General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia/Pacific Trading Partners

Investigation No. 332-374

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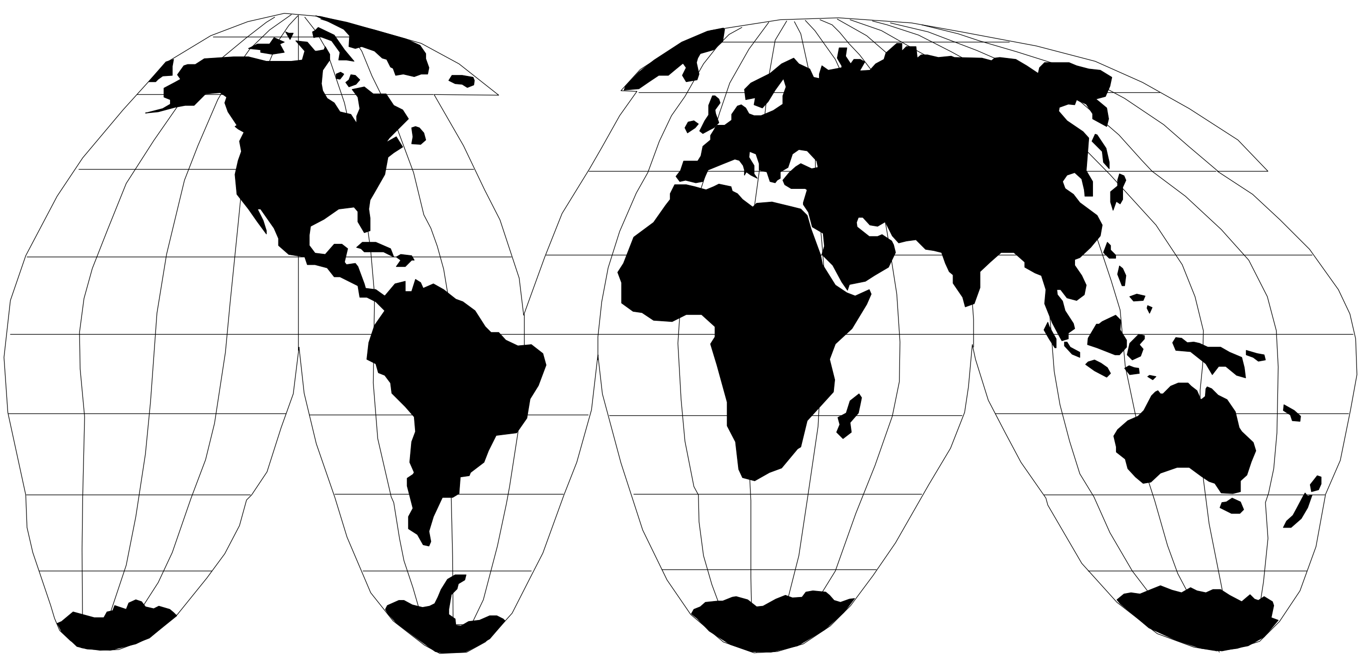

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PREFACE

Following receipt on November 12, 1996, of a request from the United States Trade Representative (appendix A), the U.S. International Trade Commission instituted investigation No. 332-374, *General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia/Pacific Trading Partners*. USTR asked the Commission in its report on the investigation to examine the schedules of commitments of ten Asia/Pacific trading partners, explain the commitments in nontechnical language, and identify the potential benefits and limitations of the commitments.

Copies of the notice of the investigation were posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC 20436, and the notice was published in the *Federal Register* (61 F.R. 65235) on December 11, 1996 (appendix B). The Commission held a public hearing in connection with the investigation on March 27, 1997. All persons requesting an opportunity were allowed to appear by counsel or in person, to present information, and to be heard. In addition, interested parties were invited to submit written statements concerning the investigation.

The information and analysis provided in this report are for the purpose of this report only. Nothing in this report should be considered to reflect possible future findings by the Commission in any investigation conducted under statutory authority covering the same or similar subject matter.

