have to pass through stages of manufacturing and/or agricultural comparative advantage before gaining proficiency in the production of services, but even low-income economies today have service sectors that account for nearly half of their economic output, and some of their service firms are competitive in international markets. Indeed the share of developing countries in world service exports has increased from just 11 percent in 1990 to 21 percent in 2008 (Goswami, Mattoo, and Sáez 2012). Services may thus be a conduit for “leapfrogging” traditional paths of economic growth. For the Organization for Economic Cooperation and Development (OECD) countries, the service sector value-added in GDP is well over

Figure 1 Labor force shares of major sectors in selected countries

Source: CIA, *The World Factbook*.

60 percent and, for many, over 70 percent. For developing countries, services still account on average for over half of national output, though this varies quite widely. Worldwide, the service sector accounts for over 68 percent of global GDP, agriculture less than 10 percent.

Services are the grease in the chains that link different parts of the production process in agriculture, manufacturing, and even final service industries. The service sector consequently is an “enabler,” permitting the productive engines to move forward smoothly. Often overlooked is the importance of services productivity to productivity growth across the entire economy. The impact of service-sector growth on GDP growth has been shown to be almost double that of manufacturing (Ghani 2010). And in OECD economies where productivity contributions have been measured, labor productivity in services outweighs labor productivity in manufacturing for its contribution to GDP growth (PECC 2011).

Figure 1, adapted from Jensen (2011), shows the shares of employment in services, agriculture, and manufacturing for eight large economies. In advanced economies, such as the United States, the United Kingdom, and the European Union, services employment is two-thirds or more of the total.

But even in some economies with lower income per capita, such as Russia and Brazil, the service sector accounts for more than 60 percent of employment, and in Mexico it is almost 60 percent. Meanwhile in China and India, countries with still lower income per capita, the service sector accounts for only about a third of employment, but even this is larger than the share for manufacturing. Thus, even the simple comparison in figure 1 show that large service sectors are not the exclusive domain of advanced economies. Moreover, there is a positive relationship between the service sector’s share of economic activity and living standards. A larger percentage of service activity in GDP is positively correlated with a higher level of income per capita. This reflects the fact that a substantial proportion of service jobs is in the highest paid sectors of the economy. Globally, skilled jobs (often in services) are growing faster than unskilled jobs.

In the early days of statistical publications, services were labeled “invisibles,” a sharp and demeaning contrast to commerce in manufactured goods and raw materials. Just two decades ago, the common view (even among economists) was that nearly all services were “nontradable” products—the barbershop was a textbook example. Thanks to the internet,

other advances in information technology (IT), improved air transportation, and a better understanding of the services phenomenon, it is now recognized that a great many services are currently traded across borders—everything from education to medical care to specialized programming to mutual funds. Cross-border trade in services has grown rapidly thanks to vastly enhanced communications technology. Although challenging to measure (more on this later), the growth of global services trade since 1980 has outstripped that of goods trade. Cross-border services trade, as measured by balance-of-payments data, now accounts for around 27 percent of global exports (Maurer and Tschang 2011). This percentage would be much higher if we were able to measure the actual value-added contributed by services in all trade flows rather than simply recording the value of the final products. Researchers are currently developing these more sophisticated statistical techniques. However, if income flows (sales, dividends, interest, and royalties) from “commercial presence” (known in General Agreement on Trade in Services [GATS] parlance as Mode 3 and more commonly identified as income flows from foreign direct investment [FDI]) are added to the cross-border flows, the current figure for services trade would be doubled.

Barriers to services trade nonetheless remain fairly high, both at the national and subnational levels, particularly in the largest emerging-market economies, labeled the BRICS (Brazil, Russia, India, China, and South Africa), and in other developing economies. Most of these barriers are nestled in regulatory regimes in the form of discriminatory or even nondiscriminatory provisions, which have, as their ostensible and laudable purpose, the defense of consumer interests but which often serve to impede competition.

The huge potential advantages to be reaped through greater services liberalization take myriad forms: job creation, greater economic efficiency leading to higher productivity, and lower costs of doing business. These advantages argue strongly for moving forward, but liberalization of services at the multilateral level has been stuck in the ill-fated Doha Development Round for over ten years now, with services negotiations going nowhere. GATS is widely recognized as an outdated agreement, with a flawed modality for carrying out services liberalization. Progress in the service area in the Doha Development Agenda was unfortunately linked to successful outcomes in the other two pillars of the Doha Development Round, namely agriculture and nonagricultural market access. Liberalization of services trade in the WTO has thus become a hostage of both institutional deficiencies in the GATS and political dissent over the broader Doha agenda. Nevertheless, services trade continues to be the most dynamic portion of world trade, with business and IT services the fastest growing components of all. And service activities have been the largest

recipients of FDI flows for several years. Higher GDP growth goes hand in hand with service-sector growth.

There is something very wrong about this picture—the disjuncture between stalled services negotiations in Geneva, the excessive focus on the other two components of the Doha Round to the neglect of services, and the rapid expansion of services trade and investment across borders.

Regional trade agreements have been taking up the slack in terms of negotiating interest and innovative outcomes. Many of the regional agreements covering services and investment have innovated to pioneer a “negative list” negotiating modality, which has shown to be superior to the “positive list” negotiating modality of the GATS for several reasons (Stephenson and Robert 2011). First the coverage of a negative list approach is comprehensive rather than piecemeal. All service sectors and measures are included in the scope of the agreement and usually all of the disciplines apply to these sectors and measures without limitations unless otherwise specified. Such an approach therefore obliges trade negotiators and interested business groups to review the entire range of regulatory measures and restrictions in place in the service sector and to identify which measure or sector and mode of delivery should be placed in a list of exceptions if the measure or sector cannot meet the obligation of nondiscriminatory treatment for the core disciplines (market access, national treatment, no local presence, and unconditional most favored nation [MFN] status).⁵

Even though, at the outset, the regional agreement following a negative list approach often does not liberalize services trade beyond the status quo, the approach builds in a liberalizing momentum over time. There are several reasons for the momentum. The exceptions, or nonconforming measures, are sometimes subject to time limits; likewise the list of exceptions may be—although not always—placed under an obligation for future review and/or negotiation. Second, transparency is very much enhanced under the negative list approach since every exception must be listed and whatever measure or sector is not listed must be liberalized according to the common standards of the agreement (see box 1 for examples of services trade barriers and liberalization). The exceptions must be inscribed at their level of regulatory application.⁶ In addition, the measures must be accompanied

5. “No local presence” refers to the requirement that the benefits of market access should not be conditioned on maintaining a local establishment or entering into a joint venture with a local firm.

6. “Liberalization” of a service sector or measure is extremely difficult to quantify, as most barriers are behind the border and embedded in domestic regulations and standards. Examples of liberalizing a service sector or measures include loosening restrictions on foreign ownership of broadcasting services, or increasing the number of licenses issued to foreign banks, allowing them to

Box 1 What service trade barriers look like and how they can be liberalized: Examples from developed and developing countries

Cross-Border, Investment, and Temporary Presence Barriers in the Architecture Industry¹

The Organization for Economic Cooperation and Development provides useful examples of the types of policy impediments firms can face.

Mode 1: Commercial presence is required for the cross-border supply of architectural services.

Mode 3: The amount of foreign investment must be over a minimum threshold. Foreign investors must notify the host government of their proposed investments; if the activity appears on exceptions to the “negative list” or is related to areas deemed sensitive such as public health and safety, it may be rejected. Quotas exist for collection and treatment services of industrial wastewater. The provision of collection, transport and disposal of industrial refuse services, cleaning services of exhaust gases and noise abatement services, purity testing and analysis services are subject to an economic means test. Some construction services, such as those for long distance and local pipelines, installation and assembly, are subject to limits on contract values and a compulsory sub-contracting system. New licenses are issued each year.

Mode 4: Stays of “executives,” “senior managers,” and “specialists” are limited to three years but can be extended if deemed necessary; they may also be limited to 90 days, depending on their function; for representatives of foreign suppliers not making direct sales of services to the public, the stay is limited to 90 days.

Other measures: Licenses are issued annually in the construction and engineering sectors to qualify for public projects. Foreign firms must obtain a license for construction, construction supervision, or design. This may be costly (US\$800,000 per license) and time-consuming, and few of the related laws or application forms are translated into other languages. Registration is required for foreign engineering firms.

Real-World Developing-Country Example of Policy Barriers²

Because land [in China] is owned by the government, public projects are awarded by government-sponsored competition. Private development projects entail a “scheme gathering” solicitation of design firms to prepare concepts. These are submitted to “expert” panels that evaluate and rank design concepts for creativity, relationship to context and constructability. Top finalists receive stipends; winning design firms have an opportunity to negotiate to provide further design services.

While the process is generally open and transparent, as with everything in China, relationships can be important. Foreign architects are currently limited to presenting preliminary designs, providing aesthetic, structural, materials, energy-efficiency, spatial use and other expertise to local design institutes (LDIs) of architects, construction engineers and building code compliance specialists. Requested drawings may be only 50 to 75 percent complete, compared to detailed plans submitted in the United States, allowing flexibility for the LDIs to lock in a final design. A developer may continue to retain a representative of the foreign firm through the construction phase to work with the LDI, or may terminate its relationship once drawings are submitted. Likewise, foreign construction firms can serve as general contractors, but the actual construction work is subcontracted to local firms.

At times the process has produced creative tensions as the original design concept is dramatically changed to lower costs, address code issues or put the developer’s or LDI’s creative stamp on a project. Still, partnerships between foreign architects and LDIs are being institutionalized, and China is becoming an increasingly important market for many Bay Area design firms.

Real-World Developed-Country Example of Policy Barriers

Frank Levy and Kyoung-Hee Yu (2010) describe how regulatory processes and business practices act to limit international trade in services in one high-skill-intensive industry, namely, teleradiology, or the interpretation of radiographic images taken in one country and transmitted electronically to a trained radiologist in another:

There are enough isolated facts for a good news story. An Indian radiologist in Mumbai or Bangalore likely earns less than the equivalent of \$35,000 a year, about one-eighth of a US radiologist’s income. US medical images are read in Bangalore and other offshore locations. Indian teleradiology firms are developing new markets in the United Kingdom and Singapore. Beyond reading images per se, Indian firms are also doing 3D image reconstruction for US hospitals, work done in the United States by trained medical technicians.

(continued on next page)

1. Excerpted from OECD (2001, 23).

2. Excerpted from Jensen (2011, box 6.2, 151).

Box 1 What service trade barriers look like and how they can be liberalized: Examples from developed and developing countries *(continued)*

But an examination of all the facts suggests that teleradiology is not garden variety offshoring. About fifteen (15) Indian radiologists currently read US images. This number is unlikely to expand much in the near future. When US images are offshored to other countries, the typical reader is a US radiologist living abroad.

Indian radiologists are developing a stronger presence in the United Kingdom and Singapore. But even in these countries potential expansion is limited in the short run and uncertain in the long run. And no client country, including the United States, shows evidence of radiologist or technologist displacement. Many of these outcomes reflect the characteristics of radiology including its extensive training requirements and its heavy government regulation. But significant training and regulation characterize many professional services and so the teleradiology story provides a useful caution about just how flat the world is....

To demonstrate competence—to be allowed to legally read images generated in the United States—a radiologist must have completed his/her medical residency in a US program, passed US medical board examinations, be licensed in the state where the image was taken and have privileges in the hospital where the image was taken. A radiologist who does not fulfill these requirements cannot obtain malpractice insurance and a doctor who refers an image to an uncertified radiologist risks his or her own malpractice insurance.

What Would Liberalization Look Like for These Examples?

While merchandise trade also faces nontariff barriers, liberalization is usually more straightforward: reduce or eliminate tariffs and abolish quotas. Trade in services is not as straightforward. Sometimes barriers can be uniquely identified and quantified. In the Chinese real estate example, foreign drawings submitted for approval can only be 50 to 75 percent of that total. In this case, liberalization would imply increasing that percentage or allowing foreign firms to submit final designs, as is permitted in the United States. Easily quantifiable cases are the exception, however not the rule.

Often a service barrier is difficult to quantify. In these cases, liberalization requires creativity and flexibility. Moreover, liberalization raises the difficult question whether countries should seek to harmonize regulatory regimes or enable through mutual recognition. Mutual recognition would allow the United States to maintain its leading practices in radiology while lowering medical costs for US consumers. State medical boards (or the relevant governing body) could identify country-specific qualification equivalents or create a foreign practitioners' exam or certification. While this process seems cumbersome and time-consuming, the efficiency gains should outweigh the costs.

An informative example is university admissions. Due to flexible and accessible student visas, American universities receive hundreds of thousands of applications from international students. Even the most prestigious universities have well-established requirements for foreign-equivalent qualifications for admissions. For example, the Harvard Law School uses Credential Assembly Service, which allows the school to use "its own means of centralizing and standardizing undergraduate academic records to simplify the law school admission process." Virtually all universities have similar procedures. Other industries, in this case radiology, could try and establish similar procedures.

Source: Jensen (2011, box 6.2, 151; box 7.1, 160; box 8.1, 177).

by a short description and by a reference to an existing law or administrative decree that a service supplier can consult if there are questions. This approach does not allow for participants in a trade agreement to list measures at a level that is more restrictive than their actual application (unlike schedules in the GATS); consequently there is no "water" in the lists. Third, most negative list agreements incorporate a "ratchet" clause that imbues them with an inbuilt bias toward greater openness. This clause requires that all liberalization that takes

place in a service sector subsequent to the entry into force of the agreement must be retained permanently and applied to all parties. Fourth, the negative list approach moves the arithmetic of political economy away from the problematic calculation of the mercantilist balance of benefits arising from "concessions" by partner countries to the somewhat less daunting task of identifying opportunities lost as a consequence of exceptions.

Despite all the benefits of a negative list approach, several sensitive service industries will likely be subject to exceptions. While this curtails the benefits from liberalization, the exceptions may be an acceptable cost if they create the flexibility needed to bring more countries into the agreement.

operate in that market. In the section on potential expansion of services trade, we offer an empirical analysis of services liberalization starting with estimated tariff equivalents for barriers in place.

Historically, the GATS liberalization commitments provide a clue on sensitive industries. The majority of commitments are in tourism, telecommunications, business, finance, and engineering/construction industries. But few commitments are found in education, health, and transportation. Moreover, several high-profile controversies highlight the sensitivity of some industries. When Dubai Ports World (a state-owned enterprise from the United Arab Emirates) sought to purchase the port management rights to five major US ports, the ensuing debate grabbed national headlines.⁷ Additionally, media ownership is widely protected, both in developed and developing countries, for reasons of culture and security.

Although the large majority of regional services agreements simply codify the status quo situation for service regulations, some do manage to go further in certain sectors. When RTAs involve market opening for services, then often this liberalization is then extended to the whole world in two ways. First, relaxed rules of origin included in most services agreements—based on the notion of “substantial business operations”—allow companies that wish to invest within the regional grouping to take advantage of the relevant provisions and provide services to all members of the group, regardless of the nationality of the parent firm.⁸ Second, when governments change their domestic regulations, the new regulatory structure is normally applied to all service traders, not just members of regional trade groupings, owing to the difficulty of discriminating between firms when applying regulations behind the border. This means that free trade agreements (FTAs) covering services generate fewer discriminatory effects toward outside parties (or “trade diversion”) than do those covering goods. Additionally, opening up service markets to foreign providers through lessening discrimination does not involve a loss of customs revenue as is the case for goods since services are not taxed at the border. Therefore the need for identifying alternative fiscal sources of revenue for the government does not present itself in the case of services. Services trade liberalization has the strong characteristics of a “win-win” proposition for both governments and the private sector. Governments can make regulatory reforms and reduce discrimination against foreign services firms without incurring revenue losses yet still deliver enhanced efficiency and productivity to their economies. Domestic firms can gain through lower regulatory costs and greater market expansion, and foreign suppliers can gain through greater export opportunities.

7. Stephen Flynn, *The DP World Controversy and the Ongoing Vulnerability of US Seaports*, prepared remarks before Congress, March 2, 2006, www.cfr.org.

8. “Rules of nationality” for services and related investments are akin to “rules of origin” for goods shipped from one RTA partner to another. Fortunately rules of nationality are typically far less strict than rules of origin.

WHY AN INTERNATIONAL SERVICES AGREEMENT

While the impasse of the Doha Round is bad news for all sectors engaged in international trade, the lack of a rulebook and framework for services can cause the most long-term damage to the trading system because of the critical role that services play in advancing economic growth and productivity.

The only way forward at this point in time is through an International Services Agreement in which self-selected WTO members voluntarily agree to new rules and market access commitments, as distinct from a multilateral undertaking, like the Doha Round, that must gain the consent of all WTO members. Unfortunately, most developing-country WTO members have shown themselves cool to negotiating services liberalization, both because they fear that additional foreign imports will exceed additional national exports and because they are heavily lobbied by protected and monopolistic domestic service providers. The reluctant negotiating stance persists even though many developing countries have undertaken the unilateral liberalization of service barriers in recent years. Thus, only one-third of WTO members presented an initial or revised offer during the decade of the Doha Round so that services had already become a *de facto* plurilateral undertaking among self-selected countries that chose to submit offers.

The idea of moving the trade agenda forward in services on a plurilateral basis has been endorsed by many different groups. Trade policy experts, business groups and practitioners have argued convincingly in its favor. The Warwick Commission, first in a 2007 report and then in a more recent 2010 report on the “Future of the WTO,” recommended that services negotiations should be structured on a plurilateral basis (Warwick Commission 2007, 2010). The Australian Services Roundtable (2008) put forward the idea of a stand-alone services agreement. In its 2009 report, the World Economic Forum’s Global Agenda Council on Trade argued for a plurilateral “club-of-clubs” approach to WTO reform, including services among the main issues, a position paper that was sent to world leaders at the Davos Summit in January 2010.⁹ In December 2010, a study group of trade policy experts from around the world, organized by the Cordell Hull Institute, reported that negotiations on trade in services have made little progress because the Doha Round has too long been focused on market access for agriculture and industrial goods. The group suggested that, to develop momentum on

9. This approach advocates a compromise in which increased diversity among a much larger set of WTO members can coexist with a more extensive set of commitments for willing members. See World Economic Forum Global Agenda Council on Trade (2009).

services, a critical mass of countries should seize the initiative and formulate a plurilateral services package.¹⁰

In early 2012 a report by the Institute for Public Policy Research in London led by Lord Mandelson, chief negotiator for the European Union during the Doha Round, recommended moving forward within the WTO machinery through open plurilateral agreements in selected sectors such as services, but with the caveat that “a new liberalizing agenda remain firmly integrated into the WTO system and does not detract from either its legitimacy or its scope” (Straw and Glennie 2012, 16). All four of these reports, by groups composed of top world trade policy experts, have underscored the need for a substantial change in the way services negotiations are approached within the WTO.

The business community in major service exporting countries has also come down unequivocally in favor of a plurilateral approach to services negotiations. While this has been the position of the Australian Services Roundtable (2008), it was also endorsed by the Hong Kong Coalition of Services Industries (2009). More recently the plurilateral approach was advocated by all members of the Global Services Coalition in a press communiqué issued in June 2011.¹¹ Likewise, British business leaders released an information note on “After Doha: Next Generation Services Negotiations—Current Arguments for a Services-Only Approach” in July 2011, signed by J. A. Cooke, chairman of the Liberalisation of Trade in Services Committee.¹² The note outlined alternative forms of an International Services Agreement, which are reviewed later in this Policy Brief. Members of the US Coalition of Services Industries (CSI) have promoted the idea of a plurilateral approach to services quite forcefully and their advocacy can be found in several documents on the CSI website—most recently in a January 2012 position paper entitled “Moving Services Liberalization Forward Using a Plurilateral Approach.” The

10. The chairman’s statement by John Weekes, issued after the meeting in Sydney on December 10–12, 2010, endorsed a plurilateral Doha Round “package” on trade in services. It did not discuss the idea of a stand-alone plurilateral agreement on services. The study group’s report argued that such a package should have the following elements: binding commitments on applied policies where these are more liberal than WTO GATS commitments; a package of liberalization commitments organized around clusters of services that are critical to users in business such as logistics; greater freedom for the temporary movement of contractual service suppliers and independent professionals; and a set of forward-looking commitments to support domestic regulatory reforms (Liberalization of Trade in Services, conference convened by the Cordell Hull Institute and hosted by the Australian Department of Foreign Affairs and Trade, Sydney, Australia, December 10–12, 2010).

