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Geneva:**

**“The International Services
Agreement”**

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A New Form of Services Trade Agreement Moving Ahead in Geneva: “The International Services Agreement”

Services dominate the US and the global economy, but the “Doha Round,” a major effort in the World Trade Organization to remove barriers to global services trade and investment, has come up empty-handed after ten years of trying. This is why a new initiative in Geneva to develop a services “plurilateral” agreement is so important.

THE UNFULFILLED PROMISE OF BUSINESS SERVICES TRADE

Services account for about 80% of US jobs. The great majority of jobs in every Congressional district are services jobs. Business services like telecommunications, express delivery, and computer and related services account for about 25% of US employment. By comparison manufacturing accounts for about 10% of US employment.

Exports of these business services are a particularly rich source of potential growth for our economy, because companies in the business services sector do not export as much of their output as goods companies do. About one in four manufacturing plants export, but only about one in twenty business services establishments export.¹

In spite of this low level of participation the US is one of the world’s most competitive services exporters with a surplus of \$172 billion on total services exports of \$606 billion in 2011. The relatively low engagement in trade of US business services firms is mainly attributed to the existence of a wide range of complex barriers to trade and investment in services in many foreign markets.

This makes a new initiative to remove these barriers urgent, and now there is an indication that this initiative is really gaining ground in Geneva.

¹ See J. Bradford Jensen, “Overlooked Opportunities for U.S. Exports of Business Services,” Economic Policy Vignette 2012-9-21, Center for Business and Public Policy, McDonough School of Business, Georgetown University, September 9, 2012.

A NEW KIND OF SERVICES AGREEMENT

The new effort was launched last year when a small group of like-minded members of the World Trade Organization (WTO) that had throughout the Doha Round pushed for an ambitious outcome for services met informally to discuss options for a new way forward for services.

Frustrated by the lack of progress in the Doha Round, including the reluctance of the big developing countries, like India, China and Brazil, to offer any meaningful liberalization, they concluded that a standalone services-only “plurilateral” (meaning a group of, but not all, WTO members) approach would work best.

In this approach, which is consistent with the rules of the WTO General Agreement on Trade in Services (GATS),² the critical distinction is that those countries that do not participate in the effort to liberalize do not get the benefits. In this case, in other words, the “most-favored nation” (MFN) principle does not apply to those that do not participate. This is important because it provides an incentive for members to participate in the agreement. If the services “plurilateral” were undertaken on an MFN-basis, members could free-ride on the agreement, i.e. not liberalize but benefit from the liberalization of others.

Dubbing themselves the Really Good Friends of Services (RGF), this small group of 16 members³ worked informally to develop a concept for a plurilateral agreement. It was not discussed publicly but it was certainly “in the air” -- so much so that at the Ministerial Conference of the WTO in December 2011, the trade ministers of India, China and Brazil all sharply criticized the concept.

The RGF, co-chaired by the US and Australia’s WTO Ambassadors, then began to formalize their meetings. Early in the new year the working title “International Services Agreement” – or “ISA” was coined and is used to refer to the plurilateral, though the name has not been formally adopted.

² The General Agreement on Trade in Services (GATS) came into force in January 1995. It is an international agreement that is legally binding on its members. It established the first set of multilateral rules covering international trade in services.

³ Australia, Canada, Chile, Colombia, European Union, Hong Kong, Japan, Mexico, New Zealand, Norway, Pakistan, Singapore, South Korea, Switzerland, Taiwan and the United States. Singapore subsequently left the group, in July.

DIFFERENCES AMONG THE REALLY GOOD FRIENDS

Early on it became clear that the European Union, of course a very important member of the RGF, was skeptical of the ISA on several grounds: first, that it would add little or no value in terms of new liberalization of services markets; second, that it would not be wise to violate the MFN principle; third, that any plurilateral agreement would only be worthwhile if it were fashioned in a way to encourage countries like India, China, Brazil and others, like Indonesia, to join it. Also the Commission did not wish to seek a new negotiating mandate from the member states, which would be required for a negotiation outside the GATS.

For all these reasons the EU initially argued against a new agreement, preferring to keep working on services under the GATS and the Doha mandate, or through additional bilateral free trade agreements. Now, having supported the plurilateral approach, the Commission it seems will be obliged to obtain a new mandate if ISA negotiations start, as hoped, next year.

EXPANDING MEMBERSHIP IN THE ISA

The ultimate goal of the ISA is to include all WTO members in a vibrant services trade liberalization enterprise. This is sometimes referred to as the “multilateralization” of the ISA. This will require the engagement of the large emerging markets - a very important objective. India and China are the world’s fastest growing markets, and our companies want more access to those markets as soon as possible. Indeed, if successful the ISA should create a giant free trading market that the big emerging economies will seek to join.

Another benefit of the ISA is that it will build a solid coalition that will have a strong influence when re-engagement with the large emerging markets is possible. The ISA can establish a high bar for standards of international treatment and it can create a venue, or negotiating forum, where new issues of importance can be worked on.

JULY 5 BENCHMARK

On July 5, the Really Good Friends issued a statement⁴ saying they had made progress toward agreeing to launch negotiations on a plurilateral agreement. The statement was based on the concept that the plurilateral would be non-MFN based, a major step. It would also be comprehensive in scope, contain baseline

⁴ “WTO Members Announce New Phase In Services Talks”, United States Trade Representative News Release, Washington, DC, July 5, 2012.

market access commitments that correspond closely with actual practice, provide new opportunities to negotiate new market access, and contain new and enhanced disciplines (i.e. provisions relating to problems like data flows), which improve on those in the GATS. It called for intensification of meetings of the RGF starting in early October with a goal of developing a negotiating framework.

On September 19, the Coalition of Service Industries (CSI) held its fourth annual Global Services Summit in Washington. The major topic of discussion at the Summit was the ISA. Trade Ministers and WTO ambassadors and many others participated in an open discussion of the character and architecture of the ISA, airing widely differing views on how it should be constructed. There were significant signals that a compromise could be reached. The Summit's effect was to energize and motivate movement toward a compromise on the ISA among the RGF, which now numbered 20.⁵

ELEMENTS OF COMPROMISE EMERGE

The October 2-3 meetings are reported to have made some important progress, auguring for a start for actual negotiations in 2013. This could be a very important development for the global economy. It has been estimated that under certain assumptions, an ISA even among just the original 16 RGF members, could increase annual services exports by \$78 billion. Because they are the largest services traders, the US and EU would see the largest gains, around \$14 billion and \$21 billion respectively.⁶

In its October meetings the RGF agreed to explore a new "hybrid approach" to scheduling which uses a negative list format for national treatment⁷ obligations and a positive list format for market access⁸ obligations. The latter decision has drawn criticism because the positive listing format is considered cumbersome,

⁵ Australia, Canada, Chile, Colombia, Costa Rica, EU, Hong Kong, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Taiwan, Turkey and the US.

⁶ Gary Clyde Hufbauer, J. Bradford Jensen and Sherry Stephenson, "Framework for the International Services Agreement," p. 22, Final Draft, Washington, DC, Peterson Institute for International Economics, 24 February, 2012.

⁷ National treatment means a member must give foreigners the same treatment that it gives its own nationals. Using the negative list approach, parties list only those services they will exclude from coverage by the national treatment obligation.

⁸ Market access obligations refers to commitments by members to allow foreign suppliers to do business in their markets, like the right to establish an enterprise. In a negotiation based on the positive list approach, parties list only those services that they will include under coverage by the agreement.

lacking in transparency, and the product classification on which it is based is decades out of date.

Consensus has seemed to develop around some central elements, to:

- Use the definitions and major provisions established in the GATS. An argument for this is that all the RGF have already agreed to them, so it saves time to accept them, and not spend months renegotiating this acquired ground.
- Adopt a commitment to liberalization for national treatment across all sectors (a “horizontal” commitment), but allow countries to negotiate exceptions for specific sectors (using the negative list). This would include a standstill on current treatment of foreign-provided services.
- Use the GATS scheduling mechanism (positive list) to schedule commitments to the market access obligation by key sector.
- Apply a rule to national treatment known as the “ratchet”, meaning that when a country improves its treatment of a given service, the new level of treatment will be locked into place with no backsliding.
- For market access, apply a rule that positive list commitments should capture “autonomous liberalization” meaning they should reflect the measures countries now use, as opposed to the level of liberalization recorded in GATS schedules in 1995.
- Provide for negotiation of new market access, by improving current commitments and removing existing restrictions.
- Negotiate new provisions that improve on the GATS on the basis of proposals by participants, which could include newer issues like state-owned enterprises, and cross border data flows.

In addition there was discussion of the elements that would facilitate “multilateralization” of the agreement, including provisions to allow new members to join the agreement.

If these elements are developed in further RGF discussion, they represent very significant progress toward setting out the framework of an ambitious agreement that applies the negative list approach for national treatment as sought by the United States, while incorporating GATS language as much as possible, the EU priority.

For its part the EU has come a very long way since its initial skepticism about the value of an ISA. Certainly adoption of a plurilateral, non-MFN agreement was a very big step.

LEVEL OF AMBITION

The shared level of ambition of its framers, and the skill and determination of negotiators in realizing that ambition will of course determine the ISA's outcome. The ability to use effectively the new hybrid format for negotiations will also affect the outcome.

Business groups like the Coalition of Service Industries and members of the Global Services Coalition have expressed from the outset the objective that the level of ambition be quite high – that the ISA embrace the best of the free trade agreements already in place and move beyond to include new issues.

The RGF statement of ambition for the ISA is expressed in the July 5 statement cited above. Recalling it, it asks for a comprehensive agreement, that is, an agreement without a priori exclusions. It calls for an agreement that contains a baseline of market access commitments reflecting commitments in other trade agreements, that provides new opportunities to negotiate new market access, and that contains new and enhanced disciplines, which improve on those in the GATS. These criteria foresee a potentially very high level of achievement.

It is fair to ask whether the new “hybrid” approach to negotiating the agreement is the most effective way to achieve its market access objectives.

In raising the importance of national treatment the ISA takes an important step. It is also important that the agreement seek a high level of ambition for market access commitments.

But to do so the ISA must improve on the GATS. ISA negotiators must update and modify the current schedules so as give market access to the new services that have come on stream since the GATS was adopted in 1995, and to services that have not yet come to market. The schedules should be altered so as to capture automatically future liberalization that members adopt of their own volition, without the need to reopen a negotiation to secure those measures. Certainly the United States will want to ensure that the new schedules include adequate coverage for all sectors of interest.

CONCLUSION

The RGF have joined in expressing a high level of ambition for the agreement. As more clarity emerges on its form, it will be important to ensure that the agreement lives up to its high promise: creating a comprehensive agreement that builds strongly on free trade agreements already in force; that addresses new trade issues; that includes the entire membership of the WTO; and thereby realizes the as yet untapped economic benefits of global services trade and investment liberalization.

The next, sixth, meeting of the Really Good Friends will take place in Geneva on November 7-8, when members will discuss ideas about how to revise the GATS schedules of commitments to meet the objectives of the ISA. The stated goal of the group is to try to launch negotiations in 2013, after another round in December.