



**Coalition of Service Industries
Statement on the Proposed Trans-Pacific Partnership Agreement**

for the

**Trade Policy Staff Committee
Office of the United States Trade Representative**

March 4, 2009

Introduction

Thank you for this opportunity to appear on behalf of the Coalition of Service Industries to discuss the proposed Trans-Pacific Partnership (TPP) Agreement. CSI is comprised of leading US service companies and trade associations across a broad spectrum of service industries. CSI and its members seek to achieve market access in crossborder trade and investment in services in all negotiating forums.

Our negotiating priorities reflect the tremendous economic importance of services in all economies. Services are essential inputs into the production of virtually all products. The price and quality of services influence costs and productivity in all other sectors of an economy, including manufacturing and agriculture. Thus, when liberalized and made more efficient, services have a strong effect on the competitiveness of an entire economy.

The United States is a service economy. 80% of our GDP and 80% of employment are in services, and trade in services has grown substantially in recent years. Figures released by the Government last month underscore this; US exports of private services last year totaled \$535 billion, a 12% increase over 2007, and the US services trade surplus increased by 21% to \$167 billion, highlighting the competitiveness of the sector.

We believe that the Trans-Pacific Partnership Agreement provides an excellent opportunity to achieve greater market access for services by maintaining and building on the high standards of previous US free trade agreements. It will catalyze interest on the part of other countries, as demonstrated by the intentions of Australia, Peru and Vietnam to join the negotiations. It could thus provide the core for building a larger trade bloc in the Asia Pacific region. In addition, the TPP is a much-needed response to the proliferation of preferential trade agreements in the Asia Pacific that do not include the United States. The ASEAN-Australia-New Zealand free trade agreement signed last week is the latest example.

In order for the TPP to support US services interests, the financial services and investment chapters that are to be negotiated must reflect the high standards of those in the most recent US free trade agreements. Moreover, the existing agreement upon which the Trans-Pacific Partnership is based should be renegotiated in areas such as other services and intellectual property, so that those chapters too reflect the high standards of the most recent US free trade agreements.

THE TPP MARKETS

The countries included in the envisaged agreement represent a very significant market for US services. The initial P-4 members, plus the three additional countries that have announced their intent to join negotiations -- Australia, Peru, and Vietnam -- collectively have a population of 160 million, with a 2007 GDP of \$1.5 trillion. The service sector is a vital part of those economies, all of which have substantial trade in services. Taken together, their services imports totaled \$134 billion in 2007, while their services exports were slightly higher, reaching \$137 billion the same year.¹

Crossborder Trade & Sales through Affiliates

US crossborder exports of services to the TPP countries were \$20.9 billion in 2007, while imports were \$12.3 billion, netting a US services trade surplus of over \$8 billion. By way of comparison, our services exports to the TPP countries exceed those to China, which were \$14.1 billion the same year.²

Sales of services by majority-owned US affiliates in those countries in 2006 (the latest data available) were substantially higher, at \$53.8 billion.³ That figure is roughly equivalent to the sales by US affiliates in Japan.

| US Crossborder Trade with TPP Countries, 2007 (US\$ millions) | | | Sales of Services by US affiliates in TPP Countries, 2006: (US\$ millions) | |
|--|-------------------|-------------------|---|---------------------------|
| Country | US exports | US imports | Country | US Affiliate sales |
| Australia | 10,446 | 5,948 | Australia | 26,573 |
| Chile | 1,756 | 868 | Chile | 4,926 |
| New Zealand | 1,516 | 1,655 | New Zealand | 2,990 |
| Singapore | 7,224 | 3,915 | Singapore | 19,326 |
| TOTAL | 20,942 | 12,386 | TOTAL | 53,815 |

HORIZONTAL ISSUES

The Trans-Pacific Partnership should focus on the broad elements that the services industry considers essential for all free trade agreements, and on which our support for such agreements is

¹ Source: UNCTAD Handbook of Statistics Online

² Source: Bureau of Economic Analysis. Figures do not include Brunei, Peru, or Vietnam, as services trade data with these countries is not available.

³ U.S. Bureau of Economic Analysis, Survey of Current Business, October 2008

based. These include well-established principles such as comprehensive market access for both crossborder trade and direct investment, investor protections, and regulatory transparency.

Market access

The first of these elements is broad market access. The agreement should cover all services, with a minimum of exceptions. Two main types of services market access are of most interest. The first is crossborder supply, where services are supplied electronically, or by people who travel to the country in which the service is produced or consumed.

The second type of market access concerns direct and portfolio investment, which have been addressed in the investment chapters of recent agreements. The sales of services via direct investments in foreign markets in fact represent the largest portion of US sales of services. In 2006, the sales of services by majority-owned foreign affiliates of US companies totaled \$806 billion, well in excess of US cross-border service exports the same year.⁴ Sales by these foreign affiliates are one of the principal means by which US companies compete in the global marketplace. This is why obtaining the right to establish enterprises, to own controlling interests in them, and to structure them in the way most appropriate for a given market, is so very important.

The negative list

As has been in the case with all recent US free trade agreements, market access for services trade and investment should be based on a negative list approach, which ensures comprehensive coverage, and is a proven model. It is essential that this approach be maintained in the TPP negotiations.

Investor Protections

The investment provisions of US trade agreements have significant impact on US service suppliers. Sufficient investor protections are crucial for investor confidence, and in creating a climate in the host country in which high-quality, long-term investment can be attracted. TPP countries have benefited tremendously from such investment.

Among the most important elements of a sound investment regime is the investor-state arbitration mechanism.

With the exception of the US-Australia and Bahrain FTAs (investment issues were covered by a separate, pre-existing Bilateral Investment Treaty in the latter case), all recent US FTAs have included investor-state provisions. This standard should be maintained in the TPP.

⁴ Bureau of Economic Analysis, Survey of Current Business, October 2008. The figure cited is the latest available.

We ask negotiators to observe several other characteristics of a sound investment chapter. These include a broad definition of “investment,” which includes portfolio investment, not solely cross-border investments with long-term aims. Appropriate protections against expropriation are central to an FTA investment chapter, and investors should also have the ability to transfer all payments related to an investment. Finally, the application of the investment chapter of the agreement should be retrospective; that is to say, the new protections should apply to pre-existing investments, as has been in the case in our earlier bilateral investment treaties.

Transparency

The TPP should include strong commitments on regulatory transparency, which is an essential companion to trade liberalization. While the existing P-4 agreement does contain transparency language, it is essential that it be renegotiated to reflect the standards in US FTAs.

Regulatory practice in the services sector has developed unevenly and often at odds with market access and national treatment commitments. Good commitments to liberalize trade and investment in services can be undermined by regulatory actions taken without prior publication and comment by affected interests.

Transparency provisions commit our FTA partners to apply transparency disciplines that have been extensively tested in the United States, where the experience is that they have improved the quality of US government regulatory practices. Nowhere is this more important than in the services sector, where government regulation is prevalent.

The TPP must contain cross-cutting disciplines to promote greater regulatory transparency for all services. In particular service sectors, additional transparency requirements can be scheduled for that sector, including broader regulatory reform as necessary and appropriate. Some sectors may need little supplementation, while other sectors may need many special rules tailored to that sector.

OBJECTIVES BY SECTOR

The following section discusses the basic principles that should be observed, by industry sector, in these negotiations.

Express Delivery

The TPP should include express delivery, customs and trade facilitation, competition, and investment commitments that are at least as strong as those negotiated in the recent Free Trade Agreements. Moreover, as with past FTAs, the final TPP provisions should improve upon these prior FTAs.

Express delivery, customs and trade facilitation, competition, and investment commitments should apply equally to all TPP participant countries to ensure that regional harmonization

benefits are fully achieved.

USTR should consider negotiating new templates and text language regarding customs, trade facilitation, express delivery services and other areas to maximize regional economic integration and efficient supply chain management.

Financial Services

The agreement should include the right to establish and own 100% of any investment, choice of juridical form, full national treatment and elimination of non-prudential regulatory barriers to achieve equal conditions of competition, and enhanced terms of transparency. Such standards would ensure that American companies can compete effectively in participating countries' financial services markets and are encouraged to develop new and innovative products.

The agreement should provide for an ongoing dialogue with regulators to address not only issues arising out of the agreement, but also continued reform and the alignment of participating countries' financial services regulations with global best practices as these develop. The US-Japan Regulatory Reform and Competition Policy Initiative is a model for such a dialogue.

Electronic Payment Systems

The Trans-Pacific Partnership presents a new opportunity to ensure that the electronic payments industry receives even stronger attention and protection in upcoming trade negotiations and international trade agreements. Identifying and closing existing gaps in coverage through the negotiation of the TPP would help create a more open and secure business climate and regulatory environment for the US industry. Three specific objectives for the industry are to enhance the electronic payments industry's access to foreign markets, to ensure that foreign governments create a competitive marketplace through transparent regulation, and to ensure that electronic payments providers maintain control over and are able to freely move information.

1. Enhance Access to Markets

The Trans-Pacific Partnership should explicitly secure full national treatment and most favored nation treatment for the US electronic payments industry.

There should be no requirement that payment cards be co-branded or co-processed with a local or domestic entity as a condition to market entry. This should include a prohibition on requirements to process all or any part of an electronic payment system transaction within the territory of a Party to the Agreement or through a national of a Party to the Agreement.

There should be no restrictions with respect to the type of legal entity or joint venture required for participation in the industry.

If governments establish or maintain a state-owned enterprise to compete in the electronic payment systems market, those entities should operate in a commercial manner consistent with general principles of non-discriminatory treatment.

2. Create Competitive Markets through Transparent Regulation

The electronic payments industry needs an affirmative right to determine who may have access to their network to prevent governments from mandating compulsory access for competitors, including any government entities. This should specifically include individual operator's rights to freely select all participants in and members and customers of the operator's electronic payment system and to set requirements for access.

Transparency provisions should apply to all electronic payments industry services, regardless of whether they are provided cross-border. They should also apply to informal regulatory processes which are common and can create problems in some countries.

3. Ensure Data Security and Free Movement of Information

Cross-Border Processing of Electronic Payment System Transactions. Industry needs the ability to process a transaction, i.e. the authorization, clearing and settlement steps which require the transmission of financial information, outside of the country where a transaction originates.

E-Commerce

The E-Commerce provisions in existing US FTAs, particularly that with Korea, should be adopted in the TPP. Electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form. Trade classification should ensure the most liberal treatment possible. Software and other digital products should be duty free.

The cross-border data processing commitments in the Financial Services chapters of existing FTAs should be extended to the other countries as part of the TPP.

Telecommunications

The TPP Agreement should include full market access and national treatment for services supplied crossborder and through commercial presence for basic telecom services, and value-added network services.

It should provide for pro-competitive, cost based interconnection.

The TPP should ensure that countries grant licenses in mobile telecommunications and liberalize the fixed line sector more quickly, and commit to ensuring rights of way, requiring number portability, and allowing resale.

The TPP should ensure fair, transparent, and pro-competitive regulatory processes, and independence and impartiality of the regulator. Independent regulators should have sufficient sanctioning power to prevent abuse by telecommunications monopolies.

The agreement should include specific timeframes for eliminating cross-subsidies and other anti-competitive practices.

New entrants and new technologies should be allowed the freedom to respond innovatively without burdening them with traditional telecommunications regulation.

Audiovisual Services

The agreement should include full market access and national treatment for production, distribution, and projection services (including cinema theater ownership and management) for motion pictures and sound recordings.

It should provide for full market access and national treatment for radio and television services and transmission services.

It should contain strong E-commerce provisions, consistent with the existing FTAs.

Customs valuation should be based on the carrier medium.

Intellectual Property

The TPP agreement should include measures to ensure IP protection and strengthen enforcement. Since piracy in both hard goods and digital format continues to be rampant in TPP member countries, the agreement should make parties to the agreement comply with "TRIPs plus," ratify and implement WIPO Internet Treaties, include provisions for anti-camcording and optical disc regulations, and provide for incentives to facilitate cross-industry cooperation to combat piracy.

Energy Services

Both market access and regulatory issues should be addressed in the TPP negotiations. The agreement on energy services should ensure the broadest possible market access commitments. Energy services providers should have the opportunity to distribute their services both crossborder, and through direct investment. The TPP should cover the full array of commercial activities to encompass new energy activities and technologies.

To ensure that energy services providers can use the best available technology, market access should be allowed without regard for the technology used to provide the energy services. Energy services providers should also be allowed to import, on a temporary duty-free basis, tools of the trade and equipment essential to the provision of those services.

Energy services companies should also have the right to the temporary entry of essential personnel with highly specialized skills necessary to provide a covered service.

Regulatory systems should provide:

- transparency in the formulation, promulgation and implementation of rules, regulations, licenses, technical standards, and arbitration and judicial review;
- non-discriminatory third-party access to and interconnection with energy networks and grids;
- an independent regulatory authority separate from and not accountable to any supplier of energy services; and
- transparent, objective and timely procedures for the allocation of scarce network resources, such as transmission capacity and rights of way.