THE PRESIDENT'S EXPORT COUNCIL
WASHINGTON, D.C. 20230

June 11, 2024

The Honorable Joseph R. Biden
President of the United States of America
The White House
Washington, DC 20500

Dear Mr. President,

The services sector is the most significant driver of U.S. economic activity, supporting every sector of the economy from manufacturing to agriculture to energy and efforts to combat climate change. The United States remains the top cross-border exporter of services, with services accounting for 79% of GDP and 82% of all private employment in the United States.[1] Exports of U.S. services directly support 4.1 million jobs, including 3 million from digitally tradable services.[2]

The high volume of services exports also plays a key role in balancing the overall U.S. trade deficit. The services trade surplus in 2023, for example, was over $700 billion[3] which partially offsets the U.S. trade in goods deficit. We laud the Biden administration for recognizing the strategic importance of services trade and its continued growth. As Jared Bernstein, Chair of the Council of Economic Advisors, said at the outset of the last meeting of the President's Export Council: *"… the Biden administration highly values robust trade flows … and by expanding services surpluses, we can both boost exports and lower our trade deficit."*[4]

The major U.S. services export industries include media and entertainment, logistics, financial services and insurance, software, telecommunications and ICT products, travel and transportation, professional and management and remote education services as well as manufacturing services such as electrical construction services and infrastructure management. U.S. services companies are some of the most well-known and respected brands around the world, including myriad PEC members exporting services globally in high volumes. Moreover, manufactured goods and agricultural and healthcare products are tightly integrated with services exports, which further drive exports of these goods to global markets.[5]

Digital services exports make up nearly two-thirds of the total volume of global services exports. Their volume soared to $4.25 trillion dollars in 2023, up 9% from 2022 and surpassing pre-pandemic levels by over 50%.[6] Digital services exports from the U.S. come from every U.S.

[1] ITC Recent Trends in U.S. Services: 2023 Annual Report
[2] CSI 2023 National Report
[3] ITC Recent Trends in U.S. Services: 2023 Annual Report
[4] 29 November Meeting of the President's Export Council
[5] Congressional Research Service, Digital Trade Policy, March 2023
[6] WTO 2023 World Trade Report

state, driving employment throughout the country. And these jobs pay well; compensation growth for digital services related work in the United States exceeds that for all jobs generally.[7]

In addition to domestic job creation and the positive impact on the trade deficit, American companies exporting more services overseas and providing their services around the world via foreign direct investment are an extension of 'soft power' that enhances the global image and reputation of the United States.

Unfortunately, as strong as U.S. services exports are, they are often subject to market access restrictions and discriminatory treatment as governments seek to favor their own services companies. Existing impediments are already significant and growing across countries and services sectors.[8]

Given the strategic importance of U.S. services exports and investment, and the rising volume of restrictions around the world that restrain these exports and investment, the Council makes the following recommendations.

1. Emphasize Market Access & National Treatment for Services as a Key Pillar of U.S. Trade Policy

Market access for *goods* is mainly about reducing border measures such as tariffs. In contrast, measures impacting U.S. services exports usually take place behind the border in the form of restrictions such as limits on foreign direct investment, stringent licensing requirements or discriminatory regulations relative to those imposed on domestic suppliers of similar services.

'Market access' and 'national treatment' commitments for services allow American companies to provide services in or to another country under conditions on par with similarly situated domestic players. For U.S. media & entertainment companies, for example, such treatment permits international distribution of U.S.-made content without regulation favoring national champions. The express delivery industry is unique amongst transportation services in that their operations work best when they manage the entirety of the logistics chain, i.e., not only between two countries but also inside them. Similarly, financial services rely on market access and national treatment to offer innovative services, financial products that make U.S. financial service providers more competitive.

While not always true for trade in goods, removal of market access restrictions and discriminatory regulations for services leads to *added* American jobs and a *positive* impact on the U.S. trade deficit. Simply put, U.S. firms rely on the high-skilled U.S. workers necessary for content creation, R&D, tech support, sales and marketing that enable services exports – in other words, jobs that are not easily replicated elsewhere. In addition, many services industries (e.g. financial services, telecommunications, etc.) require proximity to customers to deliver their services. In other words, most services jobs cannot be "reshored." When foreign investment barriers to services remain unaddressed, U.S. firms are cut off from the 95% of consumers that

[7] U.S. Chamber of Commerce Report "The Digital Trade Revolution: How U.S. Workers and Companies Benefit from Digital Trade" page 1
[8] OECD Services Trade Restrictiveness Index: Policy Trends up to 2024

reside outside the United States, losing markets to other trading partners who have secured such access through trade commitments.

In addition, improved market access for U.S. services exports has a positive impact on developing countries' domestic services sector. When a developing country makes the decision to ease market access restrictions for services, they attract more suppliers and foreign capital, which drives innovation, consumer choice and efficiency.[9] Further, such moves can drive increased inward FDI overall. Improvements to efficiencies of regulatory processes such as licensing and easing the movement of capital in and out of a destination country are among the top factors for investors when deciding where to invest.[10]

The World Trade Organization (WTO) set a floor of specific rules governing trade in services in the 1995 General Agreement on Trade in Services (GATS). In parallel, U.S. trade agreements built on the GATS baseline and include sector-specific chapters and general prohibitions against favoring domestic players over U.S. service suppliers. The PEC believes the GATS baseline and bilateral trade agreements could be improved upon to benefit U.S. services exporters. This is especially important at the present time given the rising level of domestic restrictions targeting services and digitally delivered services.[11]

We believe the U.S. is in a unique position to lead the world in evolving trade policy to re-emphasize market access and national treatment for services while simultaneously promoting high-standard labor and environmental commitments. We therefore recommend the Administration pursue the following three strategies.

A. Re-start the Trade in Services (TiSA) Initiative and Reinvigorate the WTO's *Progressive Liberalization* Services Negotiations

Spurred by the lack of progress at the WTO, the TiSA negotiations, launched in 2013 and led by the U.S. and Australia, included 23 like-minded countries that understood the economic benefits of services trade and sought to reach an agreement further liberalizing trade in services. Talks stalled in 2017. Now, given the need to address rising services and digital barriers, the importance of what TiSA sought to accomplish is even more significant.

A re-started TiSA initiative would address the wide array of increasing trade and services barriers and create new disciplines that build on GATS and U.S. FTA disciplines and commitments. Concluding a TiSA Agreement would benefit U.S. workers and small businesses by creating new market access opportunities and creating and supporting U.S. jobs. Conversely, the absence of further trade disciplines for services exports will cost jobs in the United States. As enshrined in GATS and other U.S. free trade agreements, liberalization efforts under a re-started TiSA would not include services supplied in the exercise of governmental authority.

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[9] Access Opportunities And The Benefits of Liberalization for Developing Economies. Policy Issues in International Trade and Commerce Studies Series. By Greg McGuire, United Nations, 2002

[10] Continued optimism in the face of instability, 2024 FDI Confidence Index, Kearney (2024)

[11] An estimated 3,000 services trade-restricting measures were imposed in 2023, nearly three times the number imposed in 2019. *How Policymakers Should Handle a Fragmenting World.* Speech by Gita Gopinath, 20th World Congress of the International Economic Association in December 2023.

In addition, at the WTO and elsewhere, there is a critical mass of countries that are like-minded on the need to develop rules around trade in services and progressively liberalize markets for services. This is evidenced by the conclusion of the Joint Initiative on Domestic Services Regulation, the on-going progress of negotiations on the Joint Initiative on E-commerce and that in 2018, 11 key trading partners of the U.S. signed on to the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP). Countries clearly remain interested in liberalizing services trade and have been looking for U.S. leadership in this regard. The PEC therefore also recommends that the U.S. advocate for a more robust services agenda at the WTO, including but limited to, calling for the re-starting of TiSA negotiations.

B. Enforce Existing Trade Agreement Services Commitments and Related Disciplines

The PEC urges the Administration to prioritize enforcement of services commitments and related disciplines including investment. USTR's engagement with counterparts on some potential service-related FTA violations has merited a degree of success and we recommend that enforcing services commitments be further prioritized given the importance of services exports to the U.S. economy. Holding our trade agreement partners to their service-related commitments ensures that the agreements deliver their full economic benefits to the U.S. services companies and their employees.

C. Re-establish U.S. Leadership Globally for Trade in Digital Services Exports

Continued global growth of digital services drives our overseas success which in turn creates jobs in the United States across mostly all sectors of our economy. This virtuous cycle (success of service exports overseas and job growth at home) is increasingly at risk by the ongoing rise of market access restrictions and discriminatory rules targeting digital services in markets around the world. The right to regulate is firmly enshrined in bilateral, regional and multilateral trade agreements and similarly, any digital services trade provisions should be consistent with a government's right to regulate. Our trading partners have been able to create and maintain strong privacy, consumer protection, competition and other public policy prerogatives while negotiating digital market access and national treatment disciplines. The United States should be able to do the same. We are also concerned that global digital rules of the road will be set without the U.S. and competing countries will make greater inroads in services and digital market access to the detriment of American services suppliers.

We therefore recommend the Administration re-establish U.S. leadership on digital services trade globally by reasserting leadership in the WTO in shaping the Joint Initiative on E-commerce negotiations into a commercially meaningful agreement that provides for the opportunity for further negotiations on cross border data flows, data localization, source code and nondiscriminatory treatment of content and a permanent moratorium on the imposition of customs duties on electronic transmissions.[12] The U.S. should also take the lead in ensuring

[12] The WTO's 13th Ministerial Conference extended the e-commerce customs duty moratorium for another two years. We recommend the U.S. support a further extension at the next Ministerial Conference and that the US, in addition, supports

that the WTO e-commerce work program provides meaningful capacity building that enables developing countries and less developed countries to participate in the digital economy in order to strengthen support for further extension of the WTO e-commerce moratorium Further, we believe that the United States should reassert leadership in the Asia Pacific by producing a commercially meaningful Indo-Pacific Economic Framework for Prosperity Pillar 1 outcome on services and digital trade and also revisit joining CPTPP. The United States should also take an active role in promoting the growth of the digital economy in the G7, G20 and APEC multilateral forums, as well as emerging ones such as the Americas Partnership for Economic Prosperity. Additionally, the United States should actively support the work of the OECD in promoting the importance of moving forward with services and digital trade negotiations and in promoting the work of the newly established OECD working group on Data Flows with Trust.

Finally, the U.S. should take a leadership role in relevant international standards development, as outlined in the National Standards Strategy for Critical and Emerging Technology, on a global scale. By actively participating in the development of international standards, the US can safeguard the interests of American service suppliers and maintain a competitive edge in the digital services market.

2. Additional Recommendations

A. Promote Transnational Regulatory Coherence. This issue has been at the foundation of cross-border trade and investment facilitation for decades and is now receiving renewed attention as regulatory regimes fragment and new products and services arise to adapt to technological developments. Of deepening concern is the fragmentation of national legislation and regulation, whether in finance, or climate, or digital trade and investment (as examples) which is suppressing SME engagement in cross border trade and investment. Fragmentation of digital services standards is a growing barrier and it is critical to promote regulatory coherence on digital services standards.

B. Make the Pursuit of Economic Security More Predictable. As national security and economic security become larger concerns in the current geopolitical environment, government interventions and controls over a wider array of technologies, goods and services are being undertaken both at home and abroad. Business operates best when conditions are predictable. It would help U.S. competitiveness if the Administration were to be more precise in its definition of what it will treat as subject to government controls for economic security for inbound and outbound commerce, bearing in mind that there are numerous legal authorities in place by which the Executive can assert such controls. And many of these authorities involve significant business participation in the final determination of whether to impose such controls, increasing the predictability of their use.

C. Protect U.S. National Security. The Administration is rightly concerned about the potential national security risks associated with digital trade and the U.S. Department of Commerce

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permanent establishment of the moratorium via the WTO's Joint Initiative on E-Commerce and via plurilateral agreement such as the on-going Joint Statement Initiative negotiations that Australia, Japan and Singapore are leading with 90 like-minded countries.

recently released an Advanced Notice of Proposed Rulemaking (ANPR) seeking comment on connected vehicles' national security risks and potential mitigation. To ensure that any future rulemaking in this area is the most effective, we encourage the Administration to continue working closely with U.S. industry partners to develop a tailored approach that addresses potential national security challenges while ensuring U.S. economic competitiveness.

D. Maximize Government Coverage for Elevated Risk. We recommend a paradigm shift for U.S. Government export and foreign direct investment financing agencies such as the Export-Import Bank of the United States, the U.S. International Development Finance Corporation, and the U.S. Trade and Development Agency. This would include Congressional mandates for their respective charters, to recognize the need for expanded coverage and reduced cost for political risk premiums including "wartime" risk for certain markets and financings. This, in some instances, may require a proposal by the Administration for Congress to acknowledge the new era of hybrid warfare by mandating such agencies with broader scope and more adaptable balance sheets to accommodate U.S. businesses seeking to do business in high-risk countries.

E. Prioritize An Anti-Corruption Campaign. A significant and long-standing disadvantage for U.S. business as it competes in foreign markets is the "demand" side of corruption which is all too often accommodated by competitors of U.S. business. The OECD's Blue Dot Network and Pillar 4 of the Indo-Pacific Economic Framework for Prosperity are important initiatives, but the concepts and practices that they promote need to be incorporated and prioritized in overall U.S. Government trade and investment policy to a greater degree. To elevate attention to this issue, the PEC recommends formation of an interagency Task Force for Competitiveness that would include the Departments of Commerce, Justice, State, and the Treasury, the Office of the U.S. Trade Representative, and the U.S. Agency for International Development that would re-examine both the demand and supply sides of corruption to determine how best to exert leverage to curb corruption on the demand side of the ledger.

F. Promote protections for US intellectual property rights internationally. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) stands as the most extensive multilateral agreement concerning intellectual property (IP). Its primary purpose is to facilitate the trade of knowledge and creativity, resolve trade disputes related to IP, and provide WTO members with the flexibility to pursue their domestic policy goals. TRIPS establishes a framework for the IP system that emphasizes innovation, technology transfer, and public welfare. The PEC recommends the Administration continue to advocate through the TRIPS agreement, which legally acknowledges the crucial connection between IP and trade and the importance of maintaining a balanced IP system.

Sincerely,

Mark Ein

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