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EXECUTIVE SUMMARY

On November 12, 1996, the United States Trade Representative requested that the Commission examine the schedules of commitments submitted by 10 Asia/Pacific trading partners under the General Agreement on Trade in Services (GATS). The GATS provides a framework that disciplines government regulation of trade and investment in service industries and obligates signatory countries to establish schedules of commitments. These schedules indicate the extent to which signatory members accord market access and national treatment to foreign service providers on an industry-by-industry basis. The 10 subject economies examined in this report are Australia, Hong Kong, India, Indonesia, Korea, Malaysia, New Zealand, the Philippines, Singapore, and Thailand. The Commission was asked to explain the commitments in nontechnical language as they relate to eight service industries, and to identify potential benefits and limitations that may accrue to U.S. service providers as a result of implementation of the commitments by the subject countries. The subject industries are as follows:

- Distribution services (defined as wholesaling, retailing, and franchising services);
- Education services;
- Communication services, defined as enhanced telecommunication services, courier services, and audiovisual services;
- Health care services;
- Professional services (defined as accounting, advertising, and legal services);
- Architectural, engineering, and construction services;
- Land-based transportation services, defined as rail and trucking services; and
- Travel and tourism services.

The 10 Asia/Pacific trading partners accounted for 16 percent of total U.S. services trade in 1995, with the most significant U.S. export markets being Korea, Australia, Singapore, and Hong Kong. The schedules of commitments submitted by Asia/Pacific trading partners vary significantly from one partner to another in terms of benchmarking and transparency. Benchmarks are commitments that identify trade-impeding measures and, under the terms of the GATS, prevent these measures from becoming more onerous in the future. Commitments are transparent when the nature and extent of all regulatory impediments to trade are explained clearly in their entirety. Such countries as New Zealand and Australia offered commitments on a broad range of service industries and provided a high degree of benchmarking and transparency. Others, such as India, scheduled commitments that covered few industries and provided little in terms of transparency. Countries such as Malaysia and the Philippines fell somewhere in between, offering binding and beneficial commitments in selected areas, yet declining to schedule commitments in other key industries.

Examination of Industry-Specific Commitments

Travel and tourism, transportation, professional services, and distribution services account for the greatest U.S. export volume. All 10 of the subject Asia/Pacific trading partners scheduled commitments pertaining to travel and tourism services, indicating that trade in the industry is not heavily restricted. Transportation, professional, and distribution services did not receive as thorough coverage, suggesting that the regulatory environment affecting these important industries remains somewhat more restrictive.

With respect to industries representing fewer exports, schedules were similarly mixed. All 10 of the subject economies scheduled commitments on enhanced telecommunication services. Architectural, engineering, and construction services were also well represented among the commitments scheduled by Asia/Pacific countries. However, schedules submitted to the World Trade Organization (WTO) suggest that the Asia/Pacific trading partners are more reticent to bind open professional services, audiovisual services, and social services, such as education and health care.

Examination of Cross-Industry Commitments

Labor Mobility

As was customary among most GATS signatories, commitments offered by Asia/Pacific trading partners concerning the entry and stay of business persons applied only to selected types of employees, typically senior managers and specialists. Measures affecting all other types of employees remain unbound. Some countries, such as Australia, Indonesia, and the Philippines, noted that some form of market or needs testing may be applied in determining whether individual employees are indeed essential to foreign firms' operations. Although it appears that foreign firms will be able to move essential employees as required, the presence of such needs-testing policies generates uncertainty concerning the consistency and objectivity of the assessment criteria.

Capital Investment

Capital investment issues appear to be of considerable concern to Asia/Pacific trading partners, several of which scheduled restrictions on foreign direct investment. Some of these restrictions, such as notification and authorization procedures, do not appear to pose significant impediments to foreign firms as long as the process is based upon transparent criteria that are applied in a consistent and timely manner. Other investment restrictions that are more onerous limit foreign investors to minority shareholder status or essentially force foreign firms to establish a joint venture. Such measures are particularly troublesome for foreign firms because they may weaken the ability of the parent organization to maintain control over its affiliate operations. Five of the 10 subject trading partners impose foreign equity ceilings, ranging from 30 percent in Malaysia to 60 percent in the Philippines.