11. The Global Services Coalition draws upon a worldwide membership of private-sector representatives. Business, academic, and policy leaders met in Hong Kong from June 1 to 3, 2011 during the conference on Services Trade: New Approaches for the 21st Century to assess the state of global services trade and investment and to discuss opportunities in the face of persistent obstacles in the Doha Round. See PECC and ADBI (2011).

12. TheCityUK, “After Doha: Current Arguments for Negotiations on Services,” November 28, 2011, London, www.thecityuk.com.

paper argues that a plurilateral agreement would provide the vehicle for delivering new services trade and investment liberalization that responds to the realities of 21st century global business (CSI 2012).

The Services Task Force of the Pacific Economic Cooperation Council and the Asian Development Bank Institute (PECC and ADBI 2011) produced a well-argued and documented report on the basis of a multi-stakeholder conference held in June 2011, with private- and public-sector representatives alike urging the adoption of a plurilateral approach to the negotiation of a services agreement. In a similar vein, the Transatlantic Taskforce on Trade and Investment (2012), launched by the European Centre for International Political Economy and the German Marshall Fund of the United States, with membership including policy experts, business, and civil society, released a report in early 2012 recommending that, in light of the Doha Round experience, future trade deliberations “...should be decentralized, both in geographic and substantial terms, with new agreements based on ‘coalitions of the willing.’” The Transatlantic Taskforce further recommends that such plurilateral agreements be confined to the participating countries, in order to avoid free-riding, but should remain open for other countries to join. It advocates starting with strategic sectors, namely services and the digital economy, for these negotiations. Rarely has the private sector around the world been so unanimous in advocating forward movement on liberalization of a specific area in such a coherent manner.

Opinion leaders in the Asia-Pacific region have reached the same conclusion. The PECC included a question in its 2011 annual survey of opinion leaders, “Should APEC members take the lead in promoting a plurilateral agreement on services?” Responses were overwhelmingly positive: 72 percent of all those who answered responded positively and only 5 percent dissented. This positive response was shared to almost the same degree by government officials (70 percent) as by business leaders (76 percent).¹³ This opinion poll carried over into the APEC Leaders Meeting in Hawaii in November 2011, when some trade ministers mentioned their support for a plurilateral services agreement.

At the WTO several members have also argued in favor of moving in the direction of a services plurilateral. The Australian trade minister sounded alarm bells in October 2011, lamenting the likelihood of the Doha Round’s failure and arguing for the need to adopt a different path if further global trade liberalization is to occur, stating that “A new approach involving [...] the parallel negotiation of selected agreements is a realistic way of achieving further liberalisa-

13. “There was very broad support for the suggestion that ‘APEC members take the lead in promoting a plurilateral agreement on services’ with 72 percent of respondents agreeing with the statement and only 5 percent disagreeing.” See PECC (2011).

tion.” At the 8th WTO Ministerial Meeting in December 2011, the US ambassador to the WTO proposed a plurilateral approach for negotiation of services.¹⁴ This suggestion had a mixed reception at the time, but since has been acted upon. Indeed, even the director general of the WTO, Pascal Lamy, in his speech to the 8th Ministerial Meeting in December 2011, declared: “We can no longer bury our head in the sand. We need to understand the root causes of our inability to advance multilateral trade opening and a regulatory agenda, and to build a collective response. Blaming others will not help.”¹⁵

These numerous voices from the trade policy community, the business community, and government have now been heard. A first “brainstorming” session on services was held in Geneva on January 17, 2012 by representatives of 16 industrialized and advanced developing countries (counting the 27 members of the European Union as a single country) to examine ways to develop an International Services Agreement within the WTO GATS—but outside of the Doha Development Agenda negotiations.¹⁶ These initial 16 countries were joined in March 2012 by two additional interested countries. The participants are taking their cue both from GATS Article V, which permits self-selected WTO members to liberalize trade in services among themselves, and from GATS Article XIX, which called for GATS members to “enter into progressive rounds of negotiations [commencing in 2000] with a view to achieving a progressively higher level of liberalization.” This new grouping within the WTO describes itself as the “real good friends” of services trade liberalization. Late in March 2012, the United States formally informed WTO members of progress made to date but did not indicate whether a link was envisaged to the stalled services negotiations in the Doha Round. China, Brazil, India, and South Africa all expressed concern that the plurilateral initiative would weaken the multilateral trading system.¹⁷

The 18 participating countries are Australia, the United States, the European Union (representing 27 member states), Japan, Canada, Costa Rica, New Zealand, Switzerland, Norway, South Korea, Singapore, Hong Kong, Chile, Colombia, Mexico, Pakistan,¹⁸ Peru, and Taiwan. Since the discussions began on January 17, 2012, subsequent meetings have taken place in Geneva on February 15–16 and March 21, 2012. The

next meeting is planned for the second half of May 2012. The February meeting was attended by capital-based service experts from 14 of the (then) 16 WTO members involved in the preparatory talks, the most since a July 2008 “pledging” conference on services, which drew some 30 countries. Participants in the February meeting submitted information and outlined the commitments already made on service liberalization in RTAs that go beyond those inscribed in their WTO GATS schedules.¹⁹ Participants in the March meeting discussed a proposal put forward by the United States for a GATS-plus approach in three areas: enhanced market access, addition of rules incorporated in some bilateral agreements, and new issues involving regulatory and transparency elements. Also discussed was the question of whether to adopt a negative or positive list approach in the negotiations. Participants in the talks agreed that an inventory of GATS-plus provisions could be the basis for further discussions while clarity is reached on both the form and substance of a future agreement.²⁰

The intention of this core group of self-selected countries is to continue meeting in order to advance discussions on a services plurilateral. A possible draft model agreement may be circulated in the near future by Chile containing a comparison of current commitments, best practices, and provisions from selected FTAs. This core group has also agreed to discuss the level of service market access in existing FTAs and GATS-plus rules in those agreements and to identify new issues that should be taken up in a services agreement.

In the United States this new services initiative has received strong endorsement from members of the Congressional Services Caucus. Members of the US House Ways and Means Committee and the House Financial Services Committee have urged the administration to move forward in Geneva to negotiate a high-quality services agreement among willing WTO member countries.²¹ At a recent joint meeting of the US Chamber of Commerce and Business Europe, deputy US trade representative and representative of the United States to the WTO, Ambassador Michael Punke, said: “There’s a lot of work to be done to scope out how an international services agreement will come together. But there are strong core ideas on the table and a common recognition of the tremendous benefits that can be shared through expanding service market access and developing new, internationally agreed rules and standards. More work is needed to deal with both new and longstanding issues, such as information and communications technology services and global supply chains.”²²

14. Ambassador Michael Punke suggested a services plurilateral agreement under Article V of the GATS, following the conditional MFN approach. See Inside US Trade, “Deputy USTR Outlines U.S. Interest In Exploring A Services Plurilateral Deal,” December 19, 2011.

15. Pascal Lamy, “Stand Up for the Value of Multilateralism,” speech delivered at the 8th WTO Ministerial Meeting, Geneva, Switzerland, December 15-17, 2011, www.wto.org/english/news_e/sppl_e/sppl212_e.htm.

16. *Washington Trade Daily*, January 18 and February 2, 2012.

17. *Washington Trade Daily*, March 24, 2012.

18. Pakistan did not attend subsequent meetings.

19. Special Report by the Global Services Network, GSN Update, February 21, 2012 on the services meeting in Geneva.

20. *Washington Trade Daily*, March 22, 2012.

21. *Washington Trade Daily*, January 25, 2012.

22. *Washington Trade Daily*, March 20, 2012.

Countries that were notably absent from the initial meeting in Geneva include all of the BRICS, two of which are significant exporters and importers of services and together account for over 8 percent of world services trade.²³ The BRICS and other developing countries have steadily opposed the idea of moving forward within the WTO on a plurilateral basis because this would amount to relinquishing the objective of a “single undertaking” for the Doha Round. Ministers from India, Brazil, and South Africa issued a joint statement prior to an informal meeting of trade ministers from 21 countries on the margin of the World Economic Forum in Davos on January 28, 2012, opposing plurilateral approaches to negotiations on the grounds that they “go against fundamental principles of transparency, inclusiveness and multilateralism” and “weaken(s) the resolve of WTO Members to overcome the substantive gaps that exist among them”.²⁴

In a meeting held February 3, 2012, at Geneva’s South Center, trade representatives from Nigeria, China, and again from India and South Africa criticized the pursuit of an ISA, arguing that such an agreement would “disturb the delicate balance in market access pillars within the Doha Development Agenda and may make it practically impossible to conclude the negotiations.”²⁵ However, we believe that this objection to plurilateral services negotiations has lost its relevance after a decade of very little progress on services in the Doha Round.²⁶ Moreover, in a companion paper (Hufbauer and Schott 2012), one of us suggests the possibility of a “grand bargain”: the United States, the European Union, and other Doha skeptics would accept the current Doha Development Agenda terms for agriculture, nonagricultural market access, and other subjects (trade facilitation) in exchange for advance waivers by three-fourths of WTO members to permit future plurilateral agreements on services and other timely issues. While a desirable outcome, we recognize that this proposed trade-off will face serious political challenges. The best outcome would be a waiver for the ISA, granted on its own merits.

23. India and China now constitute a fairly significant proportion of global services trade. On the basis of 2010 data, China has 4.6 percent share of world exports of services and India 3 percent. China has 5.5 percent share of world imports of services with India 3.3 percent, so together the two countries account for nearly one-tenth of all services trade. See TheCityUK, “After Doha: “Next Generation” Services Negotiations—Current Arguments for a Services-Only Approach,” October 25, 2011, www.thecityuk.com.

24. India’s trade minister clarified that the statement on plurilaterals was made in the context of the WTO and the Doha Round negotiations. He said that India—as well as Brazil and South Africa—is aware that such approaches can be adopted outside of the WTO but that they would likely destroy the Doha Round. See *Washington Trade Daily*, January 30, 2012.

25. *Washington Trade Daily*, February 6, 2012.

26. India and China now constitute a fairly significant proportion of global service exports, namely 4 and 5 percent respectively, as of 2010. This should signal that their interest in ISA discussions will not be absent for long.

Participants in the ISA talks are also actively working to allay suspicions by pledging to make the negotiations as transparent and inclusive as possible. The “real good friends of liberalization of trade in services” briefed all WTO members on the talks at the March 23, 2012, meeting of the WTO Services Council. And the European Union has proposed a meeting of all countries that took part in the July 2008 services pledging conference—including Brazil, China, and India—to discuss the ISA initiative and possible options in an inclusive manner.²⁷ China and India have indicated that they are willing to participate in a reconvened services “signaling” conference and amenable to discussing further offers but have not indicated an interest in ISA talks.²⁸

Part of the challenge ahead, in addition to the important question of who will participate in an ISA, is to consider what the agreement itself might contain. In this Policy Brief, we examine the stake in services trade comprising countries that have identified themselves as interested parties and will most likely form the core of an agreement. We also attempt to quantify the gains these countries would receive from varying degrees of liberalization. We emphasize that there is no guarantee that mere participation in an ISA will deliver up-front services trade liberalization; but we do think that, just as in high-quality RTAs, the ISA will create a momentum in favor of liberalization over time. We then outline key negotiating approaches and possible normative options

STATISTICAL COVERAGE OF SERVICES TRADE

One difficulty in analyzing the potential for services trade is the scarcity of good quality statistics. Even developed economies such as the United States and the European Union are not yet able to provide anywhere near the level of detail for services trade as for goods trade. The statistical picture for services has improved slightly over the past few years but the main statistical source on services trade—the International Monetary Fund’s Balance of Payments (IMF BOP) Manual 6—still lists only 12 categories in its most recent version (2008).²⁹ The United Nations Inter-Agency Task Force on Statistics of International Trade in Services recommended, in its *Manual on Statistics in International Trade in Services 2010*, the adoption of the EBOPS 10 (Extended Balance of Payments Classifications for Services).

27. Special Report by the Global Services Network, GSN Update, February 21, 2012 on the services meeting in Geneva.

28. *Washington Trade Daily*, March 21, 2012.

29. These include manufacturing services; maintenance and repair services; transportation; travel; construction; insurance and pension services; financial services; charges for the use of intellectual property; telecommunications, computer, and information services; other business services; personal, cultural, and recreational services; and government goods and services.

Of the 12 categories, one category (government goods and services) is routinely excluded from trade agreements. Moreover, the 12 categories do not line up very well with the coverage of service activities enumerated in the GATS.³⁰ All in all, the statistical coverage of services trade is very limited, especially when compared with the over 6,000 individual items at the six-digit level in the Harmonized System for goods trade that can be compared internationally.

The picture is somewhat better for the 34 OECD members that have adopted the EBOPS 10 categories, recommended by the United Nations Task Force. The OECD requires the collection and reporting on 58 service subsectors by its members for its annual publication, the *OECD Statistics on International Trade in Services* (latest edition 2010). The OECD categories are based on those included in the EBOPS classification, which is a disaggregation of the 11 main service categories of the BPM5 standard components. However, these more disaggregated service statistics cover cross-border trade just for the period 2000 to 2008. Not all OECD members have been able to report data for all of the relevant years. Of the developing countries, only Chile, Mexico, Korea, and Turkey are OECD members, so there are few comparable detailed statistics on services trade available for non-OECD developing countries. Trends in Foreign Affiliates Trade Statistics (or FATS), which capture the sales of service companies located abroad, equivalent to Mode 3 revenues from FDI, are collected and published regularly only by a subset of OECD members, namely the United States and the European Union.

US official statistics suggest that services trade has been expanding rapidly over the past decade or so. Figure 2 shows that US services trade increased steadily over the decade ending in 2007. Both service exports and imports roughly doubled, with exports growing slightly faster in the last few years of the period. Service exports now account for almost 30 percent of US exports; service imports account for about 15 percent of US imports. Their sum, total services trade, now accounts for slightly over 20 percent of US two-way trade in goods and services.³¹ Figure 2 also shows that the United States has consistently maintained a positive trade balance in

services, with service exports exceeding service imports. This suggests that the United States enjoys a comparative advantage in tradable services.

US Service Exports and Imports

Which industries are contributing to the growth in services trade, and which services are being traded? The US Bureau of Economic Analysis (BEA) divides private services into five main groups: travel, passenger fares, other transportation, royalties and license fees, and “other private services” (OPS), a catchall category that includes education, financial services, insurance services, telecommunications, and business, professional, and technical services (BPTS). The following analysis will focus on OPS for two reasons: It is an important contributor to overall growth in services trade, and it is the area that raises red flags over the impact of trade in services on the home economy. These concerns focus on services like engineering and computer services, not travel and tourism.

Figures 3 and 4 portray the composition of US service exports and imports, using the BEA categories from 1995 to 2011. Although all of the categories show growth over the period, OPS grew the fastest, with both imports and exports more than doubling. OPS also contributed the most to overall services growth, accounting for more than half of the increase in service exports and about half of the increase in service imports.

Import and export data for the components of US OPS trade are available starting only in 1997; these data are shown in figures 5 and 6. Business, professional, and technical services were the largest component at the end of the period and contributed the most to OPS growth over the period, for both imports and exports. Financial and insurance services also enjoyed significant growth over the period, and indeed both grew faster than BPTS, but they did not contribute as much to total growth in OPS as did BPTS.³² Together, BPTS, financial services, and insurance services account for a significant share of service-sector growth over the past 15 years.

While the aggregate data on trade in services are instructive, to truly understand the potential impact of trade in services on the US economy would require significantly more detailed data for a longer period of time. To understand how increased trade in services has affected and is likely to affect the US economy would require both more detailed information on trade flows than is currently available and the ability to link the data to detailed information on domestic producers.

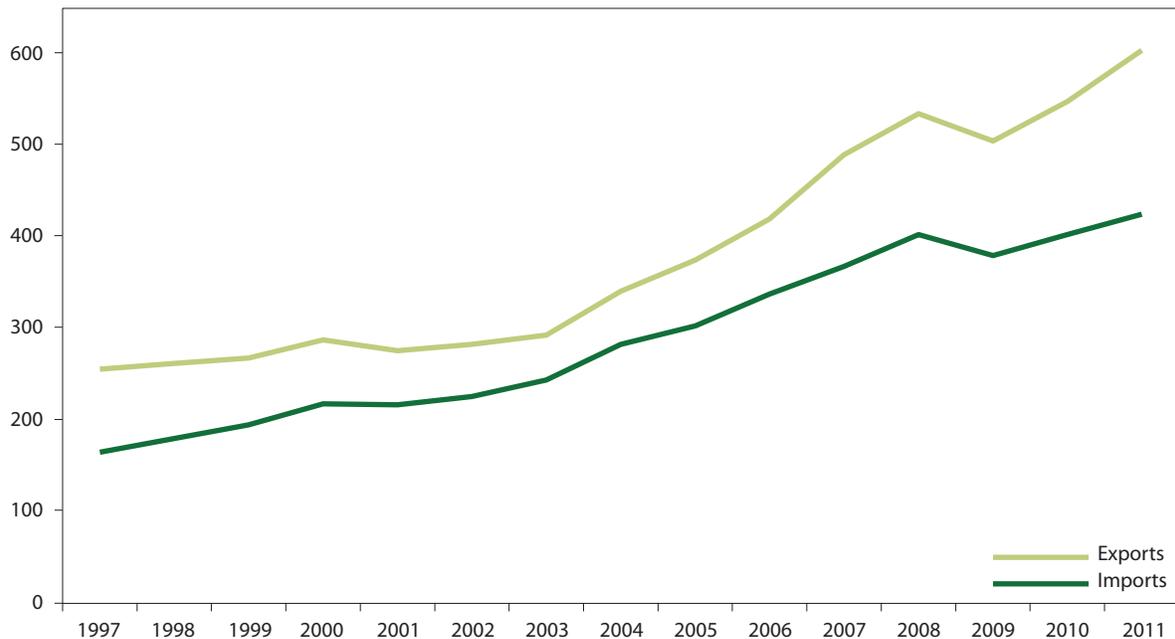
30. The GATS also lists 12 categories of services: business; communication; construction and related engineering services; distribution; education; environment; finance; and health services; tourism and travel; recreational, cultural, and sporting services; transportation; and other services not included elsewhere.

31. Lipsey (2009) reports that the share of services in total trade has been roughly 20 to 30 percent for decades. Services trade is growing rapidly, but so is merchandise trade, so that the share of services trade, as conventionally measured, in total trade is not changing. However, the conventional measure does not fully reflect the substantial growth of cross-border income flows generated by FDI in service activities, nor does it reflect the rapid expansion of income earned by expatriate workers. Moreover, within the conventional measure, the composition of services trade has changed considerably over recent decades.

32. Financial services and insurance services both present even greater measurement challenges than other types of services. See Borga (2009) for more information on how the BEA constructs estimates of insurance and financial services trade.

Figure 2 US services trade, 1997–2011

billions of current dollars



Source: US Bureau of Economic Analysis.

Unfortunately, currently available data do not provide anywhere near the detailed information on trade in services or the historical data necessary to examine the potential impact of services trade on the domestic economy. As mentioned, data on exports and imports of over 6,000 merchandise categories are published monthly for most countries. In contrast, only recently have about 30 categories of services trade become available for a limited set of OECD countries.

