

IMPETUS IN THE UNITED STATES FOR THE
LIBERALIZATION OF INTERNATIONAL TRADE IN
SERVICES

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It is a pleasure to be here. I thank our University of Georgia Law School hosts for the opportunity to be with you. I am saying a few words of background about an attractive proposition—a global effort to liberalize restrictions, on the international trade in services. The underlying proposition is that consumers and providers of services should be able to deal with one another with minimal outside intervention. Certainly, official policy should not unfairly limit the commercial freedom that the parties to the transaction might otherwise enjoy.

But first, what are services? Simply stated, services are invisible products, in contrast to tangible products or goods. Of course, a few services are embodied in a tangible medium. For example, the information contained in a computer disc. However, the essential value is the intangible part. Some services are provided directly from a source in one country to a foreign client in another country—“across-the-border trade”. There are some variations. In a few forms of across-the-border trade, the client goes across the border to obtain the service. An example of this is a tourist or a student.

Other services are provided to the client through the medium of a business establishment located in his, the importing, country. The establishment is owned or controlled by a foreign, or exporting, service company. This is referred to as “establishment trade”.

To understand “internationally traded services”, I sometimes find it helpful to think of them in terms of the economic purpose they serve; in other words, what they do. Here, there are three families of services which meet three different needs in importing countries. One large family of international services facilitates trade itself. Here we have services necessary to move goods and people as well as the newer cluster of services which move information around the world. A second family consists of services that are needed by industry and which the importing industry consumes as “intermediate inputs” in the production of goods and services that are then sold as final products. Intellectual property and the whole gamut of industrial technology that is exchanged between companies falls into this area.

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A final family consists of services that we can think of as more on the order of final products, and which are consumed by business and the public. There is some overlap among these families of course.

Bear in mind that a service company may have products to meet needs in each family. For example, an insurance company may provide export insurance that supports trade. It might also provide reinsurance, which is insurance capacity provided to other insurance companies. This is an intermediate input necessary to producing insurance for the public. Finally, it might provide fire insurance to businesses and homeowners, a more final, or retail, product.

What is the basic trade issue affecting the international exchange of services? Simply stated, there are a host of unnecessary, discriminatory interventions distorting the service trading process. These are imposed, for the most part, by official institutions. There are of course interventions in international service markets for accepted reasons. Regulation, when needed, is one of these. Also, governments intervene with international service transactions for tax, monetary, industrial, and trade policy reasons. Trade liberalization in services is an effort to eliminate "discriminatory" policy and practices which distinguish between the domestic and the foreign service provider and which competitively disadvantage the foreigner in a national market place.

Why are we here today? A little over 25 years ago, United States direct insurers and reinsurers found themselves being driven from overseas markets by a wave of discriminatory policies. The discriminatory practices were of three types: (1) those simply closing a market to the United States insurer, (2) those making it virtually impossible to set up and organize an effective operation in a market that is technically open and accessible; and (3) those that crippled the commercial operations of the foreign insurer if it were admitted and permitted to organize. Confronted almost globally, U.S. international insurers attempted to fight back. The industry discovered three things: (1) not only were there no international trade rules for international insurance, there were no trade rules for the entire service industry sector, almost one-third of world trade; (2) there was absolutely no recognition among the service industries themselves of common trade problems, let alone the need to confront them jointly; and (3) there was no policy or structure in the U.S. trade policy establishment or elsewhere abroad for dealing with the service industries. Thus, in the early 1970s the U.S. international insurance industry found itself, quite innocently, in the position of having to

do nothing less than spearhead the reform of the entire international trade policy system.

It was necessary to cause governments and trade organizations worldwide to focus upon the trade barriers that service industries faced in markets around the world.¹ In effect, this dimension had to be added to the traditional trade policy focus on the problems of trading manufactured goods, agricultural commodities and raw materials.

The process took decades. While it is too complex to completely recount here,² there were several key steps. First was a triggering development in 1974. Congress passed the 1974 Trade Act authorizing the executive branch to negotiate a reduction of barriers to trade in services while providing exporters of services with recourse against unfair trade practices. Thereafter, a handful of service industries, led by the insurers, organized under the umbrella of the U.S. Chamber of Commerce to promote the use of these provisions. A second step occurred in 1976 when the U.S. executive branch "officially" recognized that services were an important, and often discriminated against, part of U.S. trade. Third, by 1980, U.S. government offices in the White House, USTR and the Commerce Department were created to address the trade in services issues. Finally, by the mid 1980s, governments outside the U.S. came to recognize that the U.S. call to eliminate trade barriers to services would not go away. In the end they realized that the issue was equally as important to them.

