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THE DEPTH OF THE TRADE IN SERVICES AGREEMENT

*Harold Godsoe**

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* Harold Godsoe is a student in the LLM program in International Legal Studies at American

I. INTRODUCTION

The Trade in Services Agreement (TISA)¹ is set against a history of frustration. The concessions through the General Agreement on Trade in Services (GATS) system have fallen well short of expectations.² Current concessions in service sectors date from the conclusion of the GATS at the end of the Uruguay Round in 1995. Ten years of service negotiations in the World Trade Organization (WTO) have failed to produce conclusive results,³ and stand-alone service negotiations in 2000 failed to make progress.⁴ Of the 211 Preferential Trade Agreements (PTAs) in force in 2012, only 89 cover services. The United States, Singapore, and Chile negotiated the majority of these agreements primarily after 2000.⁵ One veteran of the Doha negotiations lamented that because the Doha negotiators were discouraged by the complexity of service liberalization, they “spent maybe five–ten percent of their time on services and sixty–seventy percent of their time on goods and agriculture.”⁶ As stated by Deputy USTR Michael Punke in 2012, the “genesis of [TISA]...lies in our hard-nosed assessment that we simply will not be able to make real progress on services trade liberalization any time soon under existing WTO frameworks.”⁷

Service negotiations are hard. The glaring and unexamined question is: Why? This paper will examine the current trade literature on what is known about TISA to date and subject that information to a feasibility analysis for trade in service agreements. The goal is to understand what went wrong in previous attempts to liberalize services and/or trade, what might be going wrong in TISA, and how it might be made right. In the end, the article will conclude that TISA’s potential will not be realized on its current course. The only feasible aspects of the agreement are its recognition of dormant economic and political potential. Deficiencies include multilateral consensus, regulatory hurdles, credence among the parties, and a basic understanding of the effects of service liberalization. Further lacking are the resources needed to approach these deficiencies. This paper offers two primary recommendations. First, there is a need for more research, theory and data collection on trade in services to address a critical lack in both understanding and persuasive power. Second, there is a need for an independent multilateral effort toward regulatory

¹ The working name of the services agreement was changed from an “International Services Agreement (ISA)” to the “Trade in Services Agreement (TISA)” immediately prior to the publication of *U.S., EU at Odds*, *infra* note 27.

² Stuart Harbinson & Aik Hoe Lim, *Trade in Services*, in *THE TRANS-PACIFIC PARTNERSHIP: A QUEST FOR A TWENTY-FIRST CENTURY AGREEMENT* 133, 133 (C. J. Lim et al. eds., 2012).

³ *Id.*

⁴ *Id.* at 134.

⁵ *Id.* at 135.

⁶ J. Bradford Jensen, Book Release Address given at the Peterson Institute for International Economics: Global Trade in Services: Fear, Facts, and Offshoring (Oct. 18, 2011), http://www.piie.com/events/event_detail.cfm?EventID=202.

⁷ *USTR Takes First Steps to Services Negotiations*, WASHINGTON TRADE REPORT (Jan. 21, 2013) [hereinafter WASHINGTON TRADE REPORT].

convergence—prior to TISA—with recognition of the supremacy of national decision-making.

Part I will describe the elements and issues of TISA as they stand at this point in negotiations. Part II will work through a seven-factor feasibility analysis of the agreement. Part III will draw upon the preceding analysis to offer recommendations.

II. THE ELEMENTS OF TISA

A. Plurilateral Negotiations

TISA was proposed in a policy brief from the Peterson Institute for International Economics in January 2012.⁸ Since then, preliminary talks have taken place among a plurilateral group of twenty-one WTO members⁹ originally referred to as the “Real Good Friends” of Services coalition.¹⁰ In December 2012, participants agreed to a rough framework for the formal discussions.¹¹ Formal notification of negotiations was provided to the U.S. Congress in January 2013,¹² where the initiative already enjoyed strong support.¹³ However, other TISA Negotiating Parties (Negotiating Parties) must fulfill their own domestic procedures for beginning a new trade negotiation before full negotiations may begin.¹⁴ The details of TISA negotiations and scheduling are unsettled,¹⁵ but if everything works as planned, the agreement is anticipated to conclude by 2014.¹⁶

⁸ *Peterson Institute Argues for Services Deal Along Lines of U.S. Position*, INSIDE U.S. TRADE (May 3, 2012), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/04/2012/peterson-institute-argues-for-services-deal-along-lines-of-us-position/menu-id-710.html> [hereinafter *Peterson Institute*].

⁹ These members are: Canada, the United States and Mexico in North America; the European Union plus Iceland, Norway, and Switzerland in Europe; Australia, New Zealand, Hong Kong, Taiwan, Japan, and South Korea in Asia; Chile, Colombia, Costa Rica, Panama, and Peru in Central and South America; and Israel, Pakistan, and Turkey in the Middle East. Matthew Kronby & Milos Barutciski, *The Trade in Services Agreement: Opportunities for Canadian Service Suppliers*, BENNETT JONES LLP, (Apr. 3, 2013), http://www.bennettjones.com/Publications/Updates/The_Trade_in_Services_Agreement__Opportunities_for_Canadian_Service_Suppliers/#page=1.

¹⁰ WASHINGTON TRADE REPORT, *supra* note 7 at 1; *Punke Outlines U.S.-EU Differences on ITA Expansion, New Services Deal*, INSIDE U.S. TRADE (Mar. 22, 2012), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-03/23/2012/punke-outlines-us-eu-differences-on-ita-expansion-new-services-deal/menu-id-710.html> [hereinafter *Punke Outlines*].

¹¹ *USTR Says It Will Seek To Cover New Services In Plurilateral Agreement*, INSIDE U.S. TRADE (Jan. 17, 2013), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-01/18/2013/ustr-says-it-will-look-to-cover-new-services-in-plurilateral-agreement/menu-id-710.html> [hereinafter *USTR Says*].

¹² WASHINGTON TRADE REPORT, *supra* note 7 at 1.

¹³ WASHINGTON TRADE REPORT, *supra* note 7 at 5.

¹⁴ *USTR Says*, *supra* note 11.

¹⁵ Amy Porges, Panel discussion at the International Trade and Law Society Distinguished Alumni Dinner: The Impact of a Successful E.U.-U.S. Trade Agreement and the Transpacific Partnership Agreement on World Trade (Apr. 22, 2013) (on file with American University, Washington College of Law).

¹⁶ Kronby & Barutciski, *supra* note 9.

B. A Standalone Deal Outside of the WTO

A subset of WTO members committed to trade liberalization is negotiating TISA as a stand-alone deal outside the WTO.¹⁷ However, other WTO members could potentially join the negotiations, and the deal could later be brought into the WTO framework through a vote of members, similar to the manner in which the Government Procurement Agreement (GPA) was brought under the WTO.¹⁸

C. Market Access Expectations

TISA negotiations are expected to reflect new types of services that have emerged since GATS was negotiated.¹⁹ These Negotiating Parties generally seek to expand market access concessions.²⁰ Sectors that have been expressly included on the agenda are telecommunications,²¹ insurance,²² digital media,²³ engineering,²⁴ accounting,²⁵ higher education,²⁶ and audiovisual services.²⁷

D. Positive List for Scheduling Market Access Concessions

Negotiating Parties have agreed to a positive list for scheduling market access concessions²⁸ that obligates countries to open only those

¹⁷ Kronby & Barutciski, *supra* note 9.

¹⁸ Peterson Institute, *supra* note 8.

¹⁹ Kronby & Barutciski, *supra* note 9.

²⁰ Kronby & Barutciski, *supra* note 9.

²¹ Jeffrey J. Schott et al., *Understanding the Trans-Pacific Partnership*, in 99 POLICY ANALYSES IN INTERNATIONAL ECONOMICS 31 (2013).

²² *Id.*

²³ *Id.* at 21; Office of the United States Trade Representative, *Interagency Trade Policy Group Holds Public Hearing on Negotiating Objectives for International Services Agreement Negotiations*, (Mar. 12, 2013), <http://www.ustr.gov/about-us/press-office/press-releases/2013/march/tpsc-services-hearing> (quoting Deputy Assistant U.S. Trade Representative for Services Christopher P. Melly's Opening Statement at a Public Hearing before the Trade Policy Staff Committee on an International Services Agreement).

²⁴ Schott et al., *supra* note 21; OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *supra* note 23.

²⁵ Schott et al., *supra* note 21; OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *supra* note 23.

²⁶ Schott et al., *supra* note 21; OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *supra* note 23.

²⁷ The European Union has never made, and does not want to make, any commitments on audiovisual services, but the U.S. has indicated that it will press Europe on this issue. *U.S., EU at Odds Over Audiovisual Services In Plurilateral Negotiations*, INSIDE U.S. TRADE (Mar. 28, 2013), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-03/29/2013/us-eu-at-odds-over-audiovisual-services-in-plurilateral-negotiations/menu-id-710.html> [hereinafter *U.S., EU at Odds*].

²⁸ *Compromise 'Hybrid' Approach For Services Deal Largely Follows GATS*, INSIDE U.S. TRADE (Oct. 9, 2012), <http://insidetrade.com/201210092412372/WTO-Daily-News/Daily-News/compromise-hybrid-approach-for-services-deal-largely-follows-gats/menu-id-948.html> [hereinafter *Compromise*]; *Geneva Services Group Picks Scheduling Approach To Attract BRICS*, INSIDE U.S. TRADE (Feb. 7, 2013), <http://insidetrade.com/201302072423893/WTO-Daily-News/Daily-News/geneva-services-group-picks-scheduling-approach-to-attract-brics/menu-id-948.html> [hereinafter *Geneva*].

sectors that they specifically schedule to foreign competition.²⁹ A negative list would open all sectors to foreign competition, except for sectors carved-out of the agreement.

The use of a positive list approach has no real consequences for the negotiation of market access concessions as compared to a negative list approach.³⁰ A negative list with a great number of carve-outs would be identical to a limited positive list. These two approaches can be thought of as glass-half-full and glass-half-empty perspectives on scheduling concessions and may affect early negotiations in a corresponding way—it is easier to begin with the optimistic attitude that accompanies positive control as opposed to the pessimistic attitude that accompanies negative control. Concrete consequences resulting from the choice of methods could arise for future, not-yet-existent services, which would automatically be covered by a negative list. Those sectors could not be specifically listed at the time of negotiation, but would be subject to inclusion in the agreement through periodical negotiations under the positive approach.³¹ Coverage of not-yet-existent services was an explicit goal of the United States;³² however, negotiators have indicated that not-yet-existent services might still be captured through a flexible definition of service categories or a process for modernizing concessions after an initial deal is inked.³³ Additionally, the positive list approach more closely follows the GATS scheduling commitments,³⁴ which a) makes TISA easier to potentially integrate into the current GATS architecture;³⁵ b) makes it easier for the European Commission to argue that TISA is a continuation of the multilateral negotiations in the Doha Round and, thereby, avoid requesting a new negotiating mandate; and, c) acknowledges Negotiating Parties' interest in attracting China and other emerging markets to a more familiar agreement.³⁶

E. Negative List for National Treatment Commitments (The New Hybrid Approach)

Under the GATS structure, WTO members also used a positive list to negotiate national treatment. In other words, in those areas that WTO members agreed to liberalize, they reserved the right to treat domestic providers more favorably than foreign ones except in those specific areas

²⁹ *Compromise*, *supra* note 28; *Geneva*, *supra* note 28.

³⁰ *U.S., Other WTO Members See 'Hybrid' Approach On Services Plurilateral*, INSIDE U.S. TRADE (Sept. 20, 2012) <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-09/21/2012/us-other-wto-members-see-hybrid-approach-on-services-plurilateral/menu-id-710.html> [hereinafter *Hybrid*].

³¹ *'Positive List' In Services Deal Requires Periodic Renegotiation Says CSI President*, INSIDE U.S. TRADE (Feb. 5, 2013), <http://insidetrade.com/201302052423579/WTO-Daily-News/Daily-News/positive-list-in-services-deal-requires-periodic-renegotiation-says-csi-president/menu-id-948.html> [hereinafter *Positive List*]; *USTR Says*, *supra* note 11.

³² *Positive List*, *supra* note 31; *USTR Says*, *supra* note 11.

³³ *Positive List*, *supra* note 31; *USTR Says*, *supra* note 11.

³⁴ *Geneva*, *supra* note 28.

³⁵ *Geneva*, *supra* note 28; *Positive List*, *supra* note 31; *Hybrid*, *supra* note 30.

³⁶ *Geneva*, *supra* note 28; *Hybrid*, *supra* note 30.

where they agreed to National Treatment commitments. In TISA, by contrast, members will be obligated to provide full National Treatment commitments in all liberalized sectors unless they specifically carve-out the areas in which they reserve the right to treat domestic providers more favorably than foreign ones.³⁷ Using a combination of positive and negative lists to schedule market access and National Treatment commitments has been labeled a “hybrid” approach.³⁸ Expansion of the principle of nondiscrimination was a stated goal of the Negotiating Parties.³⁹

F. Ratchet-in & Standstill Lock-ins for National Treatment (But Not for Market Access)

TISA is expected to lock in liberalization undertaken unilaterally by parties since the GATS came into force.⁴⁰ The Negotiating Parties have agreed that TISA will prohibit signatories from going back on National Treatment commitments that exist under their current regime.⁴¹ This is referred to as the standstill commitment. TISA negotiators will also extend unilateral National Treatment commitments to all other signatories, preventing them from backing off those concessions,⁴² an obligation referred to as a ratchet.

Like the positive list for scheduling market access concessions, Negotiating Parties adopted these approaches in part to attract other WTO members to the agreement in the future. In GATS, the ratchet and standstill obligations also apply only to National Treatment commitments, and not to market access concessions.⁴³ However, Negotiating Parties viewed application of the ratchet and standstill obligations as potentially inhibiting to future liberalization, if signatories’ incremental improvements to market access were inflexible and legally binding.⁴⁴

³⁷ *Compromise*, *supra* note 28; *Geneva*, *supra* note 28; Kronby & Barutciski, *supra* note 9; *USTR Says*, *supra* note 11.

³⁸ *Geneva*, *supra* note 28; *Positive List*, *supra* note 31.

³⁹ Office of the United States Trade Representative, *U.S. Trade Representative Ron Kirk Notifies Congress of Intent to Negotiate New International Trade Agreement on Services* (Jan. 15, 2013) <http://www.ustr.gov/about-us/press-office/press-releases/2013/january/ustr-kirk-notifies-congress-new-itas-negotiations> [hereinafter *USTR Notification*]; Office of the United States Trade Representative, *supra* note 23; Kronby & Barutciski, *supra* note 9.

⁴⁰ *USTR Notification*, *supra* note 39; Office of the United States Trade Representative, *supra* note 23; Kronby & Barutciski, *supra* note 9.

⁴¹ *Geneva*, *supra* note 28.

⁴² *Geneva*, *supra* note 28.

⁴³ *Geneva*, *supra* note 28.

⁴⁴ *WTO Members Discuss Services Deal Elements Linked To Potential Expansion*, INSIDE U.S. TRADE (Oct. 4, 2012), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-10/05/2012/wto-members-discuss-services-deal-elements-linked-to-potential-expansion/menu-id-710.html>.

G. Expectations for New Rules

TISA negotiators have been given a weighty and complex task in assembling a “gold standard, A-grade agreement.”⁴⁵ However, they need not start from scratch. There is already an extensive network of bilateral and regional preferential trade agreements among the negotiating countries, stakeholder and public interest contributions to Negotiating Parties, half-concluded negotiations under the Doha round, and parallel plurilateral service negotiations under the Trans-Pacific Partnership. Drawing on those precedents, the January 2012 Peterson Institute briefing paper recommended that particular provisions of GATS be bolstered in TISA,⁴⁶ creating a “GATS-plus” agreement.

Some provisions will be procedural—the United States has indicated that it wants to ensure greater transparency and predictability for its service providers from their trading partners.⁴⁷ Among other issues, the January 2012 Peterson Institute briefing paper recommended that TISA include new competition policy and mutual recognition of professional credentials.⁴⁸ On cross-border data flows,⁴⁹ the United States has indicated that it will propose equal treatment for electronically delivered goods and services, absolute freedom of cross-border data transfers, and freedom from regulations requiring companies to locate data servers in any particular location.⁵⁰ Australia and New Zealand are opposed to freedom of cross-border data transfers on the grounds that such transfers might not provide adequate protection and control over their citizens’ electronic data.⁵¹

Other provisions will be specific to a particular sector. On financial services, for instance, the United States may push for GATS-plus market access, including the right to establish commercial presence, one hundred percent ownership, and the provision of cross-border services without the requirement to establish commercial presence.⁵² Participants have generally agreed to address provisions such as licensing⁵³ and barriers on investment, including requirements as to residency, form of

⁴⁵ *Mexican WTO Official Advocates Two Stages For New Services Agreement*, INSIDE U.S. TRADE (Sept. 20, 2012), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-12/21/2012/csi-president-confident-ustr-will-push-for-soe-rules-in-plurilateral-deal/menu-id-710.html> [hereinafter *Mexican*].

⁴⁶ *Peterson Institute*, *supra* note 8.

⁴⁷ *USTR Notification*, *supra* note 39; Office of the United States Trade Representative, *supra* note 23; *USTR Says*, *supra* note 11.

⁴⁸ *Peterson Institute*, *supra* note 8.

⁴⁹ Kronby & Barutciski, *supra* note 9; Joshua Meltzer, *The Internet, Cross-Border Data Flows and International Trade*, BROOKINGS RESEARCH (Feb. 2013), <http://www.brookings.edu/research/papers/2013/02/25-internet-data-flows-international-trade-meltzer>.

⁵⁰ *CSI President ‘Confident’ USTR Will Push For SOE Rules In Plurilateral Deal*, INSIDE U.S. TRADE (Dec. 20, 2012), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-12/21/2012/csi-president-confident-ustr-will-push-for-soe-rules-in-plurilateral-deal/menu-id-710.html> [hereinafter *CSI President*].

⁵¹ Schott et al., *supra* note 21, at 32.

⁵² Schott et al., *supra* note 21, at 21.

⁵³ Kronby & Barutciski, *supra* note 9.

establishment, participation in joint ventures, or the satisfaction of economic needs tests.⁵⁴

Both the European Union and the United States have indicated that it is unlikely that members involved in the plurilateral negotiations will have to make commitments on opening up to private competition government-provided services, such as public water utilities.⁵⁵ However, the “trade distorting actions” of State Owned Enterprises are an issue likely to be raised in the negotiations and unfavorably received by other WTO members.⁵⁶ Some parties, although certainly not all, will likely support provisions addressing government procurement of services.⁵⁷

Another specific matter that some of the parties have marked as important is allowing individuals to go to other countries to supply services (called Mode 4 supply in GATS).⁵⁸ Discussions on cross-border movement of workers would begin with improving temporary entry for business people, professionals, and technical experts, including intra-company transfers, which can be important for businesses operating in foreign markets.⁵⁹ The Peterson Institute for International Economics has proposed going further, with liberal rules for the movement of semi-skilled workers.⁶⁰ The United States is generally opposed to liberalization of Mode 4, due to the impact on domestic immigration concerns.⁶¹ Turkey has taken an opposite tack and proposed an entire separate chapter on Mode 4, including binding regulations on how countries grant visas.⁶²

III. A FEASIBILITY TEST FOR TRADE AGREEMENTS

There are seven interrelated factors making cooperation on broad and deep plurilateral liberalization of trade in services increasingly difficult—seven questions which may highlight TISA’s capability to reach its ambitious liberalization and multilateralization goals. First, does TISA and/or services liberalization have the potential to increase trade and make money? Second, what is the collective will among WTO members to implement services liberalization and eventually multilateralize TISA under WTO? Third, what are the domestic political obstacles to participation in TISA? Fourth, what is the potential for critical regulatory convergence among the major international economic players? Fifth, what impact could the recent history of cooperative efforts have on the liberalization and multilateralization of TISA? Sixth,

⁵⁴ Kronby & Barutciski, *supra* note 9.

⁵⁵ *U.S., EU at Odds*, *supra* note 27.

⁵⁶ WASHINGTON TRADE REPORT, *supra* note 7 at 5; *CSI President*, *supra* note 50.

⁵⁷ *Peterson Institute*, *supra* note 8; Kronby & Barutciski, *supra* note 9.

⁵⁸ *Peterson Institute*, *supra* note 8; Kronby & Barutciski, *supra* note 9.

⁵⁹ *Peterson Institute*, *supra* note 8; Kronby & Barutciski, *supra* note 9.

⁶⁰ *Peterson Institute*, *supra* note 8.

⁶¹ *Peterson Institute*, *supra* note 8.

⁶² *EU Proposal On Horizontal Disciplines In Services Talks Met With Skepticism*, INSIDE U.S. TRADE (Mar. 28, 2013), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-03/29/2013/eu-proposal-on-horizontal-disciplines-in-services-talks-met-with-skepticism/menu-id-172.html>.

what do we actually know about the functioning of trade in services under liberalization, and is it enough to actually predict results? Seventh, do negotiators from each country (or at least the major players) have access to sufficient resources of staff and finances to effectively complete the negotiations?

A. The Economic Factor: No Risks in Liberalization for the Developed Countries

The first question is whether a new trade plurilateral agreement has the potential to benefit the parties economically. The economic size of the parties involved in the agreement is substantial. TISA involves twenty-one Negotiating Parties, representing forty-seven economies, and nearly two-thirds of global services.⁶³ Generally, domestic service production is the dominant economic activity in the world.⁶⁴ In low-income economies, service sectors accounted for 45% of GDP, which climbs to 57% in middle-income economies, and almost 71% in high-income economies.⁶⁵

The first factor is whether liberalizing trade in services will actually stimulate those large numbers. If goods and services are essentially economic equivalents, there is a clear and simple economic argument for the liberalization of services: liberalization of trade in goods has correlated very strongly with growth,⁶⁶ and services (unlike goods) are relatively un-liberalized.⁶⁷ There is, however, considerable debate as to whether trade in services is the same kind of trade as trade in goods, and therefore whether the strong correlation of growth with liberalization ought to apply, in theory, to services as well. This potential lack of theoretical understanding dovetails into issues considered under the sixth factor of feasibility. It is possible that the effects of services liberalization are well understood and economically valuable, or neither well-understood nor economically valuable, or only one but not the other. Unfortunately, while the debate is ongoing and evidence is scarce, it is difficult to separate the two theories—so we must examine both assumptions.

⁶³ Office of the United States Trade Representative, *supra* note 23.

⁶⁴ MAX PLANCK, WTO: TRADE IN SERVICES at ix (Rüdiger Wolfrum & Peter-Tobias Stoll eds., 2008).

⁶⁵ Juan A. Marchetti, *Developing Countries in the WTO Services Negotiations: Doing Enough?*, in WTO LAW AND DEVELOPING COUNTRIES 82, 84 (George A. Bermann & Petros C. Mavroidis, eds., 2007).

⁶⁶ Ian F. Fergusson, *CRS Report for Congress: World Trade Organization Negotiations: The Doha Development Agenda 7–8* (Jan. 18 2008). Trade “plays an independent and positive role in raising incomes” and productivity. OECD, *Trade, Growth and Jobs*, <http://www.oecd.org/tad/tradedev/50447052.pdf> at 1.

⁶⁷ Jensen, *supra* note 6.

1. If Service Liberalization is Similar to Goods

Speaking to the lack of liberalization of services, J. Bradford Jensen, an economist at the Peterson Institute for International Economic, calculates that tradable business services are five times less likely to be exported than manufactured products.⁶⁸ He argues that if the exports-to-sales ratio in tradable business services were increased to the same level as manufacturing, there would be a 40% increase in total U.S. exports.⁶⁹ As Jensen modestly assures, “[e]ven if those aren’t the right numbers, the right numbers are big.”⁷⁰ Additionally, more service exports mean more jobs. USTR estimates that every \$1 billion in U.S. services exports supports an estimated four thousand U.S. jobs,⁷¹ equating to about three million additional jobs. Workers in tradable services earn about 20% more than workers in similar industries, even accounting for their higher education, and service jobs are qualitatively better.⁷² Although these estimates ought to be considered on a country-by-country basis, the basic assumptions about the impact resulting from growth in services exports will often be the same for other developed countries.

Developed countries have the most to gain from liberalization of trade in services. Comparative advantage is the traditional way to think about the opportunities in trade—a country has trading advantage where its factors of production are abundant. For services, the most salient factor is skill/education and, in general, the United States and other developed countries have a great comparative advantage in the amount and quality of highly skilled, or highly educated, service providers.⁷³ The United States is also currently the world’s largest services trader.⁷⁴ Additionally, Jensen speculates that there are obvious future opportunities for developed countries to reap dividends from a coming forty trillion dollar global infrastructure boom, mostly in the emerging economies, involving architecture, financing, engineering, water treatment, and project management services.⁷⁵

For the developed world, there is urgency to capturing Jensen’s benefits. The developing world’s comparative advantage through skilled labor and education is rapidly eroding. In the cohort of individuals between the ages of 25–29 in 2010, the level of education around the world has more or less flattened, compared to the same aged cohort thirty-five years ago (who are now earning their peak lifetime incomes), a cohort group in which the United States clearly had a massive educational comparative advantage.⁷⁶ Also, the coming infrastructure

⁶⁸ Jensen, *supra* note 6; USTR Notification, *supra* note 39.

⁶⁹ Jensen, *supra* note 6.

⁷⁰ Jensen, *supra* note 6.

⁷¹ Office of the United States Trade Representative, *supra* note 23; USTR Notification, *supra* note 39.

⁷² Jensen, *supra* note 6.

⁷³ Jensen, *supra* note 6.

⁷⁴ USTR Notification, *supra* note 39.

⁷⁵ Jensen, *supra* note 6.

⁷⁶ Jensen, *supra* note 6.

boom is likely to be (at least partially) government projects, and many large, fast-growing, emerging economies are not participants in the WTO's Government Procurement Agreement, so interactions between GATS as it is and the GPA would make liberalization within those emerging economies difficult.⁷⁷

If services are traded in the same way as goods—again, still an untested hypothesis—then the risks of the liberalization of services are also best considered through the lens of comparative advantage.⁷⁸ There may⁷⁹ or may not⁸⁰ be justification for widespread concerns about job losses from adjustments in developed economies as a result of liberalized trade; however, even if the fears are justified, developed countries risk limited outsourcing losses from liberalization in services trade. Tradable services are skill intensive, and the United States is (still) relatively skill abundant.⁸¹ Jensen has further found that only about 25% of tradable service jobs are low-wage jobs below the U.S. threshold of comparative advantage—thereby subject to outsourcing. Additionally, no region in the United States has a high concentration of those low-wage tradable service jobs. The jobs that would be dislocated by liberalized service trade are largely in dynamic urban areas, suggesting that whatever impact occurred from the minimal economic displacement would be evenly absorbed into the background of the entire U.S. economy.⁸² Again, country-by-country analysis may reveal differences, but similar assumptions should apply to all large, developed economies.

In contrast to the developed countries, the primary opportunity for developing economies is time. The world is experiencing a hospitable environment for economic catch-up.⁸³ So long as countries have some combination of fundamental background conditions, ideas and blueprints will spread, and firms from developing countries will be able to take advantage of the educational and technological infrastructures of the developed world.⁸⁴ Similarly, time can only add to what little is known now about the underlying factors that determine whether a developing country produces significant service exports. The best we can say is that

⁷⁷ Jensen, *supra* note 6.

⁷⁸ Jensen, *supra* note 6.

⁷⁹ Fifty percent of U.S. manufacturing jobs are still below the U.S. threshold of comparative advantage, suggesting further adjustment in the U.S. economy. Jensen, *supra* note 6.

⁸⁰ Import growth, in general, is a sign of economic recovery, not a sign of increasing displacement of jobs; the effects of manufactured imports have been positive on equality and welfare, and manufactured imports have had no effect on jobs and wages, rather, the declining trend in US manufacturing employment has been driven by the combination of a shift in domestic demand away from spending on goods and faster productivity growth in manufacturing. Lawrence Edwards & Robert Lawrence, *Rising Tide: Is Growth in Emerging Economies Good for the United States?* (Oct. 18, 2011) (book release presentation, delivered at Peterson Institute for International Economics, Washington D.C.), http://www.piie.com/events/event_detail.cfm?EventID=269.

⁸¹ Jensen, *supra* note 6.

⁸² Jensen, *supra* note 6.

⁸³ JEFFRY FRIEDEN ET AL., *AFTER THE FALL: THE FUTURE OF GLOBAL COOPERATION* 76 (2012), available at <http://www.voxeu.org/sites/default/files/Geneva14.pdf>.

⁸⁴ *Id.*

education and human capital is critical for certain service sectors,⁸⁵ and developing economies are only going to close the education gap.⁸⁶

Jensen asserts that developing economies need access to cheap services to build their infrastructures.⁸⁷ Additionally, service exports typically require much more infrastructure for the importer than the exporter and, in such a case, a developing country can compete on a very high level with minimal investment at home.⁸⁸ However, negotiating service trade agreements is resource-intensive, and so developing countries that face challenges negotiating the agreement may be more motivated to join in when the work is done, and their own service sectors are stronger.

2. *If Service Liberalization is Different*

Taking economists at their word, some progress has been made in analyzing the economic effects of service trades in the special form of trade-in-tasks, or outsourcing. Trade-in-tasks has been shown to be theoretically analogous to migration of foreign factors of production to the outsourcing nation while retaining foreign costs.⁸⁹ Gene Grossman and Esteban Rossi-Hansberg, who introduced the idea of trade-in-tasks, have shown that this conception of trade is economically beneficial in a formal analogy with technological improvement.⁹⁰ At the same time, Robert Baldwin and Frédéric Robert-Nicoud have introduced an analytic framework which takes into account known special cases and integrates trade-in-tasks theory with mainstream trade theory,⁹¹ adding certainty to the problem of unexpected outcomes⁹² and inapplicability of standard trade theorems.⁹³ As it continues to develop, the theory of trade-in-tasks may offer further assurances that the familiar beneficial effects of trade liberalization under GATT will continue.

B. The Consensus Factor: No Multilateralization

The second factor is the sum of any evidence for bringing the trade agreement to the multilateral system. In this area, the TISA Negotiating

⁸⁵ Arti Grover Goswami et al., *Exporting Services: A Developing Country Perspective*, in EXPORTING SERVICES: A DEVELOPING COUNTRY PERSPECTIVE 2, 18 (World Bank 2012).

⁸⁶ Jensen, *supra* note 6.

⁸⁷ Jensen, *supra* note 6.

⁸⁸ Goswami et al., *supra* note 85 at 5.

⁸⁹ Robert Baldwin & Frédéric Robert-Nicoud, *Trade-in-Goods and Trade-in-Tasks: An Integrating Framework* at 3–5 (Nat'l Bureau of Econ. Research Working Paper, 15882, Apr. 2010) available at <http://www.nber.org/papers/w15882>.

⁹⁰ Gene M. Grossman & Esteban Rossi-Hansberg, *Rise of Offshoring: It's Not Wine for Cloth Anymore*, 2–3 (2006), http://www.princeton.edu/~pcglobal/research/papers/grossman_rise_offshoring_0602.pdf [hereinafter *Rise of Offshoring*]; Gene M. Grossman & Esteban Rossi-Hansberg, *Trading Tasks: A Simple Theory of Offshoring*, 98 AM. ECON. REV. 1978, 1980 (2008) [hereinafter *Trading Tasks*]; Baldwin & Robert-Nicoud, *supra* note 89, at 5.

⁹¹ Baldwin & Robert-Nicoud, *supra* note 89, at 5.

⁹² Baldwin & Robert-Nicoud, *supra* note 89, at 3–5.

⁹³ Baldwin & Robert-Nicoud, *supra* note 89, at 5.

Parties have made a gamble by not including the large, emerging economies—believing that there will be enough pressure from a final agreement to force a multilateral adoption.⁹⁴ The desire of the TISA Negotiating Parties to “redefine global trade”⁹⁵ and then multilateralize the agreement at the WTO—most likely through the use of GATT Article V⁹⁶—has been quite explicit.⁹⁷ However, despite deep divisions on the question of new entrants to TISA,⁹⁸ the Negotiating Parties are unlikely to extend the benefits of a deal until a critical mass of WTO members join, to avoid the free riders problem—new countries receiving benefits from TISA without making any concessions during the negotiations.⁹⁹ Reaching the critical mass of new entrants is an unlikely achievement.

Although many of the TISA Negotiating Parties have called for the removal of barriers to entry for new entrants these requests are contradicted by equally strong calls for deep commitments that WTO members are unlikely to make.¹⁰⁰ The United States, for instance, is both anticipating and discouraging China’s accession to TISA with regulatory proposals for rules disciplining state-owned enterprises.¹⁰¹

Outside the intentions and capacities of the TISA Negotiating Parties, there is little indication that the large, emerging economies, in particular, have either the capacity or the will to join a multilateral TISA under any mechanism. Politically, the large, emerging economies are not interested,¹⁰² and they have the power to block TISA at the WTO.¹⁰³ Once a plurilateral agreement is concluded, its value may be perceived as having something which is denied to others—possibly motivating countries outside the deal to enter, but equally motivating signatories to refuse entry to countries outside the deal, and so hindering the political

⁹⁴ Gary Horlick, panel discussion, at American University, Washington College of Law: The Impact of a Successful EU-US Trade Agreement and the Transpacific Partnership Agreement on World Trade (Apr. 22, 2013) (unpublished).

⁹⁵ *USTR Notification*, *supra* note 39; Office of the United States Trade Representative, *supra* note 23.

⁹⁶ An agreement made under GATS Article V is required to eliminate discrimination among parties and to cover “substantially all trade” defined by sectors, volumes of trade, and modes of supply. *Peterson Institute*, *supra* note 8; Kronby & Barutciski, *supra* note 9.

⁹⁷ Press Release, Brakeyshia Samms, Deputy U.S. Trade Representative Michael Punke Participates in Workshop on Trade in Services Agreement Negotiations (Mar. 27, 2013), available at <http://www.ustr.gov/about-us/press-office/blog/2013/march/amb-punke-workshop-tisa>; *Korean Minister Stresses Need For Clear Path To Multilateral Services Deal*, INSIDE U.S. TRADE (Sept. 20, 2012), <http://insidetradetrade.com/Inside-US-Trade/Inside-U.S.-Trade-09/21/2012/korean-minister-stresses-need-for-clear-path-to-multilateral-services-deal/menu-id-710.html> [hereinafter *Korean Minister*]; *Positive List*, *supra* note 31; *Hybrid*, *supra* note 30; *Peterson Institute*, *supra* note 8.

⁹⁸ Kronby & Barutciski, *supra* note 9; *Korean Minister*, *supra* note 97; *Mexican*, *supra* note 45.

⁹⁹ Least Developed Countries may be extended the benefits of the services even if they don’t participate in the plurilateral discussion.: *Compromise*, *supra* note 28; *Mexican*, *supra* note 45; *Punke Outlines*, *supra* note 10; Schott et al., *supra* note 21, at 51.

¹⁰⁰ Harbinson & Lim, *supra* note 2, at 145.

¹⁰¹ *Positive List*, *supra* note 31; WASHINGTON TRADE REPORT, *supra* note 7, at 5.

¹⁰² *Positive List*, *supra* note 31; FRIEDEN ET AL., *supra* note 83, at 49. *But see, Brazil hopeful an EU/Mercosur trade accord can be concluded this year*, MERCO PRESS ONLINE: USTR PRESS RELEASES (Apr. 6, 2013), <http://en.mercopress.com/2013/04/06/brazil-hopeful-an-eu-mercosur-trade-accord-can-be-concluded-this-year>.

¹⁰³ WASHINGTON TRADE REPORT, *supra* note 7, at 4.

task of multilateralization,¹⁰⁴ at least in the short term. If TISA is to be a building block rather than a stumbling block to multilateralization, then it must be undertaken with a greater regard for brokering an eventual multilateral global consensus, with more than symbolic concessions to the large, emerging economies.

C. The Constituencies Factor: Liberalization will be Subject to Political Skill

The third factor is whether governments have the support of domestic constituencies to take on new international commitments.¹⁰⁵ One of the lessons of the collapse of nineteenth century globalization was that national governments will be unable to maintain open economies if they do not have the support of their constituents, whether they be narrow elites or broad masses.¹⁰⁶ On the one hand, politicians have the advantage in managing constituencies. Each government's trade agreement may be somewhat crafted in the first place by an active political organization and outside the reach of any transparency in developing trade negotiations. If constituent support turns against a deal, political organizations may be capable of pushing it through. For instance, the governments which negotiated NAFTA in Canada and the United States were both defeated in elections in which anti-NAFTA public sentiment was a significant factor and yet the agreement was ultimately signed by the anti-NAFTA successor governments. On the other hand, in virtually all countries, political incentives are heavily weighted on domestic problems at the expense of international ones,¹⁰⁷ and political capital is not infinite. In the aftermath of the Great Recession, the TISA Negotiating Parties and other WTO members will likely face greater than normal domestic political resistance.¹⁰⁸ Examples of the tenuous balance in the United States, European Union, and Japan, the largest players among the TISA Negotiating Parties, are illustrative.

One major American constituency is firmly in favor of trade liberalization: internationally oriented financial institutions and corporations.¹⁰⁹ In Congress, TISA has strong early support¹¹⁰ and trade agreements have generally fared well: Congress has passed twelve of the fifteen PTAs with hundreds of votes to spare.¹¹¹ Even the ostensibly nationalist and neo-isolationist¹¹² Tea Party is not a protectionist group in

¹⁰⁴ Ann Capling & John Ravenhill, *The TPP: Multilateralizing Regionalism or the Securitization of Trade Policy?* in *THE TRANS-PACIFIC PARTNERSHIP: A QUEST FOR A TWENTY-FIRST CENTURY TRADE AGREEMENT* 279, 287 (C.J. Lim et al. eds., 2012).

¹⁰⁵ FRIEDEN ET AL., *supra* note 83, at 59.

¹⁰⁶ FRIEDEN ET AL., *supra* note 83, at 7.

¹⁰⁷ FRIEDEN ET AL., *supra* note 83, at 33.

¹⁰⁸ FRIEDEN ET AL., *supra* note 83, at 3.

¹⁰⁹ FRIEDEN ET AL., *supra* note 83, at 35.

¹¹⁰ WASHINGTON TRADE REPORT, *supra* note 7, at 5.

¹¹¹ Horlick, *supra* note 94.

¹¹² Walter Russell Mead, *The Tea Party and American Foreign Policy: What Populism Means for Globalism*, FOREIGN AFFAIRS (Mar./Apr. 2011), <http://www.foreignaffairs.com/articles/67455/walter-russell-mead/the-tea-party-and-american-foreign-policy>.

Congress where 65 of its 85 members have approved all the negotiations for three of the new PTAs.¹¹³ On the other side, public opinion toward international trade was more hostile in 2007 in the United States than in any of the other 47 countries regularly surveyed by Pew Charitable Trust.¹¹⁴ While that opinion may be changing with the demographics of the country,¹¹⁵ the majority of Americans, especially those with lower incomes, believe that liberalized trade reduces jobs, wages, and the economy as a whole.¹¹⁶ Only Americans with college degrees and incomes above \$100,000 hold positive views on trade liberalization.¹¹⁷

European public opinion towards trade liberalization in general is more even than in the United States,¹¹⁸ and not as politically charged. However, Europeans overwhelmingly believe that globalization makes society more unequal, and that it is only good for large companies. As an example of political restructuring to win the favor of constituencies, economic growth is presented to the public in Europe as a defensive measure to protect citizens who do not have work, rather than as an economic reward in itself.¹¹⁹ As explained in *The Economist*, “Europe... is not the most dynamic and competitive economy in the world, because lots and lots of Europeans do not want to live in the most dynamic and competitive economy in the world.”¹²⁰ Yet, European politicians must craft trade liberalization. The European Union is confronting some major internal economic issues, and these problems are likely to draw upon much of its politicians’ energies for the foreseeable future.¹²¹

Japanese public opinion has traditionally been more accepting of governmental authority, with a sharp drop in the past two decades following a prolonged economic slump. However, in a very short time, Japan’s Prime Minister Shinzo Abe has generated a great deal of political capital with which to negotiate TISA. The initial results of “Abenomics” seem to be generating a rising stock market and improving business sentiment¹²² and Abe’s Cabinet approval rating now stands above 70%.¹²³ On the other hand, the Japanese organization of agricultural interests, JA-Zenchu, is a strong and vocal protectionist group, representing a predominant public concern with national interests.¹²⁴ Although agriculture is not directly on the table in TISA, JA-Zenchu has

¹¹³ Horlick, *supra* note 94.

¹¹⁴ FRIEDEN ET AL., *supra* note 83, at 35.

¹¹⁵ Horlick, *supra* note 94.

¹¹⁶ FRIEDEN ET AL., *supra* note 83, at 35.

¹¹⁷ FRIEDEN ET AL., *supra* note 83, at 35.

¹¹⁸ FRIEDEN ET AL., *supra* note 83, at 38.

¹¹⁹ *Do Europeans want a dynamic economy?* THE ECONOMIST (Jan. 8, 2010),

http://www.economist.com/blogs/charlemagne/2010/01/do_europeans_want_dynamic_economy.

¹²⁰ *Id.*

¹²¹ FRIEDEN ET AL., *supra* note 83, at 37.

¹²² Pankaj Mishra, *Last refuge of weak leaders*, THE JAPAN TIMES (May 14, 2013),

<http://www.japantimes.co.jp/opinion/2013/05/14/commentary/last-refuge-of-weak-leaders>.

¹²³ *Support for Abe Cabinet slides to 70.9%: poll*, THE JAPAN TIMES (May 20, 2013), <http://www.japantimes.co.jp/news/2013/05/20/national/support-for-abe-cabinet-slides-to-70-9-poll/>.

¹²⁴ Meredith Kolsky Lewis, *Achieving a Free Trade Area of the Asia-Pacific: Does the TPP Present the Most Attractive Path?*, in THE TRANS-PACIFIC PARTNERSHIP: A QUEST FOR A TWENTY-FIRST CENTURY TRADE AGREEMENT 223, 233–35 (C. L. Lim et al. eds., 2012).

weighed in on other issues of national interest, such as health care, in the past.¹²⁵ Additionally, while trade issues are relatively unknown in other countries, discussions of national interests in potential trade agreements are frequently front-page news in Japanese newspapers.¹²⁶

D. The Sovereignty Factor: Shallow Regulatory Convergence

The biggest prize¹²⁷ and the hardest puzzle¹²⁸ for TISA will be greater regulatory convergence. Trade negotiators' traditional area of expertise, border measures, have little bearing on trade in services. Negotiators attempt to get all sides to move towards common rules, or at least regulations that are close enough that each party can accept the others'. The issue at the heart of the agreement will be balancing the diverse thicket of domestic regulations with the needs of international trade.¹²⁹ Negotiations will be difficult.¹³⁰ Domestic regulations are difficult to police,¹³¹ hard to measure,¹³² locally focused and possibly more reflective of entrenched national values than the border measures placed on tangible goods.¹³³ Even in instances where countries' goals are aligned, an unorthodox regulation that buys off the beneficiaries of the status quo

¹²⁵ *Joint Statement from National Farmers' Union (USA) and Ja Zenchu (Japan) Regarding the Lima Round of Trans-Pacific Partnership Negotiations*, INSIDE U.S. TRADE, (May 14, 2013), http://insidetrade.com/index.php?option=com_iwppfile&file=may2013/wto2013_1588.pdf.

¹²⁶ *USTR Official Makes Case For Tokyo's Constructive Participation In TPP*, INSIDE U.S. TRADE (May 15, 2013) <http://insidetrade.com/201305152434424/WTO-Daily-News/Daily-News/ustr-official-makes-case-for-tokyos-constructive-participation-in-tp/menu-id-948.html>.

¹²⁷ Attempts to quantify the effects of these regulatory measures on trade are underway, but incomplete: Jensen, *supra* note 6. According to the WTO, preferential trade agreements that commit to "deep" integration on regulatory measures increase trade between member countries by almost 8%: *The WTO and Preferential Trade Agreements: From co-existence to coherence*, World Trade Report 2011 (Geneva: WTO), available at http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf.

¹²⁸ Domestic regulations with heavy impact on services trade include requirements for and restrictions on commercial presence, economic needs tests, quotas on number of producers, requirements for local joint ventures, licensing/accreditation, regulation, differential tax treatment, and government procurement practices: Jensen, *supra* note 6; Harbinson & Lim, *supra* note 2, at 134; Alan O. Sykes, *The (Limited) Role of Regulatory Harmonization in International Good and Services Markets*, 2 J. INT'L ECON. L. 1, 4970 (1999); Thomas J Bollyky, *Regulatory coherence in the TPP talks*, in THE TRANS-PACIFIC PARTNERSHIP: A QUEST FOR A TWENTY-FIRST CENTURY TRADE AGREEMENT 171, 173 (2012). A further complication in that task would be a shift from the objective of totally unobstructed trade to identifying a level playing field that balances protection of consumers' health and local values, and protection of producers' trade goals. Pascal Lamy, *Lamy: Helping developing countries remains priority but 'nature of trade is changing'*, WTO NEWS (Sept. 25, 2011), https://www.wto.org/english/news_e/sppl_e/sppl249_e.htm.

¹²⁹ Sherry Stephenson, Director Department of Trade, Tourism and Competitiveness, OAS, *Regulatory Disciplines in Trade Agreements* (May 7, 2007) (Presentation delivered at Australian Services Roundtable), http://servicesaustralia.co/file_download/73/regulatory-disciplines-sherry-stephenson-may-07.ppt.

¹³⁰ As an analogy, it is enough to see the example of the frustrated attempts to achieve a convergence in rules of origins.

¹³¹ PLANCK, *supra* note 64, at ix; Kal Raustiala, *Comment on Juan Marchetti's Developing Countries in the WTO Services Negotiations: Doing Enough?*, in WTO LAW AND DEVELOPING COUNTRIES 125, 125 (George A. Bermann & Petros C. Mavroidis eds., 2007).

¹³² Jensen, *supra* note 6; Bollyky, *supra* note 128, at 173.

¹³³ Raustiala, *supra* note 131, at 126.

may be preferable to an orthodox regulatory alignment which is impossible to implement.¹³⁴

Regulatory coherence within TISA will have to be shallow. Due to the fact that all major countries engaging in TISA negotiations are developed economies, these nations have already liberalized their regulatory measures independently, although to varying degrees. For example, both Western Europe and the United States already have low regulatory barriers to trade in services, relative to the rest of the world.¹³⁵ Despite the fact that these regulatory barriers are low, they show no signs of falling any lower. Even between the United States and the European Union, regulators' attempts to move toward common rules have yielded little progress.¹³⁶ WTO rules have been effective in limiting discriminatory regulatory measures, but have done little to eliminate the non-discriminatory regulations that hinder international trade.¹³⁷ Regional trade agreements follow the same approach as the WTO. Governments' rights to regulate are left intact.¹³⁸ Developed countries have been slow in many sectors to adopt international standards.¹³⁹ WTO transparency obligations on regulations of services have also been largely ignored, with developed countries being the worst offenders.¹⁴⁰ Conversely, other trade agreements have not improved collaboration among regulatory agencies,¹⁴¹ and have not been well received by civil society¹⁴² or regulators in the United States¹⁴³ who are not eager to allow their responsibilities (for which they are politically accountable¹⁴⁴) to be subject to potentially increased restrictions.

Among developing countries, there is also little pressure to attempt greater regulatory convergence. They all impose high barriers to trade in services.¹⁴⁵ There is no global forum or mechanism for fostering a discussion of the impacts of service sector policies, or the appropriate design of regulations, which are the preconditions for realizing welfare

¹³⁴ FRIEDEN ET AL., *supra* note 83, at 78.

¹³⁵ Jensen, *supra* note 6.

¹³⁶ *Transatlantic Trading: Why America and Europe need a free-trade deal—and why they might fail to get one*, THE ECONOMIST (Feb. 2, 2013), <http://www.economist.com/news/europe/21571195-why-america-and-europe-need-free-trade-deal-and-why-they-might-fail-to-get-one-transatlantic>.

¹³⁷ Robert W Staiger & Alan O Sykes, *International Trade and Domestic Regulation* (Stanford Law School, Working Paper No. 387, 2009).

¹³⁸ Stephenson, *supra* note 129.

¹³⁹ Donna Roberts & Tim Josling, *Tracking the Implementation of Internationally Agreed Standards in Food and Agricultural Production*, International Food & Agricultural Trade Policy Counsel (2011) available at <http://www.agritrade.org/Publications/documents/Harmonization.pdf>.

¹⁴⁰ Bernard Hoekman & Aaditya Mattoo, *Services Trade Liberalization and Regulatory Reforms: Re-Invigorating International Cooperation* (World Bank Policy Research, Working Paper No. 5517, 2011).

¹⁴¹ Bollyky, *supra* note 128, at 173.

¹⁴² *U.S. Faces Lack Of Enthusiasm On 'Horizontal' Topics In TPP Negotiations*, INSIDE U.S. TRADE (Mar. 11, 2011), <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-03/11/2011/us-faces-lack-of-enthusiasm-on-horizontal-topics-in-tpp-negotiations/menu-id-710.html>.

¹⁴³ *U.S. Proposal For TPP Regulatory Coherence Chapter Mostly Non-Binding*, 29 (43) INSIDE U.S. TRADE (2010) 6–7; FRIEDEN ET AL., *supra* note 83, at 49.

¹⁴⁴ FRIEDEN ET AL., *supra* note 83, at 49.

¹⁴⁵ FRIEDEN ET AL., *supra* note 83 at 48; *Positive List*, *supra* note 31. India boasts the highest barriers on services trade, though it remains outside the TISA negotiations. Jensen, *supra* note 6.

gains from liberalization.¹⁴⁶ Regulatory convergence is likely to remain an exception rather than a rule.¹⁴⁷

E. The Credence Factor: Subject to Improvement; Falling Short of Multilateralization

The fifth factor in the analysis is whether the TISA Negotiating Parties (and other potential members) have a track record of trust, established through prior successes and cooperation. Importantly, the WTO has been the most successful of humanity's efforts at a global system on a major issue.¹⁴⁸ Globally, however, there is a disappointing, checkered record of success for international cooperation on recent international issues.¹⁴⁹ The Center for Economic Policy Research (CEPR) released a gloomy report in 2012 on collective international efforts over the past decade and concluded "optimistic anticipation has...given way to empty phrase-mongering."¹⁵⁰ Resentment toward perceived bullying is another obstacle to collective action. Economist Richard Baldwin makes the argument that twenty-first-century PTAs' are much less about the reciprocal negotiation of market access than about stronger economies—the United States, the European Union and Japan—negotiating in the context of significant power asymmetries and imposing domestic reforms on weaker countries. In other words, strong economies are perceived to be filling the factories of their weaker counterparts in exchange for control over weak countries' domestic regulations.¹⁵¹

Among the TISA Negotiating Parties, the level of credibility is higher—one of the factors which may have led to the initial Good Friends of Services grouping. However, many of the TISA Negotiating Parties have been working on Doha together for over a decade. The failure to strengthen the multilateral system by concluding the Doha Round is an honest embarrassment and major lack of credibility for negotiating countries, especially those at the forefront in the G20.¹⁵² Those members of the G20 who have joined TISA negotiations are: the United States, the European Union (including France, Germany, Italy, and the UK), Canada, Australia, Japan, Mexico, South Korea, and Turkey. Are these countries responsible for the Doha?¹⁵³ The members of the G20 that have not joined the TISA negotiations are: Argentina,

¹⁴⁶ Goswami et al., *supra* note 85, at 4.

¹⁴⁷ FRIEDEN ET AL., *supra* note 83, at 78.

¹⁴⁸ Richard Cunningham, Trade After Doha: The Growing Divide Between the Emerging Nations and the Developed World (Canada-US Law Institute Distinguished Lecture, delivered at Faculty of Law, Western University, Oct. 16, 2011) (unpublished).

¹⁴⁹ FRIEDEN ET AL., *supra* note 83, at 3.

¹⁵⁰ FRIEDEN ET AL., *supra* note 83.

¹⁵¹ Capling & Ravenhill, *supra* note 104, at 290. Interestingly, the situation was reversed during the interwar period: "many Americans felt that existing international organizations did not accurately reflect the role of the US in the world, and were indeed to some extent intended to constrain US influence in favor of the European powers." FRIEDEN ET AL., *supra* note 83, at 6.

¹⁵² FRIEDEN ET AL., *supra* note 83, at 63.

¹⁵³ WASHINGTON TRADE REPORT, *supra* note 7, at 2.

Brazil, China, India, Indonesia, Russia, Saudi Arabia, and South Africa. If responsibility for the withering death of Doha is laid at the feet of these eight countries (BRICS+3?), perhaps that will allow the remaining members of the G20 to negotiate TISA with genuine trust in their partners, and with optimism for the prospect of cooperation.

More broadly, however, is there credence in the concept of a plurilateral or multilateral services agreement at all? The WTO's GATS, the first multilateral agreement to address trade in services, achieved little actual liberalization.¹⁵⁴ In fact, the implementation of GATS does not seem to have had significant effects on global trade at all. It is difficult to separate trade in services from trade in goods. However, while trade grew at roughly 11% per year in the decade before the Uruguay Round (1985–1995),¹⁵⁵ in the decade since the Uruguay Round, the rate has been closer to 5%.¹⁵⁶ It is possible that there may have been an exogenous process that promoted trade in services before GATS, and which ceased afterward. The telecommunication and financial revolutions in the early 1990s are potential contenders.¹⁵⁷ Nevertheless, it is hard to imagine any such combination of processes which would coincidentally negate any and all gains from GATS at precisely the same time that the agreement was coming into effect. The more likely conclusion is that all the growth in trade of services since GATS must be attributed to advances in technology¹⁵⁸ especially in communication technology¹⁵⁹ and also in transportation as well as unilateral liberalizations.¹⁶⁰

GATS did lock in the level of services liberalization that countries had already achieved through unilateral reforms, ostensibly adding certainty to services trade.¹⁶¹ However, many countries committed themselves to levels of openness that were actually less liberal than their applied measures, leaving room for later adjustments within the agreement.¹⁶² Additionally, despite using a limited and cautious approach, the GATS obligations agreed to by WTO members have, in at least one case, turned out to be the reverse of what was intended.¹⁶³ As a result, GATS schedules have grown increasingly irrelevant.¹⁶⁴

If the approach to TISA was considered a clear innovation on GATS, the Negotiating Parties would enjoy the benefit of faith in the potential of

¹⁵⁴ WASHINGTON TRADE REPORT, *supra* note 7, at 2; Fergusson, *supra* note 66 at 12.

¹⁵⁵ MARCHETTI, *supra* note 65, at 97 (table 4.3).

¹⁵⁶ RAUSTIALA, *supra* note 131, at 127.

¹⁵⁷ RAUSTIALA, *supra* note 131, at 127.

¹⁵⁸ WASHINGTON TRADE REPORT, *supra* note 7, at 3; Goswami et al., *supra* note 85, at 1.

¹⁵⁹ *Rise of Offshoring*, *supra* note 90, at 4; *Trading Tasks*, *supra* note 90, at 1978–1980; RAUSTIALA, *supra* note 131, at 125.

¹⁶⁰ WASHINGTON TRADE REPORT, *supra* note 7, at 4.

¹⁶¹ WASHINGTON TRADE REPORT, *supra* note 7, at 3.

¹⁶² WASHINGTON TRADE REPORT, *supra* note 7, at 3.

¹⁶³ In the arbitrated result of *US–Gambling* the United States was surprised to learn that it had liberalized offshore gambling from Antigua. See PLANCK, *supra* note 64, at ix; JANE KELSEY, *SERVING WHOSE INTERESTS? THE POLITICAL ECONOMY OF TRADE IN SERVICE AGREEMENTS* (2008).

¹⁶⁴ WASHINGTON TRADE REPORT, *supra* note 7, at 3.

that new innovation. However, the compromises announced thus far have revealed a negotiating plan remarkably similar to GATS, with general obligations and a positive list of specific commitments that give members the option to schedule trade liberalization in service à la carte, and to exclude controversial service sectors,¹⁶⁵ albeit with the addition of a negative list of National Treatment obligations.¹⁶⁶ Only the hoped-for addition of GATS-plus regulatory provisions holds any promise of something new.¹⁶⁷ Even in this area, other modern preferential trade agreements have not yet played a role in promoting service exports.¹⁶⁸

F. The Tractability Factor: We're Liberalizing in the Dark

The sixth factor is whether the trade negotiation is approached with sufficient understanding to practically solve the problems. Intractability refers to a high level of complexity, which makes it difficult to change, manipulate, or resolve an issue. Are services too complex to negotiate? Is the challenge of the services trade liberalization in existing WTO frameworks¹⁶⁹ a consequence of a high level of complexity?

The first obvious hurdle is the structural resistance of service industries, in other words, separating tradable services from non-tradable ones. It is possible to separate them. Jensen, working through the Peterson Institute, has identified tradable service industries and occupations by locating national service industries with unusually high geographical clustering within the United States but broad consumption, thereby determining which services are already traded between American states. Software, for example, is consumed everywhere in the United States, but its development is clustered in Silicon Valley, and so software development is a tradable service. From his calculations, Jensen concludes that approximately sixty percent of services in the United States are currently tradable.¹⁷⁰

However, Jensen readily admits that there is not enough information about current trade flows in the services sectors he has identified. He states “[t]here are more than 10,000 manufacturing categories reported on monthly from the U.S. census. Since 2006, there have been thirty service categories that are reported on quarterly by the U.S census. There is a lot more detail than before, but it’s not enough.”¹⁷¹ So we know which service sectors are tradable in the United States, but we do not know anything about how they are currently traded. Similarly

¹⁶⁵ PLANCK, *supra* note 64, at ix.

¹⁶⁶ *Compromise*, *supra* note 28; *Geneva*, *supra* note 28; Kronby & Barutckiski, *supra* note 9; *USTR Says*, *supra* note 11.

¹⁶⁷ *Compromise*, *supra* note 28.

¹⁶⁸ Goswami et al., *supra* note 85, at 19.

¹⁶⁹ WASHINGTON TRADE REPORT, *supra* note 7, at 1.

¹⁷⁰ Jensen, *supra* note 6.

¹⁷¹ Jensen, *supra* note 6.

understanding for the success or failure of other countries in exporting services is hampered by the lack of available data.¹⁷²

The supply of services is not well understood, either. The GATS agreements is divided into four modes of supply, but the division of supply under GATS into Mode 1 (cross-border), Mode 2 (consumption abroad), Mode 3 (commercial presence), and Mode 4 (natural presence), is impractical for real economic analysis. The different modes of supply can complement or substitute for one another differently for specific services.¹⁷³ Instead, Jensen asserts that “[s]ervices are not delivered as Mode 1 or 2 or 4—they are delivered as Mode 1 and 2 and 4, and parsing that mix is difficult. Mode 3 is important, but separate—it works in a very different way.”¹⁷⁴

The biggest problem for TISA’s negotiators is a potential conflation of the unknown functioning of trade in services with the relatively well-known functioning of trade in goods. Services are frequently treated as a type of good by trade theorists. Some economists, including Bhagwati, argue that we do not need a new structural framework for the services sector—that the basic concepts of international trade theory are as applicable to services trade as they are to goods.¹⁷⁵ Others, for reasons of complexity of services and service sectors, believe that a clearer conceptual understanding of services trade is required before any theories can be drawn about the consequences of service trade liberalization—on both economies and public policy objectives.¹⁷⁶ Looking at the loose definitions and underperformance of GATS, and the increasing interconnectedness of international trade, it is easy to appreciate that caution.

Despite being the first and only WTO trade agreement on service trade, GATS contains no explicit definition of a service. Instead, services have been defined in trade theory as either not-goods (a diverse group of economic activities distinct from manufacturing, mining, and agriculture)¹⁷⁷ or simply by a list of industries or sectors.¹⁷⁸ Yet the economic functioning of services has the potential to be radically different than that of the services’ counterparts such as the industrial sector or goods sector. Contrasted with goods, services are intangible; they add value to the client directly (possibly, but not necessarily, by the

¹⁷² Goswami et al., *supra* note 85, at 5.

¹⁷³ Goswami et al., *supra* note 85, at 2.

¹⁷⁴ Jensen, *supra* note 6. See also Goswami et al., *supra* note 85, at 2.

¹⁷⁵ Hindley Brian & Alasdair Smith, *Comparative Advantage and Trade in Services*, THE WORLD ECONOMY 369 (Dec. 1984); Jagdish N. Bhagwati, *Splintering and Disembodiment of Services and Developing Countries*, 7/2 THE WORLD ECON. 133 (1984).

¹⁷⁶ Deepali Fernandes, *Twins, Siblings or Friends: The Conceptual Case of Goods and Services, Where Do We Stand and Where Could We Be Headed to?*, in THE WORLD TRADE ORGANIZATION AND TRADE IN SERVICES 105, 142 (Kern Alexander & Mads Andenas eds., 2008).

¹⁷⁷ Marchetti, *supra* note 65, at 84.

¹⁷⁸ For example, “The term [“services”] encompasses a broad range of industries that provide basic economic infrastructure (communications, transport, distribution, energy[...], construction, water supply, sanitation and sewage[...], waste collection and disposal), financial infrastructure (banking, insurance, financial markets), support to business (advertising, marketing, computer services, professional services), or social infrastructure (education, health, and social services)” Marchetti, *supra* note 65, at 84.

transfer of rights to a good); they are simultaneously created and consumed in a transaction (meaning they are also non-perishable, non-transferable, and non-storable); they are co-produced by the provider and client; they are un-able to be inspected before delivery and therefore priced with more emphasis on client expectations and less on real utility, quality, cost of production, or taxes; they able to be delivered in dynamic ways; and—most importantly for trade agreements—they are able to generate (potentially unforeseeable) linkages by facilitating the production of other commodities in an economy.¹⁷⁹

International trade increasingly involves intermediate goods and tasks along continuums of global supply chains.¹⁸⁰ Anecdotal evidence is easy to come by: a Barbie doll is manufactured in a crisscrossing web of tasks performed in seven countries;¹⁸¹ Apple's iPhones are notoriously designed in California, sourced throughout Asia (adding 35% of its value in Japan), and assembled in Shenzhen, China (adding only 4% of the final value);¹⁸² and, according to the WTO, the value of typical American car includes 30% from Korea, 17.5% from Japan, 7.5% from Germany, 4% from Taiwan and Singapore, 2.5% from the UK, 1.5% from Ireland and Barbados, and the remaining 37% of the production value from the United States.¹⁸³ In these fragmented webs of production, the line between goods and services is becoming less and less theoretically relevant to multinational corporations. Is the final layer of paint applied to a car a service or the manufacture of a product? Does it matter whether the paint is applied at the dealership, or the factory—or by another corporation entirely? Some economists have been working to create a model of these new processes,¹⁸⁴ yet the core of international trade theory continues to be dominated by thinking about production and exchange of completed goods.¹⁸⁵

The negotiations themselves are yet another added complexity to TISA. Tariff preferences can be changed incrementally, but preferences for services are much more radical commitments—on/off switches that either allow a trading partner to serve your market or not.¹⁸⁶ Consequently, there is much more potential trade displacement with a change in service preferences, and therefore a much greater value given to agreements which include some WTO members but shut out others.¹⁸⁷ A change in service preferences would be a huge advantage for first runners, those given market access before any others. In addition, trade

¹⁷⁹ Fernandes, *supra* note 176 at 113–119.

¹⁸⁰ *Trading Tasks*, *supra* note 90, at 1978–80; *Rise of Offshoring*, *supra* note 90, at 4; *see also* Lamy, *supra* note 128 at 1.

¹⁸¹ *Rise of Offshoring*, *supra* note 90, at 1.

¹⁸² WTO & IDE-JETRO, TRADE PATTERNS AND GLOBAL VALUE CHAINS IN EAST ASIA: FROM TRADE IN GOODS TO TRADE IN TASKS 107 (2011) http://www.wto.org/english/res_e/booksp_e/stat_tradepat_globvalchains_e.pdf.

¹⁸³ *WTO Annual Report* (1998) http://www.wto.org/english/res_e/booksp_e/anrep_e/anre98_e.pdf at 36.

¹⁸⁴ *See supra* Section 1.

¹⁸⁵ *Rise of Offshoring*, *supra* note 90, at 1.

¹⁸⁶ Porges, *supra* note 15.

¹⁸⁷ Porges, *supra* note 15.

negotiators are typically experienced in dealing with border measures, which require a completely different sort of competences and have little bearing on services.¹⁸⁸ Finally, negotiators have few benchmarks or measures of progress in service negotiations.¹⁸⁹ During Jensen's launch of his book at the Peterson Institute's policy brief, a veteran of the Doha Round negotiations posed an illustrative scenario in which he compared negotiating tariffs and service schedules:

You establish a benchmark for reducing tariffs, and it's either zero or it's a given percentage, and subsequently you look at products and you average it out, and you get to a certain tariff reduction. [But] anybody who's seen a services schedule knows that it takes about five months—six months—just to understand what's in the schedule. It's extremely difficult to actually find an objective way of benchmarking and quantifying liberalization by third countries who have barriers.... So I think there's a real problem in terms of the complexity of services schedules and finding a coherent way in which you can agree around the table on benchmarks to liberalize services. I don't know if you have a magic bullet for that problem....¹⁹⁰

Jensen replied: "There is a thicket of policy impediments. Measuring service imports and exports is very difficult. It's not clear that we're providing the level of resources that need to be provided to measure it well. *We're largely in the dark.*"¹⁹¹ Reaching practical economic or political goals through TISA using the current set of analytic tools seems impractical.

G. The Resources Factor: Too Few Negotiators, Regulators, and Money

The final factor in the analysis is the extent and quality of the resources devoted to addressing the problems and doing the work of negotiating TISA. The United States is the world's largest economy and the single largest player in the WTO system, TISA, and two other ambitious regional trade negotiations happening simultaneously. And yet, USTR—which is responsible for negotiating U.S. trade agreements, participating in global trade policy organizations, resolving U.S. trade disputes, and *most importantly* gathering input on trade issues and helping to formulate the President's trade policy positions—currently has

¹⁸⁸ Harbinson & Lim, *supra* note 2, at 134.

¹⁸⁹ Harbinson & Lim, *supra* note 2, at 134.

¹⁹⁰ H.H. from the E.U. Embassy posing a question during the question and answer session of Jensen, *supra* note 6, at 24:39–26:26.

¹⁹¹ Question and answer session of Jensen, *supra* note 6, at 26:26 (emphasis added).

only 179 full time employees, down from 198 employees in 2011.¹⁹² USTR was ranked last in work quality among twenty-nine small U.S. federal agencies in late 2012.¹⁹³ In that comprehensive survey, USTR staff showed dissatisfaction with their jobs, their organization, and the effectiveness of their senior leaders.¹⁹⁴ General budget pressures have been exacerbated by the fact that some of USTR's general funds have been redirected to another agency, the Interagency Trade Enforcement Center (ITEC).¹⁹⁵

If negotiating service trade agreements is resource-intensive for the United States, it is considerably more so for its trading partners.¹⁹⁶ The people working in trade matters for other TISA Negotiating Partners are presumably fewer in number and have less expertise and educational background than in the United States. Through this paper's analysis I have concluded that TISA's potential is not being realized with the level of resources currently allocated. To reach that potential, a significantly higher commitment is required.

IV. CONCLUSION

Whether it is a shallow deal or a deep deal, the trade negotiations of various governments are working to find "equilibrium of agreement" on TISA.¹⁹⁷ Liberalization along the lines of TISA is a risk free proposition for developed countries, subject to the political skill of governments, incremental improvements in the credence of trading partners, and sufficient resources to complete the task. However, the conclusion of TISA will very likely produce a shallow agreement with little understanding of the effects of the liberalization gained. In sum, like GATS before it, the deal will be a large investment, a drain on the credibility of the world system, and will have little foreseeable value. Multilateralization of such a deal will be easier if it is obviously shallow; however, WTO members outside the TISA Negotiating Parties are deeply skeptical of both the proposed agreement and its proponents' records. Multilateralization under the current circumstances is exponentially more unlikely if the deal has any real content at all.

It is likely that trade negotiators among the major economic powers are well aware of these conclusions. Keynes infamously wrote that "it is better for reputation to fail conventionally than to succeed unconventionally,"¹⁹⁸ and protecting the reputation of the parties may ultimately be the overriding goal of the negotiations. It is also possible

¹⁹² *New USTR Will Face Many Challenges, Including Staff Dissatisfaction*, INSIDE U.S. TRADE (Feb. 11, 2013), <http://insidetrade.com/201302112424255/WTO-Daily-News/Daily-News/new-ustr-will-face-many-challenges-including-staff-dissatisfaction/menu-id-948.html>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Goswami et al., *supra* note 85, at 4.

¹⁹⁷ Horlick, *supra* note 94.

¹⁹⁸ JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY* 127 (2009).

that negotiators are approaching TISA with a gambler's dice and an alchemist's kit,¹⁹⁹ knowing that no harm can come from trying, and wasting resources on the hope that despite all indications to the contrary, lightning may strike.

If these presumptions are false, the recommendations that follow address the deficiencies of the TISA. These recommendations might assist negotiators' efforts toward TISA's two original explicit goals: the liberalization of services and the multilateralization of the concluded agreement. The recommendations are selectively adapted from Thomas J. Bollyky's chapter on regulatory coherence in *The Trans-Pacific Partnership: A Quest for a Twenty-first Century Trade Agreement*,²⁰⁰ Jensen's full recommendations in *Global Trade in Services: Fear, Facts, and Offshoring*, from the Peterson Institute for Economic Cooperation,²⁰¹ and Sherry Stephenson's presentation, "Regulatory Disciplines in Trade Agreements," given at the Australian Services Roundtable in 2007.²⁰²

A. More Research, Theory, and Data on Services Trade

The first step will be to abandon all hope and embrace data. We need more research, and more intellectual and economic theory on trade in services. Dorothy Dwoskin, senior trade policy director for Microsoft, made the case eloquently at an event with the USTR. She argued that "we've gotten so wrapped up in process, in procedure, we've lost sight of the economic arguments of why services are so important...you need to spend a lot more time helping create the intellectual and economic argument on services trade liberalization."²⁰³ These efforts must go beyond economic and intellectual cheerleading to the level of a concerted effort by the United States and its trade partners to support academic theoretical and field research in services trade, and in trade as a whole. As a necessary corollary, all trading partners must devise methods to collect substantially more and better data on the service sector,²⁰⁴ and to aid developing countries in their efforts to collect the same. To succeed in liberalizing services trade we can no longer fly blind.

B. A Multilateral Effort on Regulatory Convergence

Drawing from Bollyky and Stephenson, a significant agreement in services must address the serious challenges with regulatory coherence. A sincere attempt to build regulatory coherence would be reflected in an independent multilateral effort to promote regulatory convergence and cooperation. The resulting mandate of such an effort would be preparing

¹⁹⁹ TISA is an expensive "laboratory" for testing new approaches to services liberalization, Harbinson & Lim, *supra* note 2, at 134.

²⁰⁰ Bollyky, *supra* note 128, at 178–81.

²⁰¹ Jensen, *supra* note 6.

²⁰² Stephenson, *supra* note 129.

²⁰³ Peterson Institute, *supra* note 8.

²⁰⁴ Jensen, *supra* note 6.

common technical regulations and standards, formulating Mutual Recognition Agreements with conformity assessments, assessing and recommending adoption of international standards, and promoting the sharing of surveillance data and inspection reports through the development of confidentiality arrangements.²⁰⁵ Maintaining sovereignty and local accountability of national regulatory authorities will be essential for meaningful participation across a multilateral field. The participating governments must be confident that the final decision to adopt the recommendations of regulatory coherence would remain with them.²⁰⁶

C. Additional Recommendations

Seeing where services might be headed, Jensen proposed defensive and offensive actions. Of the former, he suggested that the United States, in cooperation with its developed trade partners, make access to primary, secondary, and post-secondary education a high national priority. Jensen further urged more attention be given to education at all ages, in order to maintain American workers' high skill level. He also added that the United States should defensively strengthen its social safety net for workers dislocated by trade and technological advancement.²⁰⁷ On the offensive, he called for an "aggressive push" to open large, emerging markets, liberalize the WTO, enlarge the GPA, and improve IP protections. The defensive proposals make good policy sense now—even if trade in services reveals strange new dynamics to trade, developed countries will only be stronger with high quality education and protection for workers. The offensive proposals are contradictory, and should be shelved until given effective foundations.

Even in its current form, the potential of TISA depends on the political skill of governments and the bridge-building skills of the parties' trade negotiators. Those factors should merely be reinforced. To address the future goal of multilateralization, WTO members outside the TISA Negotiating Parties must be convinced (and not pushed)²⁰⁸ into appreciation of the merits of services trade liberalization, and the sincere interest in reciprocal negotiations by the TISA Negotiating Parties. These factors should follow from the above suggestions. Of course, sufficient resources must be found to complete these tasks. The final factor, the most difficult task in political life is to perceive the low rumble of a distant crisis and then take responsibility for a new order of things. True leadership is a necessary factor in all of the above.

²⁰⁵ Bollyky, *supra* note 128, at 180; Stephenson, *supra* note 129.

²⁰⁶ Bollyky, *supra* note 128, at 180.

²⁰⁷ Jensen, *supra* note 6.

²⁰⁸ Neither pushed, nor strongly encouraged or any other euphemism that might be misconstrued as bullying though the United States and other developed countries are no longer in a position to effectively bully in any case, and substantial persuasiveness is slower but, with an eye on success, more efficient for all parties.