To address this data gap, one of us (Jensen 2011) has developed a concept called “tradability” and applied it empirically to a wide range of service industries and occupations. The concept of tradability is based on the mismatch between the geographic location of production and the location of demand within the United States. For example, there is a close correspondence between the location of population and the supply of barber shops and beauty salons. These services are usually difficult to deliver at a distance and have been considered as classic nontradable services. In contrast, there is a significant concentration of computer service production in the Seattle metropolitan area and in Silicon Valley. Not all the computer services produced in these regions are consumed locally; instead, most are sold to users in other regions.

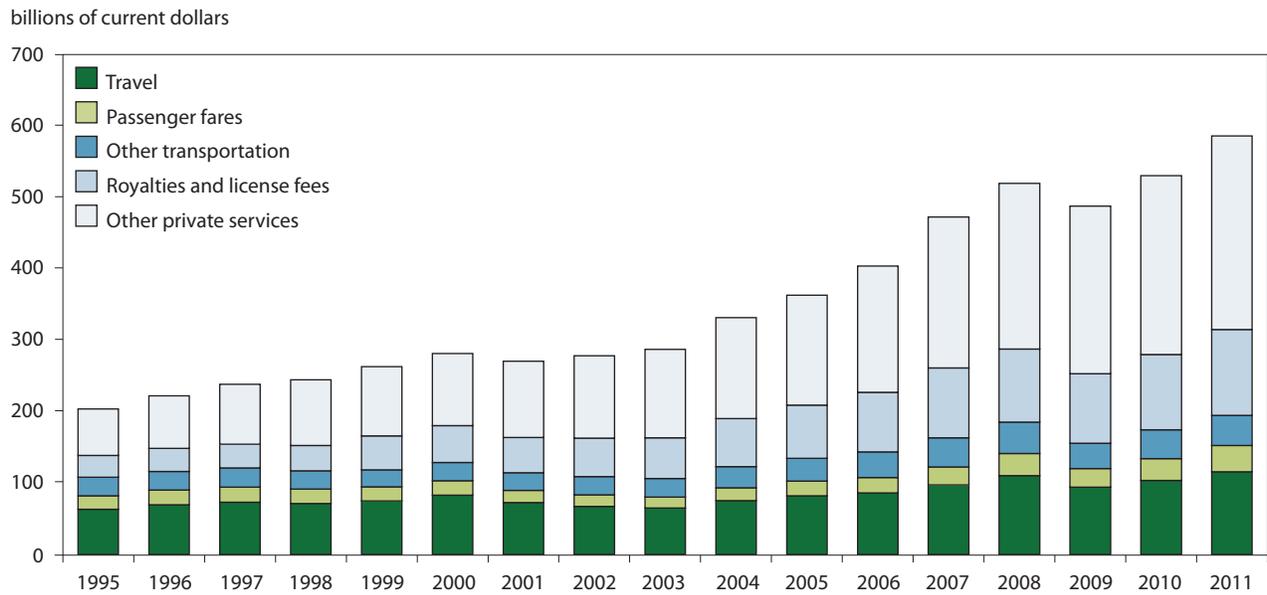
When production is concentrated at a distance from consumption, Jensen infers that the output of service production is traded within the United States. Using tradability

within the United States as an indicator of international trade potential, we can arguably measure what has so far gone unmeasured, namely we can identify at a detailed level which service activities appear to be “traded” within the United States and thus “ought” to be traded internationally.

Jensen uses this methodology to describe the characteristics of tradable service activities and provides measures of the potential scope of trade in business services. He finds that many service activities—movie and music recording production, computer service production, research and development services, and engineering services, to cite a few examples—appear to be “traded” (that is, transacted across distances) within the United States and thus are at least potentially tradable internationally. Approximately 14 percent of the US workforce is engaged in service industries that Jensen classifies as tradable. By comparison, about 10 percent of the US workforce is engaged in the entire manufacturing sector. When workers in tradable occupations within nontradable industries are included in the count—such as computer programmers in an electric power plant or medical transcriptionists in the health care industry—the share of the workforce in tradable service activities is even higher.

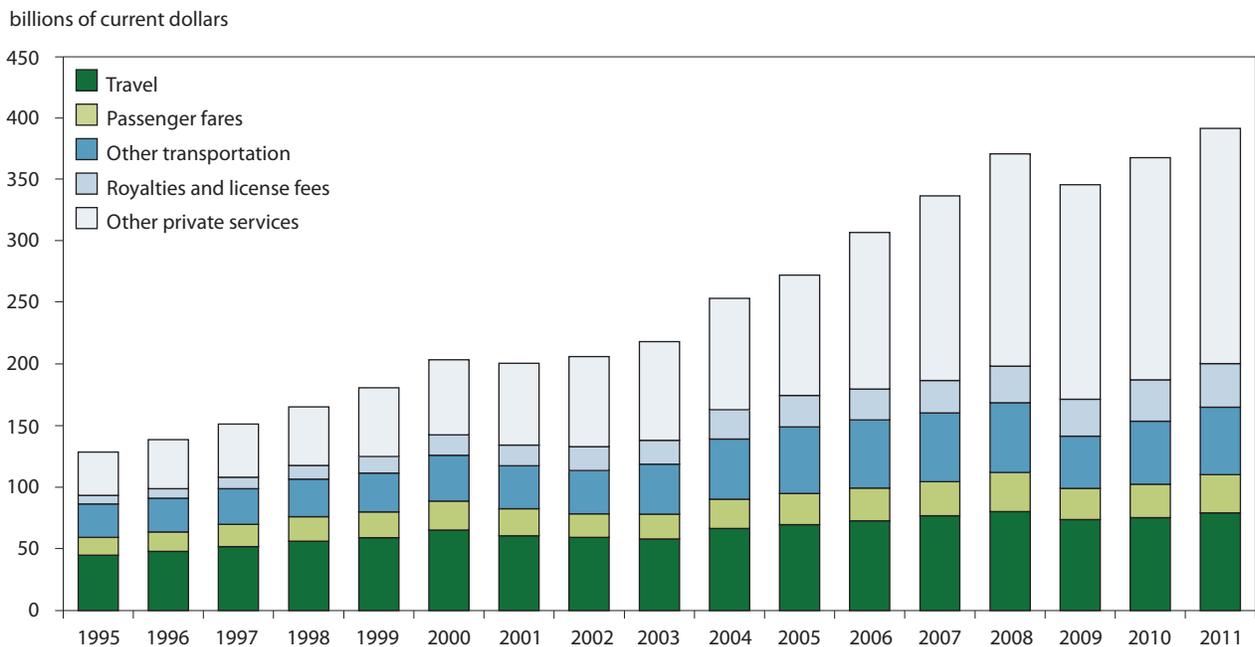
Table 1, adapted from Jensen (2009), reports the shares of manufacturing and service establishments (recorded in NAICS 51, 54, and 56) that export. (The Census Bureau asks the export question of firms in these three categories, all within business

Figure 3 Composition of US service exports, 1995–2011



Source: US Bureau of Economic Analysis.

Figure 4 Composition of US service imports, 1995–2011



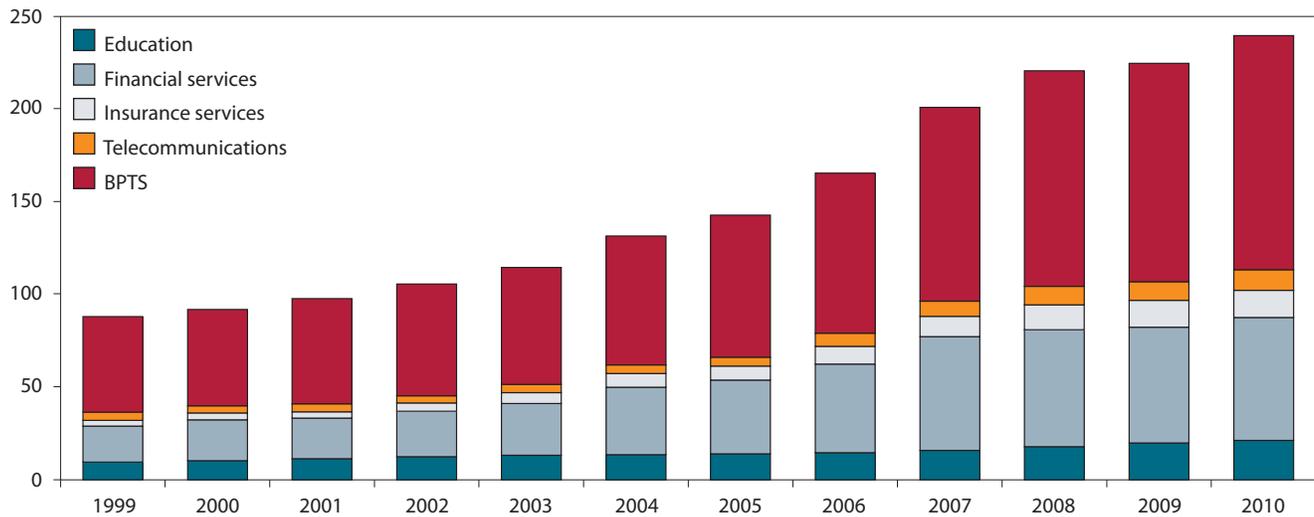
Source: US Bureau of Economic Analysis.

services, because these are the ones considered most likely to export.) Table 1 reports that 27 percent of manufacturing establishments export but only a very small share of service establishments (5 percent) in the identified categories export.

Comparing aggregate data on the prevalence of exporting in the tradable business service sector to the manufacturing sector likewise suggests that US service exports lag. Table 2 shows exports, sales, employment, and payroll for the manufac-

Figure 5 Composition of US private service exports, 1999–2010

billions of current dollars

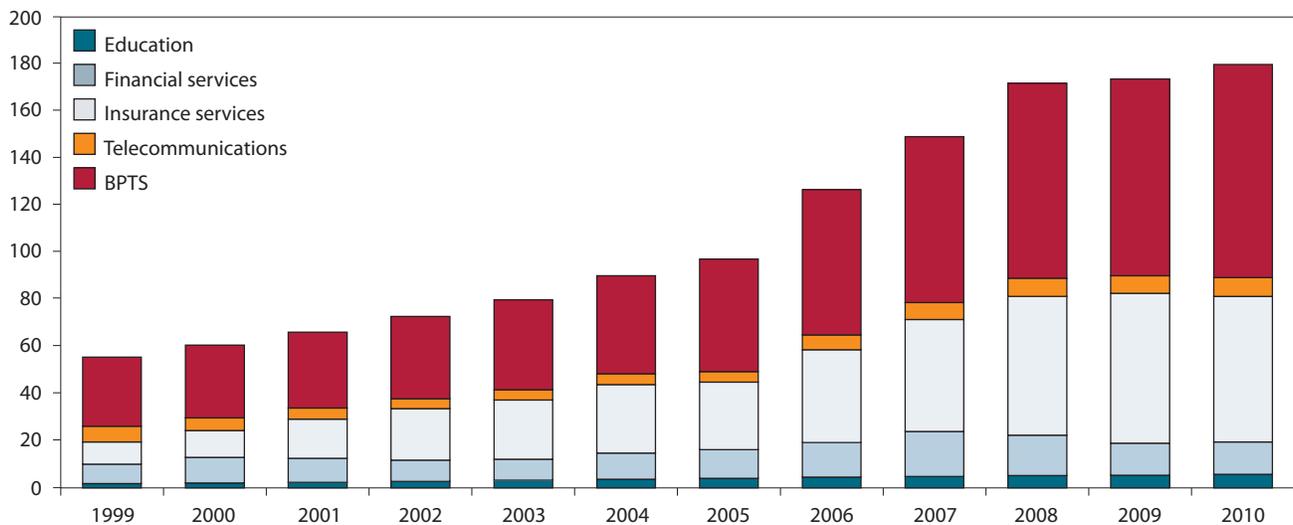


BPTS = Business, professional, and technical services

Source: US Bureau of Economic Analysis.

Figure 6 Composition of US private service imports, 1999–2010

billions of current dollars



BPTS = Business, professional, and technical services

Source: US Bureau of Economic Analysis.

turing sector and the business service sector broken out by the tradable/nontradable industry classification. The table shows that in terms of output, the tradable manufacturing sector and the tradable business service sector are roughly comparable in size, though tradable business service industries employ significantly more people.

Tradable manufacturing exports are much larger than tradable business service exports—about \$1 trillion compared with \$220 billion. As a result, the exports-to-sales ratio in tradable manufacturing is significantly higher, about five times higher, than in tradable business services.

Table 1 Prevalence of exporting in US manufacturing and business services, 2002

Industry	Percent exporting
Manufacturing (N = 146,986)	27.0
Business services ^a (N = 390,377)	5.3

a. Firms in North American Industrial Classification System (NAICS) categories 51, 54, and 56 only.

Source: Jensen (2011).

Table 2 Tradable and nontradable industry data by sector
(billions of dollars)

Indicator	Manufacturing		Business services	
	Nontradable	Tradable	Nontradable	Tradable
Exports	2.80	1,005.00	n.a.	222.40
Sales	266.70	5,052.60	1,829.1	5,184.60
Payroll	54.60	559.10	483.9	1,369.00
Employment (thousands)	1,372.00	12,022.00	12,280.0	20,458.00
Exports/sales	0.01	0.20	n.a.	0.04

n.a. = not available

Sources: Employment, sales, and payroll data from 2007 Economic Census; manufacturing exports from Census Foreign Trade Division, 2007; business services tradable/nontradable classification from Jensen (2011); exports from Bureau of Economic Analysis, Other Private Service Exports, 2007.

The United States *should* be exporting services, because that is where its comparative advantage seems to lie. The statistics on firm participation in export markets suggest that significant impediments to trade in services are retarding US performance, including culture and language differences, technological barriers, and policy barriers.

BARRIERS TO SERVICES TRADE

Services trade barriers do not take the familiar form of ad valorem tariffs. The “products” offered by service firms are typically intangible, nonstorable, differentiated, and sometimes involve a high degree of interaction between buyers and sellers. Trade barriers range across outright bans, quotas, licensing standards that are more restrictive than necessary, buy-national procurement, and discriminatory access to distribution networks, among others.

Often service barriers take the form of lump-sum costs to enter a market, rather than per unit charges as happen with tariffs. For example, an outright ban, or a quota on market share, can be thought of as an indefinitely high lump-sum cost of entry; licensing standards can be thought of as a one-off fixed cost to meet the requisite specifications. Both rent-creating and cost-creating barriers exist in services trade,

but more of them are cost-creating than for goods trade. It is reduction of the cost-creating barriers to services trade that deliver the biggest welfare gains. Nevertheless, quantitative research to date has focused on estimating tariff equivalents for an amalgam of service barriers.

Thus, in *Figuring Out the Doha Round* (Hufbauer, Schott, and Wong 2010), authors at the Peterson Institute applied a tariff equivalent approach when they wrestled with the task of quantifying potential trade gains from liberalizing service barriers. Even here there were difficulties. The academic literature reported no agreed method for calculating the tariff equivalent of assorted regulatory impediments.³³ After considering several studies, the Peterson Institute authors placed special emphasis on the findings reported by Gootiiz and Mattoo (2009). Since those results were only available regionally, however, the Hufbauer, Schott, and Wong used the country results reported by Wang, Mohan, and Rosen (2009) to make their calculations, adjusted in certain respects. Table 3 reports the calculated tariff equivalent barriers for 23 countries.

33. The authors surveyed various approaches reported in the professional literature; those interested in an overview should consult *Figuring Out the Doha Round*. For a detailed explanation of the methodology used to calculate tariff equivalent barriers and potential trade gains from liberalization, see the book's appendix B, pages 117 to 122.

Table 3 Tariff equivalents of service barriers (percent)

Country	Current tariff equivalent	Tariff equivalent after 50 percent cut
Argentina	33.09	16.55
Australia	16.12	8.06
Brazil	55.54	27.77
Canada	15.42	7.71
China	67.93	33.97
Colombia	40.87	20.44
European Union	6.69	3.35
India	68.06	34.03
Indonesia	67.93	33.97
Japan	16.76	8.38
Korea	25.04	12.52
Malaysia	28.77	14.39
Mexico	44.32	22.16
New Zealand	4.42	2.21
Norway	0.00	0.00
Pakistan	68.06	34.03
Philippines	55.35	27.68
Russia	51.26	25.63
South Africa	39.66	19.83
Switzerland	3.37	1.69
Thailand	44.06	22.03
Turkey	43.89	21.95
United States	6.03	3.02

Notes: Tariff equivalent barriers not available for Chile, Hong Kong, Taiwan, and Singapore.

Source: Authors' qualitative estimation based on Hufbauer, Schott, and Wong (2010, appendix B, table B.2).

POTENTIAL EXPANSION OF SERVICES TRADE

It is difficult to quantify the possible expansion of services trade in the wake of significant liberalization of international barriers. Here we offer two different approaches. One approach is based on standard partial equilibrium analysis, building up from estimated tariff equivalent barriers. The other approach focuses on the potential gains in US service exports if the rest of the world liberalized services to the same extent that goods trade has been liberalized.

Partial Equilibrium Calculation

Using the estimates of tariff equivalent barriers to services trade reported in table 3, we calculate the services trade that might

be generated by a 50 percent reduction in tariff equivalent barriers between potential “core” members—namely the 16 countries that participated in the “brainstorming” luncheon in Geneva on January 17, 2012—as well as the BRICS.³⁴ A 50 percent reduction in the tariff equivalent barriers is admittedly an optimistic target, but if the ISA is worth the negotiating effort, it should strive for at least this extent of reduction. To be sure, taking into account both their complexity and sensitivity, the reduction of many barriers would be phased in over a long period, perhaps 15 years.

To calculate the impact of a 50 percent tariff equivalent change we started with a matrix of bilateral services trade flows for the year 2008 (the latest year of available data) between potential “core” members and between the core members and the BRICS (table 4). Only some of these flows are publicly available (and some of the data may not be collected at all). Essentially, only the bilateral flows of OECD countries with other OECD countries, and their bilateral flows with major economies (e.g., China and India), are readily available. To fill in the missing data points, we calculated bilateral service flows between countries by assuming that the share of a country's services trade with a partner, out of its total services trade with the world, equals the share of that country's merchandise trade with the same partner out of the country's total merchandise trade with the world.

A partial equilibrium analysis was applied to determine the impact of a 50 percent tariff equivalent reduction. For each bilateral trade flow, the percentage point reduction in tariff equivalent barriers (after ISA liberalization is fully phased in) by the importing country is multiplied by a price elasticity of -1.37 .³⁵ This calculation yields the positive percentage increase in services trade as a result of liberalization. This percentage gain is then multiplied by the trade flow in 2008 to calculate the increase in trade after the tariff equivalent barrier is cut in half. To give a concrete illustration, suppose the tariff equivalent barrier is 28 percent. Half that amount represents a 14 percentage point reduction. Multiplied by an elasticity of -1.37 , the calculation suggests that trade would expand by 18.2 percent. If the existing trade flow is \$50 million annually, the increase in exports would be \$9.1 million annually. Tables 5 and 6 provide a simplified version of the results from this estimation procedure.

34. In *Figuring Out the Doha Round*, the authors considered that a 10 percent reduction in service barriers was the most that an ambitious “topping up” exercise within the Doha Round might deliver. The ISA should, over time, deliver substantially greater results.

35. The price elasticity shows the percentage increase in quantity for a 1 percent decrease in price. The price elasticity used here, -1.37 , represents an average derived from various studies reported in *Figuring Out the Doha Round*. The price elasticity may be too small in absolute value; if so, the calculated increases in services trade are too conservative.

