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Rebuilding the Global Economy

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MEMORANDUM ON

IMPROVING US PERFORMANCE IN SERVICES TRADE

To: The Deputy United States Trade Representative and Ambassador to the World Trade Organization
From: J. Bradford Jensen
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Background: The United States produces roughly 30 percent of the world's services, the largest portion in the world. China, the next largest producer of services, accounts for about 13 percent of global services value added. US cross-border services exports totaled $830 billion in 2018, or 14 percent of global services exports. As a result, the United States runs a persistent *trade surplus* in services. Given the inherently local nature of many services—they often require local in-person delivery and/or provision by locally regulated entities—US trade in services through foreign affiliate sales is consistently larger than US cross-border trade in services. Sales by foreign affiliates of US services firms totaled $1.6 trillion in 2017.

Despite its globally competitive services sector, the United States' performance is hampered by many impediments to cross-border trade, restrictions on foreign direct investment, and regulatory differences.

Policy impediments to increased services trade affect a wide range of American workers and firms. Business services (e.g., information, financial services, engineering, architecture, research and development) employ almost 25 percent of American workers. Personal services (e.g., education, health, entertainment) employ another 28 percent. In contrast, agriculture employs roughly 3 percent of American workers and the manufacturing sector employs about 8 percent of American workers. The World Trade Organization (WTO) would be a natural place to pursue services trade liberalization, but it seems unlikely that progress can be made under existing WTO frameworks.[1] The positions of major players differ significantly, are firmly entrenched, and tied to a web of other issues. Accordingly, other courses of action must be adopted.

1 Ambassador Michael Punke testimony to House Committee on Ways and Means, Subcommittee on Trade, September 20, 2012.

PRIORITY 1: Join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

The United States should negotiate to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the agreement the other 11 countries in the Trans-Pacific Partnership (TPP) negotiated and signed after the United States withdrew from the TPP.

The TPP, which was signed during the Obama administration but never ratified, would have been the most comprehensive trade and investment pact since the creation of the WTO in 1995. It would have eliminated a broad range of barriers to international trade and investment and established strong rules barring domestic policies that distort international trade in services and investment flows. Provisions in the TPP would have provided protections for US services firms.

Joining the CPTPP would provide US services firms better access and better protections in a region representing the third largest free trade area in the world (after the United States-Mexico-Canada area and the European Single Market). While the CPTPP suspended 22 provisions from the TPP (a number of which were important to US services firms), the CPTPP still provides important protections in a number of areas (including the chapters on cross-border trade in services, investment, financial services, temporary entry for business persons, telecommunications, electronic commerce, state-owned enterprises, intellectual property, regulatory coherence, and government procurement). To the extent it is possible for the United States to negotiate to include TPP provisions that were suspended in CPTPP, joining would be even better.

A reinvigorated CPTPP/TPP would provide an important example of a high-quality agreement on services trade (covering a significant share of global economic activity) and could provide a "competitive liberalization" impetus to services trade discussions within the WTO.

PRIORITY 2: Resuscitate the Trade in Services Agreement

The United States should try to resuscitate the Trade in Services Agreement (TiSA), which was launched in 2013 and drew 23 economies around the world into negotiations that were never completed with the adoption of an official treaty. As an initiative focused exclusively on the services sector, the TiSA would draw upon best practices from trade agreements around the world and provide rules to foster fair and open trade across the full spectrum of services industries. TiSA also intends to address new issues confronting international trade in services, including restrictions on data flows and forced data localization. It also aspires to promote the development of strong, transparent, and fair regulatory policies. The 23 economies participating in the TiSA negotiations represent nearly 70 percent of the world's $55 trillion services market. A reinvigorated and formalized TiSA would consolidate rules accepted by a large and diverse group of countries, laying the foundation for extending them to the multilateral system.

PRIORITY 3: Develop an international framework for privacy and data flows

The United States should press for an international framework for protection of privacy and data flows. The TiSA negotiations failed to resolve the different approaches taken by Europe and the United States on how consumer information is shared and privacy is protected. The United States Trade Representative (USTR) should convene a forum to bring together countries that respect the rule of law (and include other major players like the state of California) to develop a framework that balances the legitimate interests of consumers and citizens who want to control the use of their personal data, with business interests in providing valuable services to consumers in exchange for the use of their data, and also with government agencies that have an interest in monitoring data flows to protect their countries against national security, terrorist, and criminal threats.

PRIORITY 4: Reform government procurement

The United States should push for greater participation in the WTO's Agreement on Government Procurement (GPA). The agreement calls on countries to allow companies around the world to compete for government contracts. Programs like "Buy American" on US government procurement contracts fail to recognize that governments abroad are important purchasers of US goods and services and may retaliate if they are unable to bid on US contracts. In fact, government spending as a share of GDP ranges from 20 percent to more than 50 percent across countries. Governments purchase not only things like steel and concrete but also a range of services, from insurance, telecommunications, data processing, engineering, architecture, design to management consulting. This is an important source of potential contracts for American services firms, yet many countries are not signatories to the WTO GPA. US leaders on both sides of the aisle have proclaimed their support for "Buy American" provisions in government services without realizing that a more robust GPA in the WTO would enable competitive US firms to get contracts in other countries. The United States and the world would benefit from making government procurement fair and open.

PRIORITY 5: Work toward mutual recognition of regulations and regulatory convergence

US policymakers should continue to work toward mutual recognition of regulations and regulatory convergence. Many services industries are (appropriately) regulated by domestic government agencies. While the objectives of this domestic regulation typically have the common goal of protecting consumers, sometimes the approaches to and methods for regulating domestic industries have evolved differently in different countries. Frequently, the different approaches yield similar outcomes. Yet, the different approaches (e.g., different licensing or accreditation standards) can prove to be an impediment to either cross-border provision or commercial presence. USTR should continue to work with like-minded countries to identify opportunities for mutual recognition in regulation or regulatory convergence/alignment where possible.

ACTIONABLE TO-DO LIST:

- Join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which would provide US services firms better access and better protections in a region representing the third largest free trade area in the world.
- Reinvigorate and formalize the Trade in Services Agreement, which would foster fair and open trade across the full spectrum of services industries.
- Convene a forum to bring together countries that respect the rule of law (and include other major players like the state of California) to develop a framework for data flows and protecting privacy.

- Push for greater participation in the WTO's Agreement on Government Procurement to make government purchases of goods and services fair and open.
- Continue to work with like-minded countries to identify opportunities for mutual recognition in regulation or regulatory convergence/alignment where possible.