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Services Negotiations in the WTO: An Overview of the U.S. Offer

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Summary

On March 31, 2003, the Bush Administration unveiled a plan to liberalize global trade in services as part of its commitment to meet the World Trade Organization's (WTO) deadline for submitting negotiating proposals for trade in services. Some 14 other countries and the European Union have also submitted their services offers; a number of other countries are also expected to submit offers. The U.S. proposal expands somewhat beyond its original offer, submitted July 1, 2002, and it attempts to bind federal and state market openings that have been made unilaterally since the General Agreement on Trade in Services (GATS) was signed in 1995. The U.S. offer does not provide for negotiations on a number of sensitive issues: government monopolies that provide public services; state and federal regulatory interests; U.S. citizen and minority-specified programs; specified interest of U.S. educational institutions; and the privatization or deregulation of water distribution. The August 24, 2003 draft Cancun Ministerial text prepared by General Council Chairman Carlos Perez del Castillo urges members to intensify their efforts to develop a proposal, but services negotiations are tied to progress in the divisive agricultural negotiations, which have made little progress to date. This report will be updated as warranted by events.

Background

Services issues are an important part of the World Trade Organization's already-established work program. Services negotiations are mandated by the General Agreement on Trade in Services (GATS), which required that further negotiations on services begin in 2000. According to Article XIX of the GATS, the negotiations must aim at reducing or eliminating the adverse effects on services trade of restrictive measures initiated for the purpose of providing effective market access. This objective was reaffirmed in the Doha Ministerial Declaration¹, which supports continuing negotiations aimed at further liberalizing trade in services. The Doha Declaration folded services into a broader

¹ Ministerial Declaration. World Trade Organization, November, 2001. A copy can be found at: [\[http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/mindecl_e.pdf\]](http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/mindecl_e.pdf)

agenda, including such other topics as agriculture and industrial tariffs, and any final agreement is likely to be comprehensive.

Under the current round of negotiations, participants are expected to abide by a number of deadlines. Most of the participants met the deadline of March 31, 2002 for submitting an initial list of liberalization policies that specified those areas in which they hope to pursue greater liberalization. With the initial list of offerings as a starting point, the hard work of negotiating actual commitments is set to begin. During this stage of the discussions, the participants reserve the right to withdraw, modify, or reduce their offers depending on how much other participants are willing to open their markets. These discussions are slated to conclude January 1, 2005. Limited success in the thorny agriculture negotiations, however, is spurring some negotiators to question the prospects of reaching an agreement by this deadline. U.S. negotiators have voiced their continued support for the agricultural talks and argue that they remain committed to meeting the January 1, 2005 deadline. At the same time, they argue that the limited success experienced so far in agriculture negotiations should not impede progress in the area of services trade and in other areas where negotiations are progressing.²

Service industries account for 81 percent of U.S. employment³ and 67 percent of U.S. gross domestic product (GDP).⁴ U.S. exports of commercial services (i.e., excluding military and government) were \$266 billion in 2001, doubling from the \$137 billion recorded in 1990.⁵ Cross-border trade in services accounts for more than 25 percent of world trade, or about \$1.4 trillion annually. Major markets for U.S. services include the European Union (\$99 billion in private sector 2001 exports), Japan (\$31 billion), and Canada (\$24 billion). At \$14 billion, Mexico is presently the largest emerging market for exports of U.S. services.

Most observers agree that liberalizing trade in services could provide large economic benefits for the United States, due to the large role it plays in the U.S. economy. One estimate indicates that a hefty reduction of 33% in the barriers restricting trade in services would provide economic benefits to the United States of \$134 billion,⁶ the largest share of any potential economic gains in the Doha round. The negotiations are just at the initial stages, however, and it is unclear at this point how expansive the negotiations will be and how extensive the benefits will be for the participants. One hurdle that complicates the

² *U.S. Trade Representative Robert B. Zoellick Unveiling of U.S. Services Proposal to the WTO*, March 31, 2003. See: [<http://www.ustr.gov/releases/2003/03/2003-03-31-transcript-services.pdf>]

³ According to the Bureau of Labor Statistics, of the 129 million people in the U.S. labor force in February 2003, 105 million are in the service producing industries. See: [<http://www.bls.gov/ces/>]

⁴ McCahill, Robert J., and Brian C. Moyer, *Gross Domestic Product by Industry for 1999-2001. Survey of Current Business*, November 2002, p. 32.

⁵ Borga, Maria, and Michael Mann, *U.S. International Services: Cross-Border Trade in 2001 and Sales Through Affiliates in 2000. Survey of Current Business*, October 2002, p. 84-86.