Table 4 Cross-country service exports, 2008 (billions of US dollars)

Exporter/importer	Australia	Canada	Chile	Colombia	EU-27	Hong Kong	Japan	Korea	Mexico
Australia	—	1	0	n.a.	8	1	2	2	0
Canada	1	—	0	0	13	1	1	1	1
Chile	0	0	—	0	2	n.a.	n.a.	0	0
Colombia	n.a.	0	n.a.	—	n.a.	n.a.	n.a.	n.a.	n.a.
EU-27	18	18	n.a.	2	—	12	29	12	7
Hong Kong	3	2	n.a.	n.a.	17	—	6	2	0
Japan	2	3	n.a.	n.a.	43	0	—	5	1
Korea	1	1	1	n.a.	12	4	10	—	1
Mexico	0	1	0	n.a.	5	0	1	0	—
New Zealand	1	0	n.a.	n.a.	2	0	1	0	n.a.
Norway	0	1	n.a.	n.a.	24	0	1	n.a.	n.a.
Pakistan	0	0	0	0	1	0	0	0	0
United States	11	43	2	n.a.	176	6	40	12	23
Singapore	4	0	n.a.	n.a.	n.a.	4	7	3	n.a.
Switzerland	1	2	n.a.	n.a.	75	0	3	1	n.a.
Taiwan	0	1	0	n.a.	4	2	4	1	n.a.
<i>Subtotal: Core countries</i>	42	72	3	2	382	31	104	40	33
Brazil	0	0	0	n.a.	9	0	0	0	1
China	1	1	n.a.	n.a.	23	12	9	11	0
India	1	1	n.a.	n.a.	12	1	1	1	0
Russia	0	1	0	0	21	0	1	1	0
South Africa	0	0	n.a.	n.a.	6	0	0	0	n.a.
<i>Subtotal: BRICS</i>	2	3	0	0	71	13	11	12	1
Total imports	44	75	4	2	454	45	115	52	34

Exporter/Importer	New Zealand	Norway	Pakistan	United States	Singapore	Switzerland	Taiwan	Total bilateral export trade	World
Australia	3	0	n.a.	5	3	1	0	26	45
Canada	0	0	0	36	0	2	0	57	68
Chile	n.a.	0	0	0	n.a.	0	0	3	11
Colombia	n.a.	n.a.	0	n.a.	n.a.	n.a.	n.a.	0	4
EU-27	3	27	2	197	18	102	6	454	764
Hong Kong	0	0	0	19	3	1	5	58	92
Japan	0	n.a.	n.a.	38	14	3	7	116	148
Korea	0	0	n.a.	15	4	0	2	50	91
Mexico	n.a.	n.a.	0	10	n.a.	n.a.	n.a.	18	18
New Zealand	—	0	0	1	0	0	n.a.	5	9
Norway	0	—	n.a.	11	n.a.	1	n.a.	38	45
Pakistan	0	0	—	1	0	0	n.a.	3	4
United States	n.a.	5	n.a.	—	9	6	6	339	532
Singapore	1	1	n.a.	11	—	2	2	35	100
Switzerland	n.a.	1	0	5	2	—	n.a.	90	78
Taiwan	n.a.	n.a.	n.a.	7	1	n.a.	—	20	37
<i>Subtotal: Core countries</i>	7	35	2	357	54	118	28	1,312	2,045
Brazil	0	0	0	5	n.a.	n.a.	n.a.	16	30
China	0	0	1	10	3	n.a.	n.a.	70	147

(continues on next page)

Table 4 Cross-country service exports, 2008 (billions of US dollars) (*continued*)

Exporter/importer	New Zealand	Norway	Pakistan	United States	Singapore	Switzerland	Taiwan	Total bilateral export trade	World
India	0	0	0	13	2	n.a.	n.a.	30	107
Russia	0	0	0	4	0	2	0	29	51
South Africa	n.a.	n.a.	0	1	n.a.	n.a.	n.a.	9	13
<i>Subtotal: BRICS</i>	0	0	1	32	4	2	0	154	349
Total imports	7	35	3	389	58	120	28	1,466	2,394

Memorandum

World exports (billions of dollars) 2,814

Core countries exports to world/world total (percent) 73

BRICS exports to world/world total (percent) 12

n.a. = not available; 0 = figure is less than \$500,000

Notes: The data listed use the Extended Balance of Payments of Services (EBOPS) classification and include transportation, travel, communications, construction, insurance, financial services, computer and information services, royalties and license fees, other business services, personal, cultural, and recreational services, and government services. These calculations are low due to the scarcity of data, which do not include all categories of services trade in each case. We exclude intra-European trade, which may account for the small totals of service exports.

Sources: UN Service Trade Statistics Database 2011, <http://unstats.un.org>; OECD Statistics on International Trade in Services, 2011, www.oecd.org; and World Trade Organization Statistics Database, 2011, <http://stat.wto.org>.

This exercise indicates that sizable trade gains would result from a 50 percent cut in tariff equivalent barriers between ISA countries. Overall, annual service exports between “core” members would increase by \$78 billion. All core members would see export gains of 5 percent or more. In absolute terms, the United States and the European Union would see the largest export gains, around \$14 billion and \$21 billion, respectively (table 5). This reflects their economic size and comparative advantage in service exports. In our view, these figures represent highly conservative estimates of the trade gains from liberalization. If Brazil, India, and China became parties to the ISA, the trade gains would expand by around 30 percent using the same partial equilibrium methodology (Hufbauer, Schott, and Wong 2010, tables 3.1 and B.3). But in our view, a radically different methodology gives a more realistic—and far more robust—appreciation of the possible gains from liberalizing services trade. We turn now to a glimpse of that alternative approach.

Scope for US Service Exports

As an alternative “thought experiment” on the potential scope for increased trade in services, we draw on table 2, which shows that the exports-to-sales ratio in tradable business services is significantly lower than the exports-to-sales ratio for manufactures. We also draw on the fact that service firm participation in exporting significantly lags manufacturing firm participation—even though the United States has a comparative

advantage in producing tradable services (evidenced by its persistent surplus in services trade).

Building on these observations, as an alternative approach to sizing up the potential scope for increased trade in services, imagine that the exports-to-sales ratio in the tradable business service sector could, through the reduction or elimination of policy impediments to services trade, approach the exports-to-sales ratio for manufacturing. How big an increase in service exports would this be? Table 2 shows that the exports-to-sales ratio in tradable business services is only 0.04; in contrast, it is about 0.20 in manufactures. If the elimination of policy impediments to business services trade were significant enough to facilitate an increase in the exports-to-sales ratio in business services to 0.10—half the observed exports-to-sales ratio in manufactures—this would result in an increase in business service exports of 0.06 (the increase in the exports-to-sales ratio) multiplied by \$5 trillion (current sales in tradable business services) or \$300 billion in increased US exports. Of course this is a very rough, back-of-the-envelope calculation, but as a simplified “thought experiment” it seems useful. Gains of this magnitude would represent a 15 percent increase in total US exports of goods and services. Clearly, this would be difficult and would take time. However, the potential scope of increased trade in business services suggests that this is an effort worth undertaking.

It is worthwhile exploring the difference between the partial equilibrium approach (US service export gains of

Table 5 Estimated increase in exports from 50 percent cut in tariff equivalent barriers in services trade (billions of US dollars)

Exporter/Importer	Australia	Canada	Chile	Colombia	EU-27	Hong Kong	Japan	Korea	Mexico
Australia	—	0	0	n.a.	1	0	0	0	0
Canada	0	—	0	0	1	0	0	0	0
Chile	0	0	—	0	0	n.a.	n.a.	0	0
Colombia	n.a.	0	n.a.	—	n.a.	n.a.	n.a.	n.a.	n.a.
EU-27	1	1	n.a.	0	—	1	1	1	0
Hong Kong	0	0	n.a.	n.a.	0	—	0	0	0
Japan	0	0	n.a.	n.a.	5	0	—	1	0
Korea	0	0	0	n.a.	2	1	2	—	0
Mexico	0	0	0	n.a.	2	0	0	0	—
New Zealand	0	0	n.a.	n.a.	0	0	0	0	n.a.
Norway	0	0	n.a.	n.a.	0	0	0	n.a.	n.a.
Pakistan	0	0	0	0	1	0	0	0	0
United States	0	2	0	n.a.	7	0	2	1	1
Singapore	0	0	n.a.	n.a.	n.a.	0	0	0	n.a.
Switzerland	0	0	n.a.	n.a.	2	0	0	0	n.a.
Taiwan	0	0	0	n.a.	0	0	0	0	n.a.
Total imports	2	4	0	0	21	2	6	2	2

Exporter/Importer	New Zealand	Norway	Pakistan	United States	Singapore	Switzerland	Taiwan	Total bilateral export trade
Australia	0	0	n.a.	1	0	0	0	3
Canada	0	0	0	4	0	0	0	6
Chile	n.a.	0	0	0	n.a.	0	0	0
Colombia	n.a.	n.a.	0	n.a.	n.a.	n.a.	n.a.	0
EU-27	0	1	0	9	1	5	0	21
Hong Kong	0	0	0	0	0	0	0	1
Japan	0	n.a.	n.a.	4	2	0	1	13
Korea	0	0	n.a.	3	1	0	0	9
Mexico	n.a.	n.a.	0	3	n.a.	n.a.	n.a.	5
New Zealand	—	0	0	0	0	0	n.a.	0
Norway	0	—	n.a.	0	n.a.	0	n.a.	0
Pakistan	0	0	—	1	0	0	n.a.	1
United States	n.a.	0	n.a.	—	0	0	0	14
Singapore	0	0	n.a.	0	—	0	0	1
Switzerland	n.a.	0	0	0	0	—	n.a.	2
Taiwan	n.a.	n.a.	n.a.	0	0	n.a.	—	1
Total imports	1	2	0	25	4	6	2	78

n.a. = not available; 0 = figure is less than \$500,000

Notes: Tariff equivalent barriers are not available for Chile, Hong Kong, Taiwan, and Singapore. For these calculations, tariff equivalent barriers for Singapore and Hong Kong are set equal to Switzerland. Those for Chile and Taiwan are set equal to the United States, based on authors' qualitative estimation. See text for methodology.

Source: Table 4.

\$14 billion) and the “thought experiment” approach (US service export gains of \$300 billion). One difference is that the partial equilibrium approach assumes a 50 percent cut in policy barriers, whereas the thought experiment assumes

total elimination. However, following the partial equilibrium approach, total elimination of barriers would only double the projected magnitude of US service export gains, \$28 billion rather than \$14 billion. This is still only one-tenth the size of

Table 6 Estimated post-liberalization cross-country services exports (billions of dollars)

Exporter/Importer	Australia	Canada	Chile	Colombia	EU-27	Hong Kong	Japan	Korea	Mexico
Australia	—	1	0	n.a.	8	2	2	2	0
Canada	1	—	0	0	14	1	1	1	1
Chile	0	0	—	0	2	n.a.	n.a.	0	0
Colombia	n.a.	0	n.a.	—	n.a.	n.a.	n.a.	n.a.	n.a.
EU-27	19	18	n.a.	2	—	13	30	12	8
Hong Kong	3	2	n.a.	n.a.	18	—	6	3	0
Japan	3	4	n.a.	n.a.	47	0	—	5	1
Korea	1	1	1	n.a.	14	5	11	—	1
Mexico	0	2	0	n.a.	7	0	1	0	—
New Zealand	1	0	n.a.	n.a.	2	0	1	0	n.a.
Norway	0	1	n.a.	n.a.	24	0	1	n.a.	n.a.
Pakistan	0	0	0	0	2	0	0	0	0
United States	11	44	3	n.a.	184	6	42	13	24
Singapore	4	0	n.a.	n.a.	n.a.	4	7	3	n.a.
Switzerland	1	2	n.a.	n.a.	77	0	3	1	n.a.
Taiwan	0	1	0	n.a.	4	2	5	1	n.a.
Total imports	44	75	4	3	403	33	110	42	35

Exporter/Importer	New Zealand	Norway	Pakistan	United States	Singapore	Switzerland	Taiwan	Total bilateral export trade	World
Australia	3	0	n.a.	6	4	1	0	29	50
Canada	0	0	0	40	0	2	0	62	75
Chile	n.a.	0	0	0	n.a.	0	0	3	11
Colombia	n.a.	n.a.	0	n.a.	n.a.	n.a.	n.a.	0	5
EU-27	3	28	2	207	19	107	6	475	799
Hong Kong	0	0	0	20	3	1	5	59	94
Japan	0	n.a.	n.a.	43	16	3	7	130	165
Korea	0	0	n.a.	17	5	1	2	59	106
Mexico	n.a.	n.a.	0	13	n.a.	n.a.	n.a.	23	24
New Zealand	—	0	0	1	0	0	n.a.	5	10
Norway	0	—	n.a.	11	n.a.	1	n.a.	38	45
Pakistan	0	0	—	2	0	0	n.a.	4	6
United States	n.a.	5	n.a.	—	10	6	6	353	553
Singapore	1	1	n.a.	11	—	2	2	36	102
Switzerland	n.a.	1	0	5	2	—	n.a.	92	80
Taiwan	n.a.	n.a.	n.a.	7	1	n.a.	—	21	38
Total imports	8	36	2	382	58	123	30	1,389	2,164

n.a. = not available; 0 = figure is less than \$500,000

Notes: Tariff equivalent barriers are not available for Chile, Hong Kong, Taiwan, and Singapore. For these calculations, tariff equivalent barriers for Singapore and Hong Kong are set equal to Switzerland. Those for Chile and Taiwan are set equal to the United States, based on authors' qualitative estimation. See text for methodology.

Source: Table 4.

export gains in the thought experiment approach. Most of the gap between the two approaches can possibly be explained by the nature of policy barriers: Rather than operating as tariff equivalents, many of the barriers operate as total exclusion

from the relevant markets. If that's the case, a partial equilibrium approach—designed to estimate small changes in the size of barriers—systematically underestimates the trade that could be created with true policy liberalization.

The Coming Boom

The World Bank has created a services trade restrictiveness index, which so far has been applied to seven service sectors, mainly for Modes 1 and 3 (cross-border delivery and FDI). The index suggests that the United States and other developed economies are already fairly open to trade in services delivered by foreign investment. In contrast, a number of large and fast-growing countries, notably China, India, Indonesia, and Russia, have high barriers to trade in services. Other increasingly important economies, notably Brazil and Korea, maintain lower but still significant barriers (Borchert, Gootiiz, and Mattoo 2011).

A review of the GATS schedules of high barrier countries (particularly China) reveals a strong tendency towards exceptions to Mode 3 liberalization (FDI). For example, China has restrictions on foreign ownership in the legal, accounting, real estate, transportation, agricultural, and communications (including IT) industries. Mode 3 barriers typically require at least 50 percent domestic ownership of the enterprise at issue. In some cases, specific ownership thresholds are not specified, but industry-specific restrictions come into play. For example, foreign real estate firms operating in China are restricted because “wholly foreign-owned enterprises are not permitted for high standard real estate projects, such as apartments and office buildings, but excluding luxury hotels.”³⁶

Services trade liberalization in the BRICS would allow firms based elsewhere with a comparative advantage in supplying services to start exporting, or to increase their exports, to these countries. The US economy would benefit from increased productivity through the resulting increase in specialization. So would the economies of other developed countries, like Canada, Japan, and many EU countries, all of which are similar in comparative advantage to the United States and would likely see their service exports grow as well. The countries that liberalize would benefit from the increased productivity that comes when their own firms are able to import the best quality services at the lowest prices.

Estimates suggest that over \$40 trillion will be spent worldwide on physical infrastructure of all types over the next 25 years, more than 80 percent of which will be outside of the United States. China and India alone have infrastructure needs valued at \$10 trillion over that period; other fast-growing developing countries also have large infrastructure needs. All this infrastructure spending represents a bonanza for firms providing architecture, engineering, construction, project management, finance, and insurance services. Currently, policy impediments preclude the efficient provision of these types of services across borders, reducing the ability of the most efficient

firms to provide the services at lowest cost. In addition, existing policy might induce firms to choose an inefficient mode of delivery, using Mode 3 (FDI) instead of possibly more efficient cross-border trade (Mode 1).

The opportunity presented by this infrastructure boom is clear, as is the need to ensure that US firms have equal access to compete for the financing, architecture, engineering, project management, and construction work associated with this boom. What is less clear is exactly how to proceed. Trade in services is subject to a complex suite of impediments that are more difficult to negotiate than tariffs. For example, licensing and accreditation are often issues for individual professional service associations, and many countries require foreign firms to establish a commercial presence or take on local partners. But the difficulties involved in negotiating access are no excuse for not pushing hard.

Indeed, the United States has already made progress in negotiating access for service providers, both in regional agreements like the North American Free Trade Agreement (NAFTA) and in bilateral agreements like the Korea-US Free Trade Agreement. Yet similar agreements do not exist with other large, fast-growing economies, and it is precisely these countries where most of the trade growth will be located and where US comparative advantage in the relevant services is most pronounced. Other advanced economies also enjoy comparative advantage in services and would be natural partners in an effort to persuade the large, fast-growing countries with high service barriers to liberalize. Bringing these countries into the mix will be a challenge, and offering longer phase-in periods for reforms may ease the transition. However, the “grand bargain,” sketched earlier, would probably be the main quid pro quo for the accession of BRICS and other developing countries. Yet, at the end of the day, the ISA will be a coalition of the willing and most member countries will not view deeper and broader market opening as a “concession,” but rather as a “precondition for enhancing domestic economic performances” (Sauvé 2003, 278). Countries that do not accept this frame of reference are likely to remain outside the ISA for a considerable period.

Much of the spending for infrastructure in the coming boom is likely to be controlled or financed, at least in part, by governments—national, regional, and local. Those governments are sure to face domestic political pressures to favor domestic producers in granting contracts. Guaranteeing equal treatment in government procurement thus looms as a crucial issue for foreign providers. The WTO’s Agreement on Government Procurement was negotiated during the Tokyo Round in the early 1980s, with the intention of reducing preferences to domestic firms in public procurement and opening public works spending to international trade. Its coverage was extended tenfold in the subsequent Uruguay Round and now covers government purchases,

36. See China’s Horizontal Commitments in the GATS, WTO Services Database Output, <http://tsdb.wto.org>. Complete GATS liberalization schedules for all member countries are available on this database.

including some services, totaling several hundred billion dollars annually. This sum obscures the fact that to date only a handful of countries have signed the agreement, virtually all of them advanced nations. In March 2012, however, India, China, and Russia all agreed to join the latest revision of the Agreement on Government Procurement (GPA2) after ten years of negotiations (Kehoskie and Bade 2012). Their accession is a milestone since these large developing countries are expected to account for the bulk of infrastructure spending in coming decades. However, the scope of coverage under the GPA2 remains to be sorted out in practice, as foreign bids are accepted or rejected. Even the current signatories sometimes find it difficult to adhere to their obligations under the agreement. The issue was highlighted by the “Buy American” provisions in the 2009 American Recovery and Reinvestment Act (ARRA), the main US stimulus legislation in response to the 2008–09 recession. The Act’s provisions gave preferential access to US producers to government contracts financed by stimulus funds, creating difficulties not only for potential foreign suppliers but even for US firms with Canadian subsidiaries that provide critical inputs. Under the ARRA, if too much Canadian content was included in a product, the product was ineligible for stimulus money.

The United States and Canada recently signed an agreement to limit this type of distortion, but the episode shows how political considerations can bias government procurement decisions even when the countries involved are advanced economies, close neighbors, and signatories to the WTO agreement. The pressures are naturally much more acute and harder to overcome when the countries are half a world apart and possess very different business systems and cultures. This emphasizes the need for stronger measures in the area of government procurement. Getting the large, fast-growing economies of the world to sign on to the WTO agreement may not solve all problems, but it was a move in the right direction.

POSSIBLE FORMS OF AN INTERNATIONAL SERVICES AGREEMENT

The International Services Agreement could potentially take a number of forms that we discuss in this section. To set the record clear at the outset, negotiating a services-only agreement is not in contradiction with the WTO. Despite the linkage that was created in the Doha Development Agenda between services, agriculture, and nonagricultural market access, services negotiations began in 2000, nearly two years before the Doha Round was launched in November 2001. In fact, Article XIX of the GATS mandated WTO members to enter into successive rounds of services negotiations beginning no later than five years after the establishment of the WTO, with a view to progressive liberalization. Even if the Doha Round never concludes, services negotiations have a life of

their own through this standing mandate. Going forward, in looking at the options for an ISA, there are three tracks for pursuing negotiations—the first inside the WTO, the second linked to the WTO, and the third outside the WTO.

Inside the WTO

The “inside” track simply entails a revival of the services component of the Doha agenda: All WTO members would buckle down with renewed purpose and enthusiasm to hammer out a deal. The major difficulty with this approach—besides the lack of enthusiasm of the majority of WTO members in the services area—is that services negotiations have been conducted within the traditional GATS format and based on positive lists of commitments by both sectors and modes of supply, with all the drawbacks and severe limitations that this approach has encountered over the past decade. This approach has highlighted the fact that most developing countries, with key emerging-market economies among them (the BRICS), are not disposed to bind existing practice—and much less liberalize—large swaths of their service sectors. Thus, a limited agreement concluded within the Doha Round, on the basis of existing or even modestly improved offers, would not satisfy the needs of the business community. Bearing these constraints in mind, and recognizing that world trade in services has changed a great deal over the past two decades, we believe a new agreement requires a fresh and modernized approach.

Linked to the WTO

An ISA could also be negotiated as a stand-alone agreement among interested WTO members, with a different type of modality than the positive list and with strengthened and improved disciplines. Then the ISA could be formally linked to the WTO in the same fashion as the four plurilateral agreements appended to the Uruguay Round Agreement (the best known being the Agreement on Government Procurement). However, to be accepted within the WTO framework, the ISA would need to pass the test of Article IX(3) of the Marrakesh Agreement—namely approval through a waiver accepted by three-fourths of WTO member countries so that the ISA could become part of the WTO framework, just like the Agreement on Government Procurement.³⁷ The link between the ISA and

37. This is the same basis as the waiver that authorized the four plurilateral agreements listed in Annex 4 of the Marrakesh Agreement. The four agreements were Civil Aircraft, Government Procurement, Dairy, and Bovine Meat. The last two plurilateral agreements were terminated in 1997. The Information Technology Agreement (1997), the Basic Telecommunications Agreement (1997), and the Financial Services Agreement (1999) extended their market access benefits unconditionally to all WTO members and thus did not need waivers.

the WTO would have three great advantages. First, the ISA members could apply the WTO dispute settlement provisions to resolve their disagreements—far easier than designing a new dispute settlement mechanism just for ISA questions. Second, over time, it seems likely that more countries would join an ISA linked to the WTO than a free-standing ISA outside the WTO framework. Third, in this manner, the ISA would focus attention on the WTO rather than a competing forum.

GATS Article V Approach

Members of the ISA might decide that a free-standing agreement best suits their purposes, or perhaps affiliation with an international organization other than the WTO. The OECD is a possible alternative forum but it has two drawbacks. The unsuccessful experience of the Multilateral Agreement on Investment negotiated within the OECD (May 1995 to April 1998) left a negative impression in the minds of several countries (Graham 2000). Also, an agreement under the OECD umbrella might discourage developing countries from joining the plurilateral initiative from the outset.³⁸

Rather, the ISA can be conceived *not* as part of the Doha Round but instead as a separate agreement negotiated to meet standards set out in Article V of the GATS, the Economic Integration provision. The language of Article V is sufficiently flexible to allow an ISA wholly outside the WTO (already the case for RTAs with service provisions) or, if members preferred, they could also seek a waiver for the ISA under Article IX(3) of the Marrakesh Agreement, as discussed above, in order to establish a formal link to the WTO.

Article V of the GATS allows a services-only FTA between WTO members provided the agreement entails “substantial sector coverage” and eventually eliminates “substantially all discrimination” between the parties. Article V would furnish the basis for an ISA between consenting WTO members, without requiring those members to extend MFN benefits to the entire WTO family. Specifically, Article V(1) requires that such an agreement:

- (a) Covers “substantially all trade”³⁹ (defined in terms of number of sectors, volume of trade and modes of supply); and
- (b) Provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or

among the parties, in the sectors covered under subparagraph (a) through:

- (i) elimination of existing discriminatory measures and/or
- (ii) prohibition of new or more discriminatory measures

Read closely, Article V creates a high standard for the ISA. It stipulates that the coverage by sectors, trade volume, and modes of supply should amount to “substantially all trade.” Moreover, the footnote requires that agreements should not a priori exclude any mode of supply; in theory this means that temporary movement of natural persons (Mode 4) should not be excluded. Meeting the standards of Article V would not preclude offering the results of an ISA on an MFN basis, which could be done at any point either individually or collectively by ISA participants.

Yet, while the requirements of Article V appear rigorous, the standards have not so far been applied in a rigorous manner. Several services agreements have been notified to the WTO Committee on Regional Trade Arrangements and examined under Article V, but no conclusion has been reached as to their compatibility with the GATS requirements for an MFN exemption. Nor has an interpretation been reached as to the definition of “substantially all trade,” particularly with respect to the inclusion of Mode 4 in RTAs. Against this background, an International Services Agreement might well furnish the test case for applying the standards of Article V, particularly if the WTO rules on RTAs were to be strengthened, as is the current objective.

Trans-Pacific Partnership: Complementary Approach

The Trans-Pacific Partnership (TPP) negotiations furnishes a complementary approach for a far-reaching services agreement outside the WTO—especially if the services and investment chapters were opened for accession by countries that did not sign on to the entire TPP framework. While quite novel in the history of RTAs, this sort of limited affiliation might merit consideration.

Within the TPP, services (and investment) are being negotiated as part of an overall, comprehensive FTA among nine Asia-Pacific countries (Australia, Brunei, Chile, Malaysia, Peru, Singapore, New Zealand, United States, and Vietnam, with the possibility of four more joining in the near future, Canada, Japan, Korea, and Mexico). Countries engaged in TPP negotiations are devising new, updated rules for services as well as a more effective market access approach based on negative lists. The TPP already includes some of the most dynamic trading countries in the world, and a long-term possibility is that TPP will evolve into an APEC-wide Free Trade

38. This has been the experience of the OECD Arrangement on Officially Supported Export Credits; few developing countries have joined.

39. [The following language is note 1 in the GATS text:] “This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.”

Area of the Asia-Pacific (FTAAP). Importantly, an accession clause is being included in the draft text so that the TPP can be expanded to include new members. If accomplished, that expansion will positively answer the challenge of “multilateralizing regionalism,” currently a struggle for the global trading system. However, unless the TPP makes a breakthrough, it will not have the benefit of the rigorous WTO dispute settlement system.

To be sure, the TPP has one big advantage: It has captured the attention of US trade officials. Partly because of its success, the TPP continues to divert attention from Geneva. The TPP initiative might serve to revitalize the WTO if its services and investment chapters were brought into the WTO as an alternative to the GATS—but this is something that most developing-country members would resist. Perhaps the best advantage a TPP offers is to “modernize” the content and approach of a regional trade agreement for services so that it can serve as a reference point for other RTA groupings. Along that path, some of the new disciplines being discussed in the TPP meetings might find their way into the negotiation of an ISA under the WTO.

Recommendation: ISA Attached to the WTO

We conclude that the best path—both for reenergizing the WTO and for accomplishing the goals of the “real good friends of services trade liberalization”—is the negotiation of an International Services Agreement that meets GATS Article V requirements by a self-selected group of WTO members. The ISA should be negotiated with the view to seeking its future attachment to the WTO in the same manner as the Agreement on Government Procurement. As mentioned, the attachment will require an affirmative waiver of three-fourths of WTO members. In our view, three features will persuade WTO members that are not signatories to the ISA to endorse the waiver. First, the alternative is the prospect of a free-standing ISA, an agreement that could be harder to join in the future, and an agreement that inadvertently detracts from the primacy of the WTO. Second, the larger developing countries, including the BRICS, should be persuaded, by the time ISA negotiations conclude, of the benefits of services liberalization for their own economies and the disadvantages of being left outside. This is particularly true for countries like India and China that already have a large stake in international services trade and a large participation in global value chains through their service activities. Third, if the waiver is voted in tandem with the “grand bargain” sketched earlier, even nonsignatories will benefit from other features of the Doha package (Hufbauer and Schott 2012).

A decisive question facing the self-selected ISA countries is whether the benefits of their agreement extend as conditional or unconditional MFN benefits to other WTO members. If

the ISA follows the pattern of the Information Technology Agreement (ITA), then the market access opportunities will be applied unconditionally to all WTO members.⁴⁰ But the particular circumstances in the ITA case—a handful of countries and companies, led by the United States and IBM, were the dominant suppliers, and most countries were eager to liberalize their imports—are simply not present in services trade. Given the extensive restrictions on services trade in many developing countries and the fact that many countries are not yet convinced of the benefits of liberalizing service imports, free riders are perceived as a problem with an unconditional MFN approach. While many of the actual regulatory changes that are undertaken in the services area are de facto applied on a nondiscriminatory basis, it would be a diplomatic nonstarter for the self-selected countries to negotiate a services agreement without a strong reciprocity requirement. Nor would unconditional MFN provide an incentive in the future, after the agreement is concluded, for others to join in. In our view, the ISA will be concluded only as a conditional MFN agreement.

An “open” Article V agreement, designed so that the ISA would be applied to all WTO members on an unconditional MFN basis *but only* when a “critical mass” of countries accounting for the large majority of global services trade take part and make market access commitments is one way to deal with the free rider problem. However, if the BRICS—and especially China and India—decide not to participate in the agreement, its implementation will be stalled for the indefinite future. In our view, the best prospect for successfully concluding an ISA will be in the form of a conditional MFN agreement but with an accession clause.

“CRITICAL MASS” OR “SUBSTANTIAL COVERAGE”?

Plurilateral sector-specific agreements negotiated within the WTO during the past two decades have usually, but not always, covered a “critical mass” of trading partners. “Critical mass” has typically been defined to include countries accounting for 90 percent or more of world trade in the particular sector. In four instances, this was the touchstone for including the plurilateral agreement within the WTO framework. Examples are the Civil Aircraft Agreement, which covered the only two producers of large civil aircraft, the United States (Boeing) and the European Union (Airbus); the Basic Telecommunications Agreement of 1997, which covered roughly 91 percent of the world’s basic telecom lines when signed; the Information

40. In this case, the agreement would not need to be notified to the WTO under GATS Article V because it would not be a preferential agreement and thus would not derogate from GATS Article II, General Most Favored Nation Treatment.

Technology Agreement of 1997, which now covers roughly 97 percent of world trade in telecommunications and computer equipment; and the Financial Services Agreement of 1999, which covered roughly 95 percent of the world's basic banking services. However, there is an important contrary precedent to the 90 percent rule, the Agreement on Government Procurement,⁴¹ negotiated as part of the Uruguay Round: The agreement covered 28 countries and perhaps 50 percent of government procurement worldwide.⁴²

While “critical mass” has become part of negotiating lore in Geneva, it is not a requirement of GATS Article V. Moreover, if “critical mass,” interpreted as 90 percent of world services trade, is seen as a prerequisite for launching ISA talks within the WTO framework, the launch will not get off the ground. Most countries have ducked meaningful talks on GATS enlargement during the Doha Round. In fact, Decreux and Fontagné (2011) published a report for the European Commission that estimates that the Doha payoff in services liberalization, based on concessions already tabled amounts to a tariff equivalent reduction of only 3 percent of existing barriers. Borchert, Gootiiz, and Mattoo (2011) estimate that Doha offers would reduce the “overhang” between bound and applied barriers by roughly 10 percent but would not bring new liberalization. Within Africa, Asia, and Latin America there was little support for liberalizing access to their respective service sectors. There is no reason to think that ISA talks, launched with an ambitious liberalization agenda in 2012, would do better.

In any event, the 18 WTO members (or 44, counting each member of the European Union as a single country) that are beginning negotiations for a services agreement do not constitute a “critical mass” under the 90 percent standard, since the BRICS and most developing countries are not among them. To comport with past negotiating lore, one answer is to redefine “critical mass”; a better answer, in our view, is simply to change the threshold to a “substantial coverage of world services trade.” By that standard, the 18 WTO members certainly qualify, since they currently constitute nearly three-quarters of world services trade (adding in the five BRICS economies would increase the ISA's share of world service exports to 85 percent). Moreover, as already noted, “critical mass” is negotiating lore, not an Article V requirement.

41. The Uruguay Round Agreement on Government Procurement superseded the Tokyo Round Government Procurement Code, which had excluded services. The Uruguay Round agreement achieved a tenfold expansion in coverage by including both national and local government entities; moreover, it extended coverage to selected services and public utilities.

42. The 27 European Union countries are counted here as one member.

ISA Members

Based on movement in Geneva from January to March 2012, we foresee an ISA launch within a fairly short period of time by major trading nations plus smaller countries that see the benefits of services liberalization. Here we try to identify likely core members and early adherents and then say a word about the BRICS.

Core Members

On the basis of the 18 self-selected WTO members showing an interest, we have the definition of an essential core group, comprising Australia, NAFTA (United States, Canada, and Mexico), Chile, Colombia, Costa Rica, the European Union (27 members), Hong Kong, Japan, Korea, New Zealand, Norway, Peru, Singapore, Switzerland, and Taiwan (Pakistan did not attend subsequent meetings). Service exports by these countries to one another now amount to \$1.3 trillion annually. However, the service exports of those core countries to the world amount to over \$2 trillion, about 73 percent of world service exports. In 2008, the stock of FDI in services by these countries to one another totaled \$4.2 trillion, almost 70 percent of world FDI in services. Table 7 summarizes the extent of services liberalization scheduled by the core ISA members under their GATS schedules. These commitments were finalized nearly two decades ago (in 1993), so today their main value is to indicate the historic disposition of countries to liberalize. There was a wide spectrum as to the extent of liberalization under GATS among the core countries. On one extreme were countries like Australia, New Zealand, Norway, Taiwan, the United States, and Switzerland, which took the most commitments *without* imposing limitations. Canada, Japan, Hong Kong, and Singapore also accepted very liberal service commitments but undertook almost no commitments in sectors like health and education services. Most of the developing countries participating in the ISA discussions left large gaps in their GATS schedules, as did the large majority of WTO members at the time.

The more recent Doha Round service offers and especially the commitments from recent RTAs are more up-to-date and reflective of current openness in services than the GATS schedules (dating from 1993) as RTAs have made more progress on liberalization than the WTO. Not surprisingly FTAs between developed countries have the fewest barriers to services trade. For example, the Australia–New Zealand, Australia–US, and NAFTA agreements are quite liberal (apart from Mode 4—a major exception). The Korea–US FTA is also an advanced agreement that stands in contrast to many other East Asian FTAs, where members maintain high barriers to services trade

Table 7 GATS commitments of core countries

Service sector	Australia		Canada		Chile		Colombia	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Business services								
Professional services	FB	PB	PB	PB	U	FB	U	PB
Computer and related	FB	FB	FB	FB			U	FB
Research and development	FB	FB	FB	FB				
Real estate	PB	FB	PB	FB				
Rental and leasing	FB	FB	FB	FB	U	PB	U	FB
Other	U	U	PB	PB	U	FB	U	FB
Communication services								
Postal								
Courier			FB	PB				
Telecommunications	FB	PB	PB	PB	PB	PB	FB	PB
Audiovisual								
Other								
Construction and related engineering services								
Construction for buildings	U	FB	FB	PB				
Construction for civil engineering	U	FB	PB	PB				
Installation and assembly	U	FB	FB	FB				
Building completion	U	FB	FB	FB				
Other			PB	FB			FB	FB
Distribution services								
Commission agent	FB	FB	FB	FB				
Wholesale trade	FB	FB	PB	PB				
Retailing	U	FB	PB	FB				
Franchising	FB	FB	PB	PB				
Other			FB	FB				
Educational services								
Primary education								
Secondary education	FB	U						
Higher education	FB	U						
Adult education	FB	U						
Other	FB	U						
Environmental services								
Sewage	U	FB	FB	FB				
Refuse disposal	U	FB	FB	FB				
Sanitation	U	FB	FB	FB				
Other			FB	FB			FB	FB
Financial services								
Insurance	U	PB	U	PB	U	PB	U	PB
Banking	U	PB	U	PB	U	PB	U	PB
Other					U	PB		
Health services								
Hospitals								
Human health	U	FB						
Social services								
Other								

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Table 7 GATS commitments of core countries *(continued)*

Service sector	Australia		Canada		Chile		Colombia	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Tourism and travel								
Hotels and restaurants	U	FB	FB	PB	U	FB	U	FB
Travel agencies	PB	FB	PB	PB	U	FB	FB	FB
Tourist guides	FB	FB			U	FB		
Other								
Recreational, cultural, and sporting services								
Entertainment								
News agency	FB	FB						
Libraries, archives, museums, other								
Sporting and recreational	FB	FB						
Other								
Transportation services								
Maritime transportation								
Internal waterways	PB	PB	U	U				
Air transportation	U	FB	FB	FB	U	FB		
Space								
Rail			PB	PB				
Road	U	FB	PB	PB				
Pipeline	FB	FB						
Services auxiliary to all modes of transportation	U	FB	U	U				
Other								
Service sector	EU-27		Hong Kong		Japan		Korea	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Business services								
Professional services	U	PB	U	PB	PB	PB	PB	PB
Computer and related	FB	FB	FB	FB	FB	FB	PB	PB
Research and development	FB	PB			FB	PB	U	FB
Real estate	U	PB	U	U	PB	PB		
Rental and leasing	PB	PB	U	PB	FB	FB	U	FB
Other	U	PB	U	FB	FB	PB	FB	FB
Communication services								
Postal								
Courier			U	U				
Telecommunications	PB	PB	PB	PB	FB	PB	PB	PB
Audiovisual			U	FB	U	PB	FB	FB
Other								
Construction and related engineering services								
Construction for buildings								
Construction for civil engineering	U	PB			U	PB	U	PB
Installation and assembly					U	PB	U	PB
Building completion			U	FB	U	PB	U	PB
Other	U	U	U	FB	U	PB	U	PB

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Table 7 GATS commitments of core countries *(continued)*

Service sector	EU-27		Hong Kong		Japan		Korea	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Distribution services								
Commission agent	U	FB			FB	PB	U	FB
Wholesale trade	PB	PB			FB	PB	U	PB
Retailing	U	PB	U	FB	FB	PB	U	PB
Franchising	FB	FB			FB	PB	FB	PB
Other								
Educational services								
Primary education	PB	PB			U	PB		
Secondary education	PB	PB			U	PB		
Higher education	PB	PB			U	PB		
Adult education	FB	FB			FB	PB		
Other								
Environmental services								
Sewage	U	FB			U	PB	U	PB
Refuse disposal	U	FB			U	PB	U	PB
Sanitation	U	FB			U	PB		
Other	U	FB			U	PB	FB	FB
Financial services								
Insurance	U	PB	U	PB	U	PB	U	PB
Banking	U	PB	U	PB	U	PB	U	PB
Other								
Health services								
Hospitals	U	PB			U	U		
Human health								
Social services	U	PB						
Other								
Tourism and travel								
Hotels and restaurants	U	PB	U	FB	U	PB	U	FB
Travel agencies	FB	PB	U	PB	FB	PB	FB	FB
Tourist guides	U	FB			U	PB	FB	PB
Other								
Recreational, cultural, and sporting services								
Entertainment	U	U			U	FB		
News agency	FB	PB			FB	PB		
Libraries, archives, museums, other			U	FB	U	PB		
Sporting and recreational	FB	FB			U	PB		
Other								
Transportation services								
Maritime transportation			U	PB	U	U	U	PB
Internal waterways	U	PB			U	PB		
Air transportation	U	FB			U	PB	U	FB
Space								
Rail	U	FB			U	PB		

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Table 7 GATS commitments of core countries (continued)

Service sector	EU-27		Hong Kong		Japan		Korea	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Road	FB	FB			U	PB	U	PB
Pipeline					FB	PB		
Services auxiliary to all modes of transportation	U	FB	U	FB	U	PB	U	FB
Other	U	FB			FB	PB	U	PB
Service sector	Mexico		New Zealand		Norway		Pakistan	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Business services								
Professional services	FB	PB	FB	FB	U	PB	U	PB
Computer and related	FB	PB	FB	FB	FB	FB	U	FB
Research and development	FB	PB			FB	FB	U	FB
Real estate			FB	FB	FB	FB		
Rental and leasing	U	PB	FB	FB	U	PB		
Other	U	PB	FB	PB	U	PB	U	FB
Communication services								
Postal								
Courier	U	PB			FB	PB		
Telecommunications	PB	PB	FB	PB	FB	FB	PB	PB
Audiovisual	FB	PB	FB	U				
Other								
Construction and related engineering services								
Construction for buildings	U	PB	U	FB	FB	FB		
Construction for civil engineering	U	PB	U	FB			U	PB
Installation and assembly			U	FB	FB	FB		
Building completion	U	PB	U	FB	FB	FB		
Other	U	PB	U	FB	FB	FB		
Distribution services								
Commission agent			FB	FB				
Wholesale trade	FB	PB	FB	FB	FB	FB		
Retailing	FB	PB	FB	FB	FB	PB		
Franchising					FB	FB		
Other								
Educational services								
Primary education	FB	PB	FB	FB	FB	FB		
Secondary education	FB	PB	FB	FB	FB	FB		
Higher education	FB	PB	FB	FB	FB	FB		
Adult education					FB	FB		
Other	FB	PB			FB	FB		
Environmental services								
Sewage					U	FB		
Refuse disposal					U	PB		
Sanitation					U	FB		
Other					U	FB		

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Table 7 GATS commitments of core countries (continued)

Service sector	Mexico		New Zealand		Norway		Pakistan	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Financial services								
Insurance	U	PB	U	PB	U	PB	U	PB
Banking	U	PB	U	FB	U	PB	U	PB
Other	U	PB						
Health services								
Hospitals	U	PB					U	PB
Human health	U	PB						
Social services								
Other								
Tourism and travel								
Hotels and restaurants	U	PB	FB	FB	FB	FB	U	FB
Travel agencies	U	PB	FB	FB	FB	FB	U	FB
Tourist guides	U	PB	FB	FB	FB	FB		
Other								
Recreational, cultural, and sporting services								
Entertainment								
News agency					FB	FB		
Libraries, archives, museums, other								
Sporting and recreational								
Other								
Transportation services								
Maritime transportation			FB	U	FB	PB		
Internal waterways								
Air transportation	U	PB	U	FB	U	PB		
Space	U	PB						
Rail	U	PB	FB	FB	U	FB		
Road			FB	FB	U	PB		
Pipeline	FB	PB	FB	FB				
Services auxiliary to all modes of transportation			U	FB	FB	FB		
Other	FB	PB						
Service sector	United States		Singapore		Switzerland		Taiwan	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Business services								
Professional services	PB	PB	U	PB	FB	PB	FB	PB
Computer and related	FB	FB	FB	FB	FB	FB	FB	FB
Research and development			FB	FB	FB	FB	FB	FB
Real estate	PB	FB					FB	FB
Rental and leasing	FB	FB			U	PB	FB	FB
Other	FB	PB	FB	FB	FB	FB	U	FB
Communication services								
Postal								
Courier	FB	FB					FB	FB
Telecommunications	FB	PB	PB	PB	FB	FB	FB	
Audiovisual	PB	PB	FB	FB				
Other								

(continues on next page)

Table 7 GATS commitments of core countries *(continued)*

Service sector	United States		Singapore		Switzerland		Taiwan	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Construction and related engineering services								
Construction for buildings	U	FB	FB	FB	U	FB	U	FB
Construction for civil engineering	U	FB	FB	FB	U	FB	U	FB
Installation and assembly	U	FB	FB	FB	U	U	U	FB
Building completion	U	FB	FB	FB	U	FB	U	FB
Other	U	FB	FB	FB	U	FB	U	FB
Distribution services								
Commission agent	FB	FB			FB	PB	FB	FB
Wholesale trade	U	FB			FB	PB	FB	FB
Retailing	FB	FB			FB	PB	FB	FB
Franchising	FB	FB			FB	FB	FB	FB
Other								
Educational services								
Primary education					U	FB		
Secondary education					U	FB	FB	PB
Higher education					FB	FB	FB	PB
Adult education	PB	PB			FB	FB	FB	PB
Other	PB	PB					FB	PB
Environmental services								
Sewage	FB	FB			U	FB	U	FB
Refuse disposal	FB	FB			U	U	FB	FB
Sanitation	FB	FB			U	FB		
Other	FB	FB			U	FB		
Financial services								
Insurance	U	PB	U	PB	U	PB	U	PB
Banking	U	PB	U	PB	PB	PB	U	PB
Other								
Health services								
Hospitals	U	PB					FB	PB
Human health							FB	PB
Social services								
Other							FB	FB
Tourism and travel								
Hotels and restaurants	FB	FB	U	FB	U	PB	FB	FB
Travel agencies	FB	PB	U	FB	FB	FB	FB	FB
Tourist guides	FB	PB	U	U	U	PB	U	PB
Other	FB	FB						
Recreational, cultural, and sporting services								
Entertainment	FB	FB						
News agency	FB	FB			FB	FB	FB	FB
Libraries, archives, museums, other	FB	FB	FB	FB				
Sporting and recreational	FB	PB			FB	FB	FB	FB
Other								

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Table 7 GATS commitments of core countries (continued)

Service sector	United States		Singapore		Switzerland		Taiwan	
	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3	Mode 1	Mode 3
Transportation services								
Maritime transportation			FB	FB				
Internal waterways					U	PB		
Air transportation	U	FB			U	FB	U	FB
Space					U	U		
Rail	FB	PB			U	PB	U	FB
Road	FB	FB			U	FB	U	FB
Pipeline								
Services auxiliary to all modes of transportation	U	PB	FB	FB			U	FB
Other								

U = unbound; FB = fully bound; PB = partially bound; GATS = General Agreement on Trade in Services

Note: Blank cells indicate no commitments have been made.

Source: World Trade Organization Services Database, 2011, www.tsdwto.org.

and their liberalization schedules are far from comprehensive. In general, the more liberal agreements use a negative list approach for MFN and national treatment, schedule few Mode 1 and 2 exclusions, provide MFN and national treatment for establishment, acquisition, post-establishment, and resale for Mode 3, and allow long-term entry visas for business persons and professional service providers under Mode 4. The more restrictive FTAs tend to use a positive list for MFN and national treatment in Modes 1 and 2 and exclude many sectors from coverage of the disciplines in the agreements.⁴³

Early Adherents: Designing Incentives for Countries to Join the ISA

We think a number of small and medium countries with relatively low barriers to services trade would be eager to join the ISA either during the negotiating phase or shortly after its conclusion, and interested WTO members should be allowed to observe the negotiations (without active participation). Already two countries (Costa Rica and Peru) have joined in the Geneva discussions on a future ISA within the first two months. In the first tranche of expansion we envision other countries like Panama, Barbados, Egypt, and Indonesia as interested observers or adherents, as well as other developing countries with a significant economic stake in services trade. Malaysia and Vietnam should also logically be interested, as

participants in the TPP negotiations. Indonesia could benefit tremendously from joining the ISA in order to boost its trade competitiveness through reducing its trade logistics performance (i.e., lower transportation and distribution costs), while Egypt has a growing information and communications technology services industry and is in desperate need of FDI and job creation.

Interested countries might be identified on the basis of analysis carried out by Borchert, Gootiiz, and Mattoo (2011) and Hufbauer, Schott, and Wong (2010) measuring impediments to services trade.⁴⁴ These economists construct a restrictiveness index of service trade policies for a sample of 32 developed and developing countries. The restrictiveness index is incomplete in terms of sectoral and modal coverage, though it has the advantage of covering several developing countries, which the OECD's services restrictiveness index does not. They find a strong negative correlation between higher per capita incomes and lower barriers to services trade. They also find that, in general, Southeast Asia maintains more restrictive trade policies compared with Latin America, Eastern Europe, and Africa. For these countries, Hufbauer, Schott, and Wong (2010) provide estimates on tariff equivalent barriers to services trade and potential gains from liberalization. The countries we have identified as core members and early adherents all score well on measures of restrictiveness.⁴⁵

43. It is tricky to compare the positive list and the negative list approaches in terms of their restrictiveness. For example, a negative list nonconforming measure could look very simple but it could exclude FDI in all service sectors through a single entry, whereas a positive list might schedule FDI in several of those sectors.

44. The chapter by Borchert, Gootiiz, and Mattoo (2011) was first published as a working paper in 2009.

45. Singapore is not covered in either analysis; however, Singapore's highly developed and liberal export-oriented market economy makes it an ideal candidate for the ISA.

In addition to low barriers to services trade, most of the self-selected countries share two characteristics that make them ideal candidates. First, they have experience in negotiating high-quality FTAs with comprehensive coverage (or are obtaining it, as is the case of Malaysia and Vietnam in the TPP negotiations). Second, many are already prominent service exporters and stand to significantly increase their shares of world services trade under a more liberal regime.

It will be important to attract larger developing countries such as Egypt and Indonesia to the ISA, as it will increase the interest of the BRICS in the agreement. Russia possesses a relatively skilled workforce that would benefit from increased service liberalization. Recent signals from Russia have suggested that they might be interested in joining an ISA, both out of pure economic interest and as part of a larger effort to increase participation in global institutions. In general, it will be useful to build incentives into the ISA to encourage countries to join the agreement in the future. One way to do this is through communications that show potential adherents that joining an ISA would allow them to buy into “global supply chains” whose operations are currently centered on East Asia, the European market, and North America. If the ISA provides an opportunity for firms to “plug into” two of these three global supply chain centers (North America and the European Union), then countries that do not have FTAs with either should find it easier to make the argument at home to join the agreement, as they should be supported by their private sectors. Including an explicit discussion on trade facilitation in the ISA talks could also generate interest on the part of observers and future adherents. Global supply chains and trade facilitation are both topics that greatly interest private firms wherever they may be located.

Another way the ISA could be made more attractive for potential developing-country adherents would be through the inclusion of regulatory issues. Mechanisms to facilitate interaction between regulators and the private sector for information exchange would be one way that would not be expensive but would likely be considered very useful.⁴⁶ Another useful element would be assistance with regulatory reform for new adherents in key service sectors among explicit commitments to developing-country members of the ISA.

46. This suggestion was made by Bernard Hoekman, director of the Research Division at the World Bank, on the basis of work that the Bank has been carrying out in Africa to design “knowledge platforms” that bring together regulators, trade officials, and the private sector in providing information on regulations and barriers to services trade in eastern and southern Africa. See Hoekman and Mattoo (2011).

The BRICS?

The logical next tranche of adherents would include large developing economies, namely the BRICS (Brazil, Russia, India, China, and South Africa). While their barriers to services trade remain relatively high, they are significant players in international services trade, with China and India holding nearly 8 percent of the world export market for services.⁴⁷ As previously stated, including the five BRICS economies would add \$349 billion to ISA world service exports, and increase the ISA’s share of world service exports by 12 percent, to a figure of 85 percent, approaching the conventionally accepted 90 percent of world trade for a “critical mass.”

As it stands, however, the BRICS have shown themselves to be very skeptical of a separate agreement on services, and more generally, on unilaterally dismantling their barriers. Little to no movement on GATS since the Uruguay Round on the part of these countries, coupled with their domestic difficulties in implementing reforms, has resulted in continued high barriers to services trade. The government of India recently reversed a decision to open the retail sector to foreign “big box” firms such as Wal-Mart and Carrefour and now prefers to allow the question to be settled at the state level, illustrating the entrenched barriers to reform. The US and Australian proposal for an ISA, tabled in the margins of the December 2011 WTO ministerial conference, met hostile reactions from several of the BRICS. Their reluctance stems from the fact that the US-Australian proposal would not extend unconditional MFN to nonmembers: Countries would have to join the agreement to enjoy the benefits. This approach echoes the codes negotiated during the Tokyo and Uruguay Rounds but is opposed by countries that have historically enjoyed a free ride on liberalization agreed by advanced countries.

The position of the BRICS is based on the desire to maintain the “single undertaking” commitment of the Doha Round, grounded on the belief that this maximizes their negotiating leverage. Many BRICS impose very large licensing fees among other protective features, so they have a concern both about revenue loss and the confrontation with vested interests in domestic service firms. As the BRICS have been successfully exporting both goods and services, they do not see the benefit of difficult regulatory changes. Rather, a delaying strategy of “wait and see” seems more attractive for the present.

Opposition by the BRICS can also be attributed to the fact that these countries have seldom been parties to comprehensive services agreements. Their WTO GATS commitments are very light (other than those of China dating from its accession negotiations). Apart from Brazil, the BRICS have

47. As mentioned, China accounts for 4.6 percent of world service exports, and India contributes 3 percent.

not submitted offers in the Doha Development Round, and their inclusion of disciplines and market access provisions for services in RTAs has been limited. Brazil has not negotiated an RTA covering services to date other than with its Mercado Común del Sur (Mercosur) partners. An Association Agreement has been under negotiation between Mercosur and the European Union since 2000 and services have been a controversial issue, slowing progress. Russia has not negotiated a regional agreement on services with any of its trading partners. However, within its accession package to the WTO, Russia has made specific commitments under the GATS on 11 service sectors and 116 subsectors (out of a possible 155), including key sectors such as telecommunications, banking, insurance, transportation, and distribution services. India is in the process of negotiating a services component to its agreement with the Association of Southeast Asian Nations (ASEAN) and has just begun negotiating an Association Agreement with the European Union. South Africa is discussing services in the context of a Comesa-SADC merged FTA,⁴⁸ but the negotiations have not progressed nearly as far on services as they have on goods. Otherwise, South Africa has not included services in its RTAs.⁴⁹

Given internal vested interests in maintaining high licensing fees and other protections for service activities, their fear of weakening the “single undertaking” commitment in the Doha Round and the relatively fewer number of RTAs that they have negotiated, the BRICS may well stand back from the negotiation of the ISA in the first instance. However, once the negotiations have progressed significantly, some, if not all, of the BRICS should have a strong incentive to join the agreement in order to benefit from the increased dynamism and growth of service markets. This will particularly be the case of India (especially for Mode 1 and 4 components of the ISA) and China, both significant service exporters with strong links into global value chains.

The BRICS might eventually be more amenable to signing onto the ISA for other reasons as well. First, some of the BRICS should appreciate the need to improve the competitive strength of their domestic service sectors and realize that high-quality services provided by foreign suppliers are an excellent way of boosting productivity in their mining and manufacturing

sectors. Second, some of the BRICS are already very successfully venturing into export markets for selected business services—e.g., software (India) and engineering (Brazil and Russia) and should be interested in more open markets. Third, if the ISA includes liberal “rules of nationality” (that is, a generously worded “denial of benefits” clause), it would allow BRICS greater market access to ISA countries to the extent that they are foreign direct investors. For its part, China is already a huge exporter of services through its firms invested abroad.

KEY PROVISIONS OF THE INTERNATIONAL SERVICES AGREEMENT

A major contribution of the Uruguay Round of Multilateral Trade Negotiations (1986–94) was construction of the GATS, which brought services trade within multilateral disciplines for the first time. The GATS was an important conceptual breakthrough but, unlike the General Agreement on Tariffs and Trade (GATT) of 1947, for many reasons the GATS of 1995 did not create a workable vehicle for future liberalization. The weakness of GATS as a negotiating framework is shown by the limited progress over the past 17 years in the liberalization of services trade at the multilateral level. The services and investment chapters in more recent RTAs have achieved much more. Additionally, the dynamics of services trade have changed rapidly and multilateral rules have not kept pace with new challenges. Keeping these factors in mind, we enumerate the key provisions that the ISA should contain, emphasizing that to be relevant then ISA should incorporate new approaches for liberalizing services trade as well as cutting edge disciplines that reflect the changes that have taken place in the actual market.

Architecture and Key Elements

We start with three basic elements that will need to be decided in the formative meetings of the ISA project.

Negative List Approach

Perhaps the biggest single departure from the architecture of the GATS is to shift from a positive list of commitments to a more comprehensive and rigorous manner of negotiating services. Positive schedules require a GATS member to affirmatively commit to national treatment with respect to each of the four modes of supply. Moreover, the affirmative commitments can contain reservations—for example, any type of discrimination in national treatment for foreign service firms

48. Comesa stands for Common Market for Eastern and Southern Africa and SADC is the Southern African Development Community.

49. The RTA between South Africa and the European Free Trade Association (EFTA) touches upon services in Chapter IV, which states “Parties underline the importance of strict observance of the General Agreement on Trade in Services” and commits Parties to “endeavor to extend the scope of this Agreement with a view to further liberalizing trade in services between Parties.” However, there are no binding services commitments in the agreement.

is allowed. We suggest that the ISA should instead adopt the negative list architecture: Each ISA member should identify exceptions to services liberalization under the traditional core disciplines (MFN for members of the ISA, market access, national treatment, and no local presence), and additional core disciplines that we suggest below.⁵⁰ Any exceptions to these disciplines should be set out in transparent lists of nonconforming measures. Moreover, we advocate that these exceptions contain a time commitment before they disappear or are renegotiated—five to ten years. In our view, only by a negative list architecture, or its functional equivalent discussed shortly, will the International Services Agreement garner interest and support from the business community.

This suggestion for a negative list architecture may pose a challenge for EU participation. The European Union has to date not followed a negative list approach in any of its RTAs—Economic Partnership Agreements or Association Agreements. However, the EU Commission obtained expanded negotiating authority in international trade, including investment, services, and other areas, under the recent Lisbon Treaty that entered into force on December 1, 2009.⁵¹ According to the lead negotiator for the European Union during the Uruguay Round, despite the European Union's past adherence to an alternative structure, it would be able to enter into a services agreement structured according to a negative list approach. We believe that this would be essential for the success of a robust ISA, although the question of modality positive list or a negative list is still very much under consideration by the participants in the ISA discussions.⁵²

The architecture adopted for the ISA should strive to cover all service sectors without exception (even including maritime transportation and possibly air transportation, the latter traditionally excluded from trade agreements), in order to permit internal tradeoffs. An agreement must aim to create fully contestable markets as well as modal neutrality so that service suppliers will be able to choose freely between providing services to the markets of members on a cross-border basis or through a commercial presence. The goal is to enable each

service firm in an ISA country to contest the market for a given service on an equal basis with all other service firms and with regard to all modes of delivery. Temporary movement of skilled workers and professionals should not be excluded. The modality selected should be associated with some form of internal mechanism for ongoing services liberalization, to give dynamism to the agreement and ensure that it does not become irrelevant, as the GATS has become in many areas.

A variant of the negative list approach that could have a similar functional outcome might be considered: specific targets that all ISA members would be expected to meet, either immediately or within a given period of time. As set out by the World Bank in a recent policy research paper, these targets would include the following elements (Gootiiz and Mattoo 2009):

1. A promise not to impose new restrictions on trade in services. This promise should be combined with an explicit commitment by ISA members to bind existing levels of openness in services trade. This would need to be verified through the exchange of national “transparency” lists of measures affecting services trade across the board in all sectors.
2. A commitment to eliminate barriers to FDI, either immediately, or in a phased manner. When regulatory inadequacies are an obstacle (for example, weak financial oversight), restrictions on FDI could be carried out according to a specified timetable where the fulfillment was conditioned on the provision of outside technical expertise in specific sectors upon request.
3. An agreement to allow greater freedom of international movement of individual service providers (Mode 4) in order to fulfill specific service contracts.