As a result, we are today speaking at a time when progress in eliminating barriers to international trade in services is moving forward on two fronts. One is the bilateral level. The past several years have seen a number of countries opening heretofore closed markets to U.S. service industries. On the multilateral level, the international trade policy community is now discussing liberalization of trade in services within the General Agreement on Tariffs and Trade (GATT) Uruguay Round negotiations. The GATT discussions should lead to international fair trade rules under which a subscribing country would ensure that service consumers in their national markets have access to foreign-source services, or should force service providers operating establishments in the country to work within a framework of both non-discriminatory official treatment and competitive ground rules similarly applied to the local service companies.

1. See Appendix D.

2. See Appendix E.

The GATT service discussions are pioneering into an entirely new trade policy territory. As there is no precedent, the negotiators face at least three ground breaking problems in addition to the basic issue of accommodating each other's trade interests. One is the sheer intellectual range of the venture.³ The negotiators face the creative challenge of building a framework today to accomplish for trade-in-services liberalization what the traditional GATT framework set out to do in the trade-in-goods area over forty years ago. A second difficulty is the different views concerning the unifying commercial principle upon which the liberalization structure is to be erected. In other words, are service markets naturally open and free, with restrictions on them being an exception to the rule of openness? Or are they more properly closed, with openness being the exception to be granted by the state in only certain sectors? And finally, what geopolitical scope is desired? Is the goal to set reasonably tough international commercial rules to be subscribed to by key national service markets with perhaps an eventual trickle down to lesser markets? Or is the goal a "global" international agreement with success measured in the number of signatories, with the removal of barriers left to the long term? These are three basic problems that must be overcome by the negotiators in addition to the incredibly challenging matter of deciding what specifics should be included in the agreement.

Now let me move along and wrap up these comments with some thoughts a little closer to the topic of our discussion here today. What are the prospects for a GATT multilateral agreement on services and intellectual property? I would say that despite any outcome of the GATT multilateral discussions, the discussions made will inevitably advance the world into a more liberal trading environment for services. These negotiations deal with the problem of discrimination in trade in services. They have raised an abstract idea, liberalization of trade in services, to a "high ground". Most importantly, the matter has gained recognition and respectability.

Fifteen years ago when we began working with this idea, the concept was suspect and very much of a shadow issue. The high ground belonged to proponents of sovereign discrimination who felt that any challenge to its free exercise of distorting trade in services was suspect and improper. Thus, even if not successful per se, the GATT negotiations are legitimizing non-discrimination as a standard that will become a part of bilateral discussions and provide a strengthened

3. See Appendix F (model agreement).

basis for recourse. So if we are unable to obtain a multilateral agreement to force governments to change their discriminatory habits, there always remains the alternative of trade retaliation. But, in my judgment the negotiations will produce positive results. There are also certain economic conditions, which I call the horsemen, that I think are very important forces favoring improved efficiency in trade in services. While relating to services, they are separate and apart from the liberalization question in the GATT context.

There are four economic pressures forcing more open and efficient trade in services. The first is closing service technology gaps. Major service technology shortfalls, and in some cases outright service technology vacuums, are present in all developing countries and a few industrial nations. Modernization of the local service sector must take place lest it be a drag on the evolving economy of which it is part. Foreign sources traditionally introduce new service products, technology and marketing know-how which is, in turn, absorbed by local firms. The second pressure is privatization. Widespread official "insolvency" has placed clear limits on public sector resources. Thus, further interventions by state enterprise into the provision of commercially available services is unlikely. This circumstance may eventually open nationalized markets. And at minimum, it drives governments to build up their private service sector. Foreign private service producers can help meet the needs so created. Rising consumer demands, constitutes the third economic pressure. Client pressure exists everywhere, particularly in industries and businesses that want access to the "world class" services their international competitors enjoy. They also want these services at fair-market price terms. Governments will wisely accommodate this basic industrial demand as a matter of global competitive need. The final pressure is the global service markets themselves. Virtually all of the key service markets and the top companies serving them are already international. This circumstance is a powerful force for domestic change in both the official perception and local treatment of international service firms' view that fair treatment for foreigners at home will assure a country's emerging "international" service firms enjoy non-discriminatory treatment in the foreign markets where they must emerge and compete.

With these four draft horses of the marketplace dragging international trade in services ahead, the complementary U.S. push for negotiated trade in service liberalization is not without some real expectation of success. Yet, will the key Uruguay Round negotiators find courage to thrust ahead toward a conclusion that is premised upon commercial openness; that is broad in terms of the range of

service trade discrimination addressed; that is prudent, yet not without imagination, in providing flexibility to national approaches and timing; and that is modest in terms of "global" political reach? If they do, the commercial ground rules for the already rapidly evolving international service businesses will change, dramatically, soon, and for the better.