⁶ Brown, Drusilla K., and Alan V. Deardorff, and Robert M. Stern, *Multilateral, Regional, and Bilateral Trade-Policy Options for the United States and Japan*. RSIE Discussion Paper No. 490, December 16, 2002.

process of estimating the benefits of the negotiations is in identifying barriers to trade in services and then assigning monetary values to those barriers.

The General Agreement on Trade in Services

The General Agreement on Trade in Services, or GATS,⁷ was created as part of the Uruguay Round of trade negotiations and entered into effect in January 1995. The Agreement consists of 29 articles, eight annexes, eight Ministerial decisions, and an Understanding. Article XIX is considered by many to be one of the most important because it commits the WTO members to “successive rounds of negotiations with a view to achieving a progressively higher level of liberalization.” Such a commitment was felt necessary because the Agreement does not rely on a set of rules similar to those applied for goods, but relies instead on a list of specific commitments supplied by each member country and details what that country is willing to undertake.

Under the GATS, member countries agreed to abide by a set of general obligations, which were applied directly and automatically to all members and services sectors, and a number of specific commitments concerning market access and national treatment in certain designated sectors. The scope of these sectoral commitments is laid down in individual country schedules and, therefore, varies widely between members. Under the Agreement, the general obligations are comprised of two specific issues: most favored nation treatment, and transparency, or openness regarding laws and regulations. Specific commitments relate to market access, national treatment, and the movement of natural persons. Other annexes concern four areas in which the Members agreed to continue negotiations: air transport, financial services, telecommunications, and maritime transport services. The Agreement also distinguishes between four different modes of delivery of services: 1) cross-border trade in services, which represents the most common type of services trade; 2) consumption abroad, primarily activities associated with tourism; 3) commercial presence in which a firm from one country establishes a presence in another country in order to provide a service; and (4) the presence of natural persons, such as medical doctors, accountants, or teachers from one country entering another country in order to supply a service.

In principle, the Agreement applies to all services with two exceptions: services supplied to governments, and air traffic rights and services. The Agreement also provides that in certain circumstances, member countries can introduce or maintain domestic measures that are contrary to their obligations under the Agreement. These circumstances include measures that a nation determines are necessary to: protect public morals or maintain public order; protect human, animal, or plant life or health; or secure compliance with laws or regulations that are not consistent with the Agreement, such as laws to prevent deceptive or fraudulent practices. Exemptions are also allowed in the area of financial services that allow member countries to take measures to protect investors, depositors, policy holders, or to ensure the integrity and stability of the financial system. Finally, member countries are allowed to temporarily restrict trade on a non-discriminatory basis in the event of a serious balance of payments problem.

⁷ [http://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm]

The U.S. Position⁸

The United States has a clear economic advantage in a large number of services areas. U.S. services exports for travel and such transportation services as freight and port services are among the chief export services, but are closely followed by U.S. exports of education and financial services. U.S. firms also provide a broad array of business services, including computer and data processing, data base and information services, legal services, and management services. The U.S. offer, which includes concessions as well as requests for market openings, is presented in two parts: binding openings that have been achieved at both the federal and state level; and offerings for liberalization in 15 services sectors. In various services areas, such as insurance and legal services, states have regulations and supervisory associations that set the standards for licensure and regulate their members. With the approval of the state involved, the U.S. offer incorporates changes made in these regulations and by these associations since the 1995 GATS Agreement as a formal part of its overall offer, thereby binding these changes into the overall U.S. proposal for liberalization. U.S. negotiators believe this offer will be attractive to the other participants, because it would subject these provisions to WTO dispute settlement procedures. The U.S. offer also includes 15 areas for further liberalization:

Accounting services. This proposal is designed to make it easier for accountants and accounting firms to serve clients in other countries by addressing citizenship and prior residency requirements for licensing, and would strengthen the Accountancy Disciplines, adopted by the WTO in 1998.

Advertising and related services. This proposal is intended to provide for full market access and national treatment of advertising services, while allowing national governments the ability to set and maintain standards to protect consumers. These negotiations are especially important given the changes the Internet and the advent of global advertising have created.

Audiovisual and related services. The United States seeks: 1) a review of the activities that constitute the audiovisual sector (theatrical motion pictures, television, home video entertainment, transmission services, and recorded music) to develop a clear, accurate, and comprehensive understanding of how the sector is classified; 2) negotiated commitments for the sector that are clear, dependable, and predictable trade rules; and 3) to develop a set of rules, similar to those in other aspects of the WTO, for the use of carefully circumscribed subsidies for specifically defined purposes.

Distribution services. This proposal addresses barriers faced by wholesalers, retailers, and other distribution companies in operating supply chains internationally (e.g., restrictions on real estate purchases, store location, etc.). The proposal seeks to apply GATS disciplines by promoting transparency and fairness of administration and to promote national treatment.

⁸ The U.S. submission can be found at: [<http://www.ustr.gov/sectors/services/docsvcs.shtml>]

Education and training services. This proposal addresses barriers to market access and national treatment for suppliers of education and training services of higher education, adult education, training, and testing. The proposal seeks to remove obstacles to the transmission of educational training and testing services across national borders through electronic or physical means, or to the establishment and operation of facilities to provide services to students.

Energy services. Liberalization of energy services and nondiscriminatory access to foreign energy services providers are priority issues for U.S. negotiators. These services include exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption, management, and efficiency of energy, energy products, and fuels.

Environmental services. This proposal aims to reduce barriers to the provision of environmental services as a means of preventing, reducing, or correcting environmental degradation. This proposal seeks to improve market access and national treatment in the areas of environmental services currently recognized by the WTO (sewage services, refuse disposal services, sanitation services, and other such services) and to broaden the coverage of the disciplines to include areas of commercial presence and the movement of personnel.

Express delivery services. This proposal addresses barriers faced by express delivery companies in providing integrated services and seeks the adoption of a separate classification for express delivery services and requests countries to undertake commitments on market access and national treatment. Express delivery services is a relatively new sector and consists of time-sensitive services, which utilize advanced technologies for communication, and are integrated or controlled from end-to-end.

Financial services. This proposal would establish benchmarks for further financial services liberalization to include commitments constituting fundamental liberalization, and commitments on transparency and other principles for regulation in the areas of insurance, banking, securities, asset management, pension funds, financial information, financial advisory, and other financial services. Priority areas include removing: restrictions on the types of allowable commercial presence and the ability to provide services across borders; quantitative limitations on the number of suppliers; and removing discrimination between domestic and foreign suppliers regarding application of laws, regulations, and practices.

Legal services. This proposal is intended to have Members examine liberalization opportunities with regard to market access and such national treatment barriers as commercial presence, citizenship and residency requirements for licensing, scope of practice, and association of foreign-qualified lawyers with local lawyers and association of foreign-partner law firms with local law firms.

Movement of natural persons. This proposal would address the regulatory hurdles corporations face in moving personnel to foreign locations on a temporary basis. It would not apply to permanent entry or stay of individuals as service suppliers. In particular, the U.S. proposal seeks to improve access to information, including laws and regulations, that govern entry, stay, and work authorization of natural persons,

and procedural transparency that could include timely responses as well as an explanation of actions taken and opportunities to comment on new or amended regulation by government entities to applications for temporary entry and stay.

Small and medium-sized services enterprises. The U.S. proposal seeks to remove the following barriers: 1) transparency in domestic regulation; 2) requirements that firms maintain a local or commercial presence, which hinders smaller firms that used advanced technologies to provide services over the Internet; 3) requirements on the movement of natural persons; 4) “unnecessary” government regulation of electronic commerce that hampers the electronic delivery of services; and 5) commitments in related services.

Telecommunications, value-added network, and complementary services. The goals for this proposal are to: ensure market access and national treatment for providers of both network infrastructure and key service sectors; remove barriers to investment and competition; promote competition in basic telecommunications; and avoid unnecessary restrictions on services offered by competitive suppliers.

Tourism services. This proposal seeks to have all members undertake additional commitments relating to travelers and international conferences to promote expansion of international tourism. The proposal lists practices that frustrate growth in this sector, such as limits on foreign investment or ownership, taxes, regulations governing requirements with local suppliers, the entry and exit of personnel and event organizers, and discrimination against foreign partners, and franchises.

Transparency in domestic regulation. The proposal seeks to allow all market participants equal access to information on regulation, procedures, and other measures that affect their ability to compete effectively. To improve transparency, the U.S. proposal encourages: 1) prior notification and comment periods on government regulations; 2) a simple and clear application process that applies equally to domestic and foreign applicants; and 3) procedural review and remedies in the event of a dispute.

Other Positions

The U.S. offer is well beyond those offered by other participants and has generally been well received. In addition to the 15 proposals offered by the United States, other members have offered proposals in such services areas as: advertising, architectural services, business services, computer, construction and engineering services, logistics, postal and courier, professional, sporting, and transport services. Canada, for instance, offered improved market access in financial services, business services, communications, and transport services. Japan offered improved commitments in the movement of natural persons, business services, and tourism. Australia offered improved access in computer and related services, legal services, and financial services. New Zealand also offered significant market opening offers in services. Although developing countries might obtain benefits from liberalized trade in services, it is unclear at this stage of the negotiations which areas they will support for liberalization.