These target commitments would need to be accompanied by the exchange of national lists of “transparency” measures affecting services trade across the board in all sectors in order to verify compliance with requirement (1), as well as by a timetable for the liberalization of restrictions affecting FDI per requirement (2) above, and a listing of the types of service providers that engage in the temporary movement of personnel along with the duration of stay allowed, for requirement (3). We also advocate the inclusion of a “ratchet” clause for imparting inbuilt liberalization and a provision for periodic negotiation of the removal of existing bound restrictions and advancing liberalization in other ways.

While the two suggested alternative modalities—negative list and agreed target objectives—would mechanically work differently, the resulting outcome for market access should be similar. The disciplines to be included in the ISA would be

50. The reference to “no local presence” means that a foreign service supplier need not have an establishment or a joint venture in the destination market to enjoy the benefits of the ISA.

51. See information on the website of the Institute for International and European Affairs, www.iiea.com.

52. Comments by Ambassador Hugo Paemen, former EU ambassador to the United States and lead negotiator for the European Union during the Uruguay Round, at the launch of the Report of the Transatlantic Taskforce on Trade and Investment by the German Marshall Fund of the United States, February 22, 2012, Washington, DC. The Taskforce Report advocates the rapid launch of negotiations for a bilateral agreement on services and other key issues between the United States and the European Union, independently of what happens with the ISA discussions.

the same, no matter which market access approach is selected. Current GATS disciplines can be reviewed for their relevance, but it will be imperative to import the more comprehensive disciplines of many of the recent RTAs as well as new disciplines that reflect current realities in services trade. We discuss these in the sections below.

Conditional Most Favored Nation Treatment

Article II of the GATS spells out an unconditional MFN obligation between all WTO members but allowed countries to take exemptions, normally for periods not longer than 10 years, subject to periodic review. By contrast, the ISA should build on the conditional MFN principle: Countries that are not members of the ISA should not automatically benefit from ISA liberalization. As stated by US Ambassador Michael Punke, at the WTO ministerial in December 2011, the United States does not support the extension of liberalization on an unconditional MFN basis to avoid “free-loading by major players.”⁵³ To be sure, ISA members may decide to extend unconditional MFN benefits to less developed countries, but there will be no appetite for “free-riding” by countries the size and stature of Brazil, India, and China.

In addition to an “external” MFN clause, ISA members could consider including an “internal” MFN clause, applied to parties to the agreement. Such a clause would oblige any ISA member that concludes a subsequent agreement (post-ISA) with a nonmember to then extend the benefit to all ISA members. This type of “internal” MFN clause is found in the service chapters of most US FTAs and would be a powerfully liberalizing discipline. It might be desirable as well to explore mechanisms for extending RTA liberalization in current agreements that cover subsets of ISA participants to all ISA members. A clause might call for a periodic review of exclusive RTA rights and obligations for the relevant agreements. It would be impractical to override RTA provisions from the outset since, as a rule, the provisions in a final RTA text have been carefully negotiated, vetted by national legislatures, and championed by private parties. Important apple carts would be upset if exclusive RTA rights were suddenly extended to all ISA members. But an ISA fashioned as we suggest would contain many disciplines that go beyond existing RTAs so, in practice, the eventual extension of exclusive RTA rights to all ISA members might not affect a large number of existing RTA provisions. Only a few RTAs have recently included cutting edge disciplines for services, such as the EU-Korea FTA, or

are currently negotiating cutting edge disciplines, such as the ongoing Trans-Pacific Partnership agreement in the Asia Pacific.⁵⁴

Liberalized Temporary Movement (Mode 4)

Article I of the GATS spells out, in very brief language, four modes of delivering services across borders. Among these modes, liberalization of the temporary movement of natural persons—customarily called Mode 4 and defined in Article I(2)(d)—has proven to be the most contentious. The language defining Mode 4 reads:

Provision of services by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

The words are few but the perceived implications are very broad. A commitment to Mode 4, although involving only temporary movement—meaning limited stays of specific categories of service providers—is often mistakenly viewed as a form of permanent migration. Therefore, commitments to temporary movement are sensitive, as they must be negotiated in collaboration with national immigration officials, both in the executive and legislative branches of government. Consequently, Mode 4 commitments are quite limited and have focused primarily on professional service suppliers, although some FTAs have gone further to include openings for particular service workers such as technicians whose skills are lacking in domestic markets. To elicit a more favorable attitude toward Mode 4 commitments in the ISA, we suggest a continued emphasis on temporary movement of highly skilled persons but would also include the possibility of expanding to other workers, including semi-skilled categories where it was felt appropriate, through inclusion of a bonding requirement. The bonding requirement is designed to ensure that the temporary worker returns home. Its conditions would need to be specified either generally in the ISA or more specifically in the Mode 4 commitments of each participating ISA member.

Because of the great sensitivity of immigration policy, even for the temporary movement of highly skilled and bonded persons, Mode 4 requirements could be “tailored” to the skill qualifications of potential migrants to reflect differing educational and credentialing systems among the ISA members.

The FTA between China and New Zealand includes interesting new language on the temporary entry of highly

53. See Inside US Trade, “Deputy USTR Outlines U.S. Interest In Exploring A Services Plurilateral Deal,” December 19, 2011.

54. Optimistically, TPP talks are scheduled to conclude by end 2012. The cutting edge disciplines for services that we discuss in this section are proposed by Australia, Singapore, and the United States.

skilled persons. That FTA specifies five categories of natural persons: business visitors, contractual service suppliers, intra-corporate transferees, skilled workers, and a new category titled “installers.” Installers include persons who are installers or servicers of machinery and/or equipment. The provision of the installer services is often a condition of purchase of the machinery or equipment. This is but one example of a semi-skilled worker category whose inclusion would benefit ISA members. The FTAs between Canada and Colombia (both participating in the ISA talks) and between Canada and Peru might also be instructive.⁵⁵ A chapter on temporary entry for business persons includes Mode 4 provisions for all categories of “professionals” without numerical limits on the number of visas that may be issued and without specifications on the length of stay. In addition, coverage is expanded beyond professionals to include “technicians.” This covers 50 categories of technicians who are allowed to enter Canada with no specified length of stay, provided they have two years of work experience and have completed a postsecondary or technical degree.⁵⁶ These provisions go well beyond what has been achieved in other agreements but might serve as examples for ISA participants to expand the scope of Mode 4.

Stronger GATS Disciplines

The ISA should include most of the provisions that are in the GATS but strengthen them considerably. In the sections below, we outline key disciplines that should be in the agreement, as well as provisions that should not be in the ISA.

Government Procurement

Article XIII of the GATS essentially excludes government procurement of services from its core market access provisions. Negotiations to develop rules for procurement of services under the GATS following the Uruguay Round have not prospered. This is a major shortcoming. Services purchased by governments that are covered in the revised and expanded plurilateral Agreement on Government Procurement (GPA2) agreed on December 15, 2011 include those in five sectors, namely telecommunications; financial services; management and consulting services, computer and related services, and some construction services. There are only 15 parties to the Agreement on Government Procurement (or 42 if all of

the EU members are counted separately), of which Hong Kong, Korea, Singapore, and Taiwan are the only developing members.⁵⁷ The latest version of the agreement (GPA2) facilitates membership of larger developing countries China, India, and Russia, and negotiations on the scope of coverage are ongoing.

Despite the fact that central governments, along with state, provincial, and local governments, are major purchasers of services, these purchases are not included in WTO rules and only partially covered in the recently expanded GPA2, which still counts a very limited membership. Since governments hold a monopoly on police, defense, judicial, and certain other powers, and since these powers define the essence of state-ment, governments typically require that public employees be citizens. But when governments purchase services from independent firms, and when those purchases do not entail delegation of core state functions, the argument for an exception is much less persuasive. Government procurement of services should be included in an ISA. The broad government procurement exception in the GATS should be limited to enumerated functions in the ISA. This will have the further advantage of bringing state-owned enterprises (SOEs) under the umbrella of ISA rights and obligations (see the discussion below on SOEs).

Competition Policy and Regulatory Coherence

The GATS includes a provision on Monopolies in Article X. However, it has no teeth and cannot be enforced. The ISA should contain a provision or a chapter on competition policy, with disciplines that apply to all service suppliers and that can be invoked in situations of abuse of dominant position, price fixing, etc. Recent high-quality RTAs contain a chapter on Competition Policy. We believe that the ISA should also contain a generic set of regulatory principles applicable to services, in a chapter on Regulatory Coherence.⁵⁸ This chapter should be complemented as well by specific regulatory disciplines on key backbone services including telecommunications, financial, and energy services.

55. For more examples of how trade agreements have dealt innovatively with arrangements for temporary movement, see Stephenson and Hufbauer (2010).

56. See the chapter on Temporary Entry for Business Persons in the Canada-Colombia Free Trade Agreement 2011, Foreign Affairs and International Trade Canada, Ottawa, www.international.gc.ca.

57. Fifteen developing countries are observers to the plurilateral Agreement on Government Procurement but not subject to the procurement disciplines. See the Briefing Note on the Expanded Government Procurement Agreement at http://www.wto.org/english/thewto_e/minist_e/min11_e/brief_gpa_e.htm.

58. This suggestion was made in the PECC-ADB Services Task Force Report (2011). The report sets out conclusions and recommendations from a major conference of worldwide services experts from the business, government, and trade policy community. Regulatory coherence is being studied by APEC member economies and is also the focus of one of the groups in the TPP negotiations.

Mutual Recognition

Mutual recognition is essential for enabling trade in professional services and any other service that might require the determination of equivalent competency and subsequent certification in order to be sold and merit consumer confidence in the domestic market. The GATS article on Mutual Recognition (Article VII) only encourages governments to make this determination, and in practice very few mutual recognition agreements have been concluded and/or notified to the GATS. The ISA must do better. We suggest a chapter on qualification and licensing of professional service providers that will address the question of mutual recognition as well as other practices to determine equivalency and will set out disciplines to avoid the discrimination inherent in many licensing and qualification procedures.

Domestic Regulation

The goal of regulation is to fend off unsafe and shoddy services—exemplified by ill-trained physicians, by insurance policies loaded with fine print, and by mobile telephone systems that have large holes in their advertised coverage. Regulation in the services area is widespread and is designed to achieve important objectives of consumer safety and protection. In the case of network services that tend to monopolize structures and pricing (telecommunications, transportation, distribution, energy, etc.), regulation ensures that these potential monopolies conform their behavior to market-based principles in order to ensure competitive neutrality and contestable markets. In the case of information asymmetries present with professional services, banking, and insurance, regulation is designed to ensure the protection of consumers from fraudulent and nonqualified suppliers through required exams, licensing, and certification. In the case of social-oriented services (health and education in particular), regulation can help to ensure that public policy goals of universal access are met.

Regulation is enforced by required permits—essentially licenses that authorize a firm or a service supplier to do business provided that the requisite standards are met. The problem that the ISA must address is to distinguish, often case by case, between regulation that achieves its goal in a reasonable manner and regulation that imposes unnecessary burdens on potential foreign suppliers. To some extent, the distinction can be made through general principles: strengthened national treatment and transparency provisions.

But to a large extent, the distinction between reasonable and unnecessary must be decided case by case, after searching the letter and application of the regulation. Disciplines on domestic regulation are found in GATS Article VI and these

disciplines are reproduced in many, but not all, RTAs—but often without the “necessity” test.⁵⁹ We would suggest inclusion of a GATS-type text on domestic regulation, with the “necessity” test as reinforced in the Accounting Disciplines negotiated some years back.⁶⁰ Making judgments will require a strong dispute settlement system, although to date no dispute has been submitted to the WTO or an RTA involving the application of a domestic regulation. This provision on domestic regulation could be in addition to a chapter on Regulatory Coherence, as mentioned above, or could be folded within such a chapter.

Beyond GATS: New Disciplines

Including strengthened GATS disciplines will not be enough to make the ISA a relevant agreement for services trade in the 21st century. It will also be necessary to include new, cutting edge disciplines for services trade that reflect the changes that have taken place in the world economy and in services production and trade over the past two decades. This section outlines useful disciplines that would include chapters on state-owned enterprises, cross-border data flows, and forced localization practices.

State-Owned Enterprises

The phenomenon of state-owned enterprises is widespread in the world economy. A recent cover of *The Economist* carried the title “The Rise of State Capitalism: The Emerging World’s New Model” (January 21 to 27, 2012). The survey in this issue shows that SOEs are especially prominent in various service sectors, namely (in order of importance): energy (where services compose the energy distribution component); utilities; telecommunications, financial services; and then health care and information technology (that follow after industrials and materials). SOEs include some of the world’s most powerful companies and many of these are in the service

59. GATS Article VI(4) calls on the Council for Trade in Services to establish disciplines that requirements for professional certification, technical standards, and licensing permits are based (among other features) on objective and transparent criteria and are not more burdensome than necessary to ensure quality. The United States prefers to rely on “transparency” as the key discipline against regulatory discrimination and in its RTAs seeks to avoid the “necessity” test found in GATS Article VI(4)(b).

60. The Accounting Disciplines were adopted in 1998. Going beyond GATS Article VI(4)(b), the Accounting Disciplines establish stronger language for its “necessity test.” The main elements are: (1) a definition of measures that are subject to the test; (2) the objective that each measure seeks to achieve; and (3) the link of necessity between the measure and the objective. Measures subject to the “necessity test” in Accounting Disciplines are limited to licensing, technical standards, and qualifications.

sector.⁶¹ With their access to massive sovereign wealth funds, state companies make up the lion's share of the value of stock markets in China and Russia and a high percentage in Brazil. They accounted for one-third of the emerging world's FDI between 2003 and 2010 and an even higher proportion of its acquisitions.⁶² The financial and economic power of SOEs bestows great influence that can be leveraged to generate market distortions. These potential distortions have been amply described in a position paper by the US Coalition of Services Industries and US Chamber of Commerce (2011b).

SOEs can distort conditions of competitiveness in two main ways: regulatory favoritism and preferential purchasing and financial support from the state.⁶³ In the first instance, governments use policy instruments to confer advantages on SOEs and thus change market conditions in their favor. In the second instance, government incentives or programs influence the business decisions of SOEs in ways that are detrimental to their competitors (i.e., by government purchases, more favorable technology licensing, subsidized financing, or more relaxed taxation). Both types of distortions allow SOEs to sell on more favorable terms to local or international markets, thus putting foreign competitors at a disadvantage, not only in the home markets of SOEs but also in third markets.

Such market distortions are often carried out in an environment of nontransparency with few or no rules that govern the operations of SOEs. The OECD has designed guidelines for SOE governance, but SOEs *per se* have not yet been brought under the WTO other than in a piecemeal fashion. WTO rules on "state trading" in GATT Article XVII apply to goods only and have been so liberally interpreted that they have no teeth. The GATS contains no effective disciplines on anticompetitive practices. Article VIII of the GATS on Monopolies and Exclusive Service Suppliers requires WTO members to ensure that a monopoly supplier of a service does not act in a manner inconsistent with MFN obligations and specific commitments (which are very limited). But the only recourse to a possible complaint on market behavior is to request the supplier to provide information on its operations. GATS Article IX on Business Practices likewise contains no mechanisms for addressing anticompetitive practices of service suppliers other than consultations.

Recent FTAs have done much better in this regard. The competition chapter of the Singapore-US FTA, the provisions of the Korea-US FTA, and the competition chapter of the Korea-EU FTA all contain substantive disciplines for SOEs.

61. Special Report on State Capitalism, *The Economist*, January 21 2012, 4.

62. *Ibid.*, 11.

63. See CSI and US Chamber of Commerce (2011b). The paper provides many examples of government actions in favor of SOEs through regulatory preferences, sweetheart purchasing, and financial support.

Some of these could serve as examples of the type of disciplines that could be built into the ISA. The issue of SOEs is also being negotiated under the TPP umbrella and the outcome of these discussions could usefully nourish future ISA negotiations.

As the ISA would constitute a stand-alone agreement on services and as SOEs are numerous and their presence is growing in the services area, we believe that substantial rules on SOEs should be incorporated in the services agreement. The objective of these rules would be to ensure competitive neutrality, a principle that should be incorporated into the ISA text. Disciplines on SOEs should be included in the ISA that cover the following topics:

- definition of SOEs, including designated monopolies and government enterprises;
- notification of existing SOEs and their scope of operation;
- requirement for SOEs to act in a manner consistent with the obligations of the agreement, namely to act solely in accordance with commercial considerations in their purchases and sales;
- requirement for the national treatment obligation to be applied to SOEs for cross-border services and investment;
- obligation to ensure competitive neutrality, through the application of competition laws that cover anticompetitive conduct and provide for enforcement actions to SOEs and enterprises entrusted with special or exclusive rights;
- rules on subsidies that would make these potentially countervailable, actionable and/or prohibited if they were to be provided on a "specific" basis to a particular SOE;
- allowance of exceptions to the market access and national treatment obligations only for a limited number of measures, negotiated and set out in a special annex to the agreement;
- dispute settlement provisions that would apply to the SOE chapter, as to the rest of the ISA in a binding manner; and
- requirement of transparent financial accounts, published according to international accounting rules.

Cross-Border Data Flows

The explosion of cross-border trade in services has been remarkable over the past few years. From 2003 to 2009, world exports of services nearly doubled, from \$1.8 trillion to \$3.4 trillion, growing faster than trade in goods (7.9 percent on average compared with 6.6 percent, according to WTO

data). Importantly, the burst in services trade was accompanied by significant changes in the structure of services traded. The information technology revolution has allowed for the delivery of services remotely via the internet and/or satellite transmission. This has resulted in a much larger proportion of services being traded via GATS Mode 1. Since 1995 the share of “other commercial services” has increased to 53 percent of total services trade, mostly at the expense of travel (down by 8.5 percentage points to 26 percent) and transportation (down by 5 percentage points to 21 percent of the total). Almost half of cross-border trade in services worldwide is enabled by information and communications technology and includes not only data processing, back office, telecommunications, computer and related services, but also a large variety of other services such as financial analysis, building and equipment design, insurance claims processing, education, publishing, medical services, and various professional services and consulting that are enabled by information and communications technology.

For these services to continue to grow and to drive productivity and innovation, cross-border trade must remain free of impediments. Trade in these services, in its most fundamental form, amounts to the exchange of data across borders. Restrictions on cross-border data flows impede the ability of firms and consumers to exchange and use data, thus increasing transaction costs and curtailing efficiency. Despite this economic reality, governments are moving to place restrictions on data flows for various reasons, including a long list of concerns relating to privacy, consumer protection, cybersecurity, cybercrime, promotion of domestic cultural content, censorship of content, prevention of spam, and industrial policy objectives, plus a host of regulatory mandates (prudential measures, electronic commerce, access to information, etc.).⁶⁴ Although these restrictions may answer legitimate concerns, the unnecessary or excessively protectionist application of such restrictions can easily create barriers to services trade that will impede the growth of the world economy.

We suggest that the ISA enshrine a set of cross-border data principles that guarantee the right of unrestricted cross-border trade in data services, unless specifically subject to a negotiated exception. Such a right should be one of the basic disciplines of the agreement. The various conditions that would allow for exceptions to this rule would need to be carefully considered and agreed (presumably based on GATS Article XIV-type of objectives). Exceptions to the free movement of cross-border data should be scheduled in an explicit annex to the ISA. Members to the ISA that are questioned about a particular exception to cross-border discipline would need to justify the measure and show that it is not unnecessarily restrictive nor a disguised

restriction on services trade. Developing more detailed criteria for this evaluation would be desirable, although it has proven elusive in the context of the extended negotiations on GATS Article VI. As a start, however, we suggest that the respondent in a dispute settlement proceeding should bear the burden of showing that its measures neither discriminate between partner countries (to the ISA) that supply imports nor amount to a disguised restriction on imports from all foreign suppliers.

Forced Localization

Forced localization measures, or the practice by governments of requiring service companies to conduct all or part of their operations within national boundaries, are a growing practice in world trade. They create impediments to economic efficiency, impede the smooth operation of value chains, and act as a deterrent to FDI. Intervention by governments to determine where firms must carry out their activities interferes with a key element of economic efficiency principles, namely modal neutrality, or the ability of firms to decide how to best conduct their activities, whether through FDI, cross-border trade, or a combination.

These interventions have become more numerous in recent years, particularly since the 2008 financial crisis, as governments have tried to force their firms to do business at home in order to preserve jobs. A position paper prepared by the US Coalition of Services Industries for the Global Services Summit, held in July 2011, cites a survey conducted by General Electric that found 35 instances of enacted or proposed new localization measures globally within the past two years.⁶⁵ The paper provides numerous examples of global forced localization policies in data processing, capital markets, currency controls, licensing requirements, and energy services. These practices can spread as the imposition of local content requirements in one economy often provokes emulation by an affected neighboring economy, generating a spiral of negative trade repercussions.

The ISA should include a provision on forced localization of service activity that would constrain governments from imposing new local content requirements in service sectors. Again, this should be one of the core disciplines of the agreement and exceptions should be scheduled in an annex to the ISA. Provisions limiting forced localization are important to preserve modal neutrality, which is key to promoting efficient production and enabling firms to create value chains through “trade in tasks” (a growing phenomenon in world markets).

64. See the list in the discussion paper in CSI and the US Chamber of Commerce (2011a).

65. While many of these forced localization measures have been imposed by developing countries, no fewer than six of the 35 recent restrictions have been imposed by France, Australia, and the United States. See CSI and US Chamber of Commerce (2011a).

Subsidies and Emergency Safeguards

Article XV of the GATS called for negotiations to define permissible and impermissible subsidies, analogous to both GATT Article XVI and the WTO Agreement on Subsidies and Countervailing Measures (ASCM). Article X of the GATS called for similar negotiations to define appropriate safeguards in the service sector, analogous to Article XIX in the GATT. Neither of the contemplated GATS negotiations has made headway.

The service provisions in most RTAs exclude subsidies from their purview, avoiding the thorny issue of defining a subsidy in the service sectors. In our view, the ISA should tackle the the complex problem of defining which public practices amount to subsidies to service sectors, and then distinguishing between cases where the subsidies are prohibited per se or are actionable only when they have “adverse effects.” In other words, the ISA should exclude subsidies to services from its consideration other than subsidies specifically targeted on service exports, which could be usefully disciplined under an ISA provision that would prohibit their use.

Likewise, almost no recent RTAs have incorporated disciplines on emergency safeguard measures. It has generally been felt that members of regional groupings should not need recourse to such actions. In the few RTAs where such a provision has been included (Caribbean Community [Caricom] and ASEAN), it has not been used due to the difficulty of defining appropriate safeguard measures.

Despite this precedent in the RTA context, in order to encourage the broadest possible coverage of service sectors and modes of supply, we suggest that a qualified emergency safeguard provision might be considered for the ISA. This was the logic of Article XIX in the original GATT, and over many decades safeguard provisions have been an essential adjunct of liberalizing merchandise trade.⁶⁶ Political leaders need to be able to assure worried constituents that, if their worst fears about import competition actually materialize, the government has at its disposal means to provide temporary protection to the afflicted industry. The same political economy arguments may be important to secure approval for liberalizing services trade—at least in some sectors and modes of supply.

Our qualified emergency safeguard approach has three elements. The ISA itself would create an advisory board of qualified and independent experts to evaluate safeguard claims. When an ISA member country believes that imports in a service sector or mode of supply are creating serious injury to

domestic firms or workers, it would conduct its own judicial hearing. If the hearing body finds that imports are a significant cause of serious injury, the country could suspend its obligations under the ISA for a period not to exceed three years. However, other ISA members could challenge the findings before the advisory board, which would render its own judgment within three months. The advisory opinion would be a recommendation, not a binding determination. Our hope is that ISA members would often withdraw suspension actions in the wake of adverse determinations.

Investor-State Arbitration

More than any other aspect of recent RTAs, Investor-State Arbitration provisions have polarized public opinion against these agreements. Many OECD nations have not included arbitration mechanisms in their RTAs (for example, Australia rejected this provision in the Australia-US FTA of 2002). At the same time, investor-state arbitration is extremely important to the business community, particularly for doing business in countries with questionable domestic remedies or judicial systems. Because of these opposing tensions, we believe that the ISA should consider including an investor-state arbitration mechanism for Mode 3 investment (FDI in services) but that its application should be optional on a bilateral basis between pairs of member countries. In other words, each pair of ISA members could determine, as between themselves, whether investor-state arbitration was available to aggrieved business firms based in their respective territories.

Dispute Settlement

Ideally the ISA members would use the established dispute settlement mechanism of the WTO to resolve differences. Such an arrangement would lend institutional coherence to the ISA within the WTO framework; further, as more WTO members acceded to the ISA, it would become increasingly natural to use the established judicial mechanism. However, this is only practical if the ISA is established within the WTO framework. Even within the framework, the ISA may need to make special arrangements with the WTO Dispute Settlement Mechanism to ensure that WTO panels and the Appellate Body will adjudicate its provisions, especially those that differ from the GATS. Moreover, ISA members must agree that their disputes against other ISA members will only be brought within the terms of the ISA and that they will not “double-dip” by also invoking GATS provisions (unless those provisions are specifically referenced in the ISA).

Under the rules of the WTO, only governments can bring a case to the dispute settlement body. Unlike investor-state

66. Because Article XIX proved cumbersome to use, in practice countries have resorted to “voluntary” export restraints, antidumping cases, and other measures to deal with the adverse impact of merchandise trade liberalization. This collection of measures furnishes the “safeguards toolkit” that enables political leaders to sell liberalization to anxious industries and legislators.

disputes under bilateral investment treaties and some RTAs, corporations have no standing to bring cases in the WTO. We suggest a modest change to his approach in the ISA. We suggest that the advisory body of highly qualified and independent experts (mentioned in the discussion of emergency safeguards) also play a role in ISA disputes. Service firms, with bona fide corporate headquarters and substantial operations in a member state, could then bring a complaint to the advisory body, citing ISA obligations against another member state. The advisory body would render its opinion and give a recommendation. However, an adverse opinion against a member state would entail neither monetary damages nor retaliatory action; its weight would be limited to the force of a recommendation by qualified independent experts.

CONCLUSION

Services trade will be a significant driver of economic growth and job creation in the coming decades. This is just as true for developing economies as for advanced nations, and for small countries as well as major powers. While services rank among the most dynamic segments of international trade, they also place among the least understood.

Compared with agriculture and manufactures, services trade is hampered by low-quality statistics and limited empirical research. The absence of good data retards the formation of effective lobbies in the services space. Limited data also makes it difficult to quantify either potential gains or adjustment burdens from the expansion of trade in services as a consequence of liberalization. Quantification requires better empirical research to determine “hurdle” levels that prevent service firms from entering new markets and better estimates of the elasticity of demand for disaggregated business services. The two empirical approaches sketched in this Policy Brief suggest a large range of possible export gains to the United States. At the lower end, using a standard partial equilibrium model, an ISA might facilitate a jump in US service exports by \$14 billion annually. At the upper end, extrapolating from the scale of internal business services trade within US territory, the United States might realize export gains of \$300 billion annually. While the upper-end estimate seems ambitious, we believe that it is closer to the mark than the partial equilibrium calculation. By extension, we believe that the scope for global trade in services far exceeds the calculations served up by standard models.

The stunning neglect of services in Doha Round talks, together with the impasse reached in December 2011, clearly point to the need for a new approach. A plurilateral agreement on services is the best and possibly only path forward. This is the conclusion of 18 WTO members that began discussions in January 2012. In our analysis, these countries currently consti-

tute the core members of the future International Services Agreement, namely Australia, Canada, Chile, Colombia, the European Union (27 members), Hong Kong, Japan, Korea, Mexico, New Zealand, Norway, Pakistan (which did not attend subsequent meetings), Singapore, Switzerland, Taiwan, and the United States, recently joined by Costa Rica, and Peru. Our analysis highlights another subset of countries, or “early adherents,” that might be eager to join the discussions along the way or a future agreement. In the first tranche we envision countries like Barbados, Egypt, Indonesia, Malaysia, and Panama joining the ISA. The BRICS might also come to see that ISA membership would serve their own interests.

The stunning neglect of services in Doha Round talks, together with the impasse reached in December 2011, clearly point to the need for a new approach. A plurilateral agreement on services is the best and possibly only path forward.

We underline that it is important to attract the interest of larger developing countries to participate in the Geneva discussions and join the “real good friends of services liberalization.” Having countries such as Egypt, Indonesia, and Malaysia involved should spark interest among the BRICS. The objective of wider membership would be facilitated by broadening the discussion beyond binding rules and disciplines to include trade facilitation and regulatory reform (and assistance for developing countries). Showing how the ISA will reduce bottlenecks in trade, thus lowering costs in transportation and distribution, thus enabling developing countries to participate in global value chains will be a useful way to trigger greater interest.

Countries could use various legal avenues to negotiate the ISA. The best path forward will be a pragmatic one that allows the service discussions in Geneva to prosper. We recommend negotiations of a high standard but 21st century services agreement by the self-selected group of WTO members. As mentioned, 18 WTO members have signaled this path as the way forward. However, we also recommend that the ISA members seek to bring their agreement within the WTO framework in the future through a waiver by three-quarters of WTO members, if politically possible. This will enable WTO panels and the Appellate Body to arbitrate disputes between ISA members with respect to all provisions in the ISA text. Importantly, locating the ISA within the WTO will both rejuvenate an institution that has suffered from the prolonged delays and disappointments of Doha talks and retain a central focus on the multilateral trading system.

If a waiver is not forthcoming, then the stand-alone ISA should be notified to the WTO under Article V. Article V contemplates that an International Services Agreement (like any Economic Integration Agreement) have “substantial sectoral coverage,” understood in terms of number of service sectors, volume of trade, and modes of supply. That is, the ISA would not, *a priori*, exclude any mode of delivery. For the moment, the 18 WTO members that are engaging in discussions on a services plurilateral seem prepared to accept the standards of GATS Article V for a stand-alone ISA.

Parallel to the ISA talks, countries may write strong service and investment chapters within their regional agreements. Some RTA chapters along these lines are already in place, and the Trans-Pacific Partnership negotiations, which are ongoing and should be seen as complementary to an ISA, should do more. A future transatlantic accord could complement the TPP chapters on services and investment. Progress within RTAs in no way conflicts with negotiations of an ISA; instead such efforts can mutually reinforce each other.

In this Policy Brief, we have offered an extensive list of provisions that, in our opinion, should find their way into the ISA text. At the top of the list are: the negative list approach for scheduling commitments (or its functional equivalent, targeted commitments); a conditional MFN approach extending ISA benefits to participating WTO members but with an accession clause for the agreement; competitive and modal neutrality; built-in mechanisms for ongoing liberalization (including a “ratchet clause” and periodic review); modernized disciplines for 21st century services trade; and liberalized rules for the temporary movement of natural persons (Mode 4) between ISA members. Several GATS disciplines should be renegotiated with stronger language: government procurement of services, competition policy, mutual recognition of professional credentials, and discipline on regulations to ensure that they protect consumers but do not act as hidden barriers to foreign suppliers. We suggest that a chapter on regulatory coherence containing a general set of regulatory principles be a part of the ISA, in addition to specific regulatory principles for specific sectors, where appropriate. Moreover, ISA provisions should reach beyond GATS to cover new areas: state-owned enterprises, cross-border data flows, and forced localization practices. We suggest that the ISA should not get entangled in subsidy questions other than a prohibition on export subsidies for services but that it might consider an emergency safeguard clause. We suggest that the country coverage of the ISA chapter on investor-state disputes should be optional as between pairs of ISA members. Finally, we suggest a chapter or an annex that focuses on trade facilitation issues as well as the design of mechanisms that would help

to facilitate services regulatory reform, as ways to broaden the scope and relevance of the ISA and make it more attractive to potential developing-country adherents.

Turning to dispute settlement more broadly, we strongly recommend that the ISA members seek a waiver so that the new agreement becomes part of the WTO rulebook, with access to the established Dispute Settlement Mechanism. In that way, WTO panels and the Appellate Body will hear disputes involving ISA provisions, whether they replicate provisions in the GATS, differ somewhat, or cover entirely new subjects. Finally, we offer a novel approach for business firms to raise concerns about proper fulfillment of ISA obligations by member governments.

We end where we started. The International Services Agreement is an excellent idea whose time has come. It is an essential initiative for the world economy and the multilateral trading system.

REFERENCES

- Australian Services Roundtable. 2008. *Securing Australia's Place in the Global Services Economy*. Submission to the Mortimer Review of Export Policies and Programs. Canberra.
- Borchert, Ingo, Batshur Gootiiz, and Aaditya Mattoo. 2011. Services in Doha: What's on the Table? In *Unfinished Business? The WTO's Doha Agenda*, ed. Will Martin and Aaditya Mattoo. Washington: Center for Economic and Policy Research and World Bank.
- Borga, Maria. 2009. Improved Measures of US International Services: The Cases of Insurance, Wholesale and Retail Trade, and Financial Services. In *International Trade in Services and Intangibles in the Era of Globalization*, ed. Marshall Reinsdorf and Matthew J. Slaughter. Chicago and London: University of Chicago Press.
- CSI (US Coalition of Services Industries). 2012. *Moving Services Liberalization Forward Using a Plurilateral Approach* (January 19). Washington.
- CSI (US Coalition of Services Industries) and US Chamber of Commerce. 2011a. Cross-border Data Flows and Trade in Services. In *2011 Global Services Summit: Engaging the Dynamic Asian Economies* (July 20). Washington.
- CSI (US Coalition of Services Industries) and US Chamber of Commerce. 2011b. State Owned Enterprises: Correcting a 21st Century Market Distortion. In *2011 Global Services Summit: Engaging the Dynamic Asian Economies* (July 20). Washington.
- Decreux, Yvan, and Lionel Fontagné. 2011. *Economic Impact of Potential Outcome of the DDA II*. Paris: CEPII-CIREM.
- Ghani, Ejaz. 2010. *The Service Revolution in South Asia*. New Delhi: World Bank and Oxford University Press.
- Gootiiz, Batshur, and Aaditya Mattoo. 2009. Services in Doha: What's on the Table? *Journal of World Trade* 43, no. 5 (April): 1013–30.
- Goswami, Arti Grover, Aaditya Mattoo, and Sebastián Sáez. 2012. *Exporting Services: A Developing Country Perspective*. Washington: World Bank.

- Graham, M. Edward. 2000. *Fighting the Wrong Enemy: Antiglobal Activists and Multinational Enterprises*. Washington: Institute for International Economics.
- Hoekman, Bernard, and Aaditya Mattoo. 2011. *Services Trade Liberalization and Regulatory Reform: Re-invigorating International Cooperation*. World Bank Policy Research Working Paper 5517. Washington: World Bank.
- Hong Kong Coalition of Services Industries. 2009. Concluding Doha and Building Support for a Post-Doha Multilateral Services Negotiation. A Rethink contributed by the Hong Kong business delegation to the Global Services Summit, Washington.
- Hufbauer, Gary Clyde, and Jeffrey J. Schott. 2012. Will the WTO Enjoy a Bright Future? Unpublished report prepared for the ICC Foundation. Geneva.
- Hufbauer, Gary Clyde, Jeffrey J. Schott, and Woan Foong Wong. 2010. *Figuring Out the Doha Round*. Policy Analyses in International Economics 91. Washington: Peterson Institute for International Economics.
- Jensen, J. Bradford. 2009. Measuring the Impact of Trade in Services: Prospects and Challenges. Paper prepared for the conference on Measuring Issues Arising from the Growth of Globalization, Washington, November 6–7.
- Jensen, J. Bradford. 2011. *Global Trade in Services: Fear, Facts, and Offshoring*. Washington: Peterson Institute for International Economics.
- Kehoskie, Nicole, and Donna Bade. 2012. Agreement on Government Procurement (GPA2). *North American Free Trade and Investment Report* 22, no. 6 (March 31).
- Lipsey, W. Robert. 2009. Measuring International Trade in Services. In *International Trade in Services and Intangibles in the Era of Globalization*, ed. Marshall Reinsdorf and Matthew J. Slaughter. Chicago and London: University of Chicago Press.
- Maurer, Andreas, and Ted Tschang. 2011. An Explanatory Framework for Measuring Services Value-Added. Paper presented at the ADBI-PECC conference on Services Trade: Approaches for the 21st Century, June 2–3, Hong Kong. Available at www.adbi.org.
- OECD (Organization of Economic Cooperation and Development). 2001. *Trade in Services: Negotiating Issues and Approaches*. OECD Report. Paris.
- PECC (Pacific Economic Cooperation Council). 2011. Survey Responses. In *PECC State of the Region 2011-2012*. Available at www.pecc.org.
- PECC (Pacific Economic Cooperation Council) and ADBI (Asian Development Bank Institute). 2011. *Services Trade: Approaches for the 21st Century*. Report of the Services Task Force established by the Asian Development Bank Institute and Pacific Economic Cooperation Council. Available at www.pecc.org.
- Sauvé, Pierre. 2003. *Trade Rules Behind Borders: Essays on Services, Investment and the New Trade Agenda*. London: Cameron May International Law and Policy.
- Stephenson, Sherry, and Gary Hufbauer. 2010. Increasing Labor Mobility: Options for Developing Countries. In *International Trade in Services: New Trends and Opportunities for Developing Countries*, ed. Olivier Cattaneo, Michael Engman, Sebastian Saez, and Robert M. Stern. Washington: World Bank.
- Stephenson, Sherry, and Maryse Robert. 2011. *Innovations of Regionalism in Services in the Americas*. NCCR Working Paper 2011/34 (June). Bern: Swiss National Centre of Competence in Research. Available at www.nccr-trade.org.
- Straw, Will, and Alex Glennie. 2012. *The Third Wave of Globalisation*. London: Institute for Public Policy. Available at www.ippr.org.
- Transatlantic Task Force on Trade and Investment. 2012. *A New Era for Transatlantic Trade Leadership*. Washington and Brussels: German Marshall Fund of the United States and the European Centre for International Political Economy. Available at www.ecipe.org.
- UN Inter-Agency Task Force on Statistics in International Trade in Services. 2010. *Manual on Statistics of International Trade in Services*. United Nations. Available at <http://unstats.un.org/unsd/statcom/doc10/BG-MSITS2010.pdf>.
- Wang, Zhi, Shashank Mohan, and Daniel Rosen. 2009. Methodology for Estimating Services Barriers. New York and Washington: Rhodium Group and Peterson Institute for International Economics. Unpublished. On file with authors.
- Warwick Commission. 2007. *The Warwick Commission Report on the Future of the Multilateral Trade Regime: Strategies for Implementation*. United Kingdom: University of Warwick.
- Warwick Commission. 2010. *The Multilateral Trade Regime: Which Way Forward?* United Kingdom: University of Warwick. Available at www2.warwick.ac.uk/research/warwickcommission/worldtrade/report.
- World Economic Forum Global Agenda Council on Trade. 2009. *A Plurilateral "Club-of-Clubs" Approach to World Trade Organization Reform and New Issues*. Available at <https://members.weforum.org/pdf/globalagenda2010.pdf>.

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