Exemptions From Most-Favored-Nation Treatment

GATS signatories are generally obligated to accord foreign firms most-favored-nation (MFN) treatment. MFN treatment accords to one trading partner terms and conditions of trade that are no less favorable than those accorded to any other trading partner. In certain instances, however, Asia/Pacific trading partners listed MFN exemptions. Some of these exemptions have relatively little significance for foreign service providers. For example, New Zealand lists a measure that accords preferential terms for market access to a specific number of nationals from Kiribati and Tuvalu. Another noncontentious type of MFN exemption provides preferential treatment to countries with which bilateral or regional agreements already exist. The Philippines, Singapore, and Thailand have scheduled such exemptions.

Other MFN exemptions have the potential to distort trade and investment in services and thus may have greater significance to foreign service providers. For example, Malaysia lists an exemption declaring that decisions concerning foreign investment will be carried out in a preferential and differentiated manner. Such a measure could perhaps be used to discriminate among firms from different countries by permitting companies from some countries to establish wholly owned subsidiaries and forcing companies from other countries to form joint ventures in which they may retain only a minority interest. Similarly, Australia's MFN exemption on audiovisual services provides for the imposition of "undetermined measures" in response or retaliation to "unreasonable measures" taken by another GATS signatory. Such a broad exemption in combination with Australia's decision not to schedule specific commitments on audiovisual services leaves Australian regulators with considerable discretion regarding their treatment of foreign firms and foreign audiovisual works. Similarly, Singapore used an MFN exemption to essentially exclude legal services from the scope of its offer.

Industry Viewpoint

U.S. service providers are highly interested in expanding their presence in the Asia/Pacific region and recognize that the GATS process of successive negotiations holds considerable promise for progressive market liberalization. Consequently, U.S. industry representatives express general satisfaction that Asia/Pacific trading partners are participating in the GATS. They also observe, however, that because most commitments are only standstill positions, they do not expect to enjoy any major immediate benefits. In addition, industry representatives note that actual market access conditions may be more or less favorable than the commitments indicate. In some cases, the absence of industry-specific commitments does not reflect closed markets, while in others, full commitments do not necessarily reflect a fully open market. This suggests that specific commitments must be carefully assessed and cross-checked against current market conditions. With respect to ongoing or future negotiations, U.S. service firms indicate that reducing barriers to foreign direct investment and improving recognition of professional qualifications are priority objectives for the region.

Conclusion

The schedules of commitments offered by the subject Asia/Pacific trading partners vary widely in terms of providing benchmarks and transparency. In addition, as was common practice during this first round of negotiations on services trade, the Asia/Pacific schedules include few liberalizing commitments, generally offering standstill positions instead. As a result, the commitments from Asia/Pacific economies offer little immediate benefit to U.S. service providers. However, by establishing some binding benchmarks, providing some improvement in regulatory transparency, and signing on to a framework for future services trade liberalization, the Asia/Pacific trading partners have helped to lay an effective foundation from which to achieve progressive liberalization.

CHAPTER 1
Introduction

One of the significant achievements of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT)[1] was the conclusion of the General Agreement on Trade in Services (GATS). The GATS is the first multilateral, legally enforceable agreement covering international trade and investment in service industries. Key components of the agreement include national schedules of commitments submitted by all member countries. These schedules list commitments that accord market access and national treatment[2] to foreign service providers, subject to defined exceptions; and serve as benchmarks[3] for future efforts to liberalize global trade in services.

Purpose and Scope

At the request of the United States Trade Representative (USTR), the United States International Trade Commission (USITC) has examined the schedules of commitments submitted by ten Asia/Pacific trading partners.[4] The ten trading partners covered by this report are Australia, Hong Kong,[5] India, Indonesia, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, and Thailand. These trading partners account for 16 percent of U.S. exports of services in 1995 (see chapter 2). This study is the third in a series of studies that examine the schedules of commitments submitted by various U.S. trading partners. The first study focused on the European Union, Japan, Canada, and Mexico. The findings were presented in a report entitled *General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments* (USITC publication 2940, Dec. 1995), which was submitted to the USTR in December 1995. The subject countries of the second report included Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay, Peru, Uruguay, and Venezuela. The second report, entitled

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[1] The Uruguay Round was the most recent session of multilateral trade negotiations convened under the auspices of the GATT. The final Uruguay Round Agreements, including that establishing the World Trade Organization (WTO), were signed by most of the 125 participating governments in Marrakesh, Morocco on April 15, 1994.

[2] National treatment generally accords to foreign firms the same rights and obligations accorded to domestic firms.

[3] Benchmarks comprise full and partial commitments. Full commitments are obligations to accord foreign firms full market access and/or national treatment. Partial commitments are obligations to accord foreign firms at least some degree of market access and/or national treatment subject to specified limitations. Where GATS signatories have scheduled full and partial commitments, they may introduce new trade-impeding measures only if they are willing to compensate adversely affected parties. Where trade impediments remain unbound, no benchmarks have been established, and signatories may introduce trade-impeding measures without penalty.

[4] A copy of the request letter and the *Federal Register* notice instituting the investigation can be found in appendices A and B, respectively.

[5] After the restoration of Hong Kong to China on July 1, 1997, Hong Kong's commitments under the GATS will remain in effect for 50 years, as specified in Sino-British Joint Declaration on the Question of Hong Kong, ratified on May 27, 1985.

General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments (USITC publication 3007, Dec. 1996), was submitted to the USTR in December 1996.[6]

With respect to this report, the USTR asked the Commission (1) to examine the content of the foreign schedules of commitments and explain the commitments in nontechnical language, and (2) to identify the potential benefits and limitations that Asia/Pacific trading partners have conferred or imposed on foreign service providers, emphasizing the effect on U.S. firms. The USTR asked that the Commission focus on Asia/Pacific countries' commitments pertaining to the following service industries:[7]

- Distribution services (defined as wholesaling, retailing, and franchising services);
- Education services;
- Communication services, defined as enhanced telecommunication services, courier services, and audiovisual services;
- Health care services;
- Professional services (defined as accounting, advertising, and legal services);
- Architectural, engineering, and construction services;
- Land-based transportation services, defined as rail and trucking services; and
- Travel and tourism services.

The USTR request letter indicates that upon delivery of this report, the USTR may request an additional study examining commitments scheduled by countries in the Middle East and Eastern Europe.

Overview of the General Agreement on Trade in Services

As noted, the GATS is the first legally enforceable, multilaterally negotiated agreement to establish obligations and disciplines pertaining to international trade and investment

[6] The full text of the schedules of commitments and exemptions to most-favored-nation (MFN) treatment may be obtained by ordering volumes 28-30, 32 and 34, of *Legal Instruments of the Uruguay Round* (price: SF 420) from the World Trade Organization, Publications Services, Centre William Rappard, Rue de Lausanne 154, CH-1211 Geneva, Switzerland. WTO publications are also available by telephone: (022) 7395208/5308; by fax: (022) 7395458; and through the Internet address: publications@wto.org.

[7] For a complete list of service industries over which negotiations were held, see the GATT Secretariat's *Services Sectoral Classification List (MTN.GNS/W/120).*

in services.[8] It is an integral part of the Uruguay Round Agreements that entered into force

[8] Uruguay Round Agreements Act Statement of Administrative Action (SAA), published in H. Doc. 103-316, 103d Cong., 2d Session, 1994. The SAA, which describes significant administrative actions proposed to implement the Uruguay Round Agreements, was submitted to Congress on September 27, 1994, in compliance with section 1103 of the Omnibus Trade and Competitiveness Act of 1988, and accompanied the implementing bill for the Agreement Establishing the World Trade Organization and the agreements annexed to that agreement (the Uruguay Round Agreements).

on January 1, 1995.[9] Three elements constitute the text of the GATS: (1) a framework of rules for government regulation of trade and investment in services; (2) a set of national schedules wherein each country commits itself to apply the rules to specific industries, subject to defined exceptions; and (3) a series of annexes and Ministerial decisions that augment rules found in the framework and provide for follow-up activities or additional negotiations (figure 1-1).

The GATS Framework

The framework calls for parties to observe 14 general obligations and disciplines that are conducive to international trade in services. Foremost among these obligations are most-favored-nation (MFN) treatment[10] (article II) and regulatory transparency (article III).[11] Other important elements of the framework provide for international economic integration agreements such as the North American Free-Trade Agreement (article V); "reasonable, objective, and impartial" regulation (article VI); recognition of authorization, licensing, and certification standards and procedures (article VII); and safeguards on monopolies (article VIII) and subsidies (article XV). These obligations are binding on all GATS signatories, although exceptions are permissible, subject to agreed rules. Important institutional provisions require countries to afford other signatories consultations on any matter affecting the operation of the GATS. Such consultation is to follow newly created Dispute Settlement Understanding procedures.[12]

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[9] The Uruguay Round Agreements provide for establishment of the World Trade Organization (WTO) and set forth the scope and functions of the WTO. The GATS and various other agreements negotiated during the Uruguay Round are set forth as annexes to the Agreement Establishing the World Trade Organization. The WTO replaced the GATT on January 1, 1995, as the institutional foundation of the multilateral trading system.

[10] MFN status accords to one trading partner terms and conditions of trade that are no less favorable than those accorded to any other trading partner. Although signatories to the GATS assume a general obligation to extend other signatories MFN treatment, countries were allowed to submit a list of exemptions to the MFN obligation. Where commitments are scheduled, exemptions to MFN treatment permit more favorable treatment of selected countries. Where there are no commitments, MFN exemptions permit members to treat certain signatories less favorably. For more information, see the section later in this chapter on "Annexes and Ministerial Decisions." See also appendix C for a glossary of terms.

[11] Transparency exists when the nature and extent of all trade-impeding measures are explained in their entirety, with precision and clarity.

[12] See USTR, *Final Texts of the GATT Uruguay Round Agreements Including the Agreement Establishing the World Trade Organization* (Washington, DC: GPO, 1994), p. 353.

Figure 1-1
Components of the General Agreement on Trade in Services (GATS)

GATS

Framework of Rules

Contains general obligations conducive to international trade in services, including:

* Most-Favored-Nation treatment
* Transparency
* Increasing participation of developing countries
* Economic integration
* Domestic regulation
* Recognition
* Monopolies and exclusive service suppliers
* Business practices
* Emergency safeguard measures
* Payments and transfers
* Restrictions to safeguard the balance of payments
* Government procurement
* General exceptions
* Subsidies

National Schedules of Commitments

Submitted by each of 123 signatory countries. The schedules contain commitments regarding restrictions and limitations to market access and national treatment. Schedules typically comprise:

* Cross-industry commitments
* Industry-specific commitments with respect to 4 modes of supply:
  - -cross-border supply
  - -consumption abroad
  - -commercial presence
  - -presence of natural persons
* MFN exemptions (optional)

Annexes and Ministerial Decisions

Provide information regarding on- going negotiations and rights to temporary MFN exemptions, including:

* Annex on MFN exemptions
* Annex on movement of natural persons supplying services under the Agreement
* Annex on financial services
* Second annex on financial services
* Annex on negotiations on maritime transport services
* Annex on telecommunications
* Annex on negotiations on basic telecommunications
* Decision on Institutional Arrangements for the GATS
* Decision on Certain Dispute Settlement Procedures for the GATS
* Decision on Trade in Services and the Environment
* Decision on Negotiations on Movement of Natural Persons
* Decision on Financial Services
* Decision on Negotiations on Maritime Transport Services
* Decision on Negotiations on Basic Telecommunications
* Decision on Professional Services
* Understanding on Commitments in Financial Services

Schedules of Commitments

National schedules specify commitments undertaken by signatories to accord market access and national treatment to foreign firms.[13] The schedules are bifurcated in structure and provide most of the detail of the final agreement. One section describes regulatory measures as they are applied on an industry-specific basis. The other section specifies cross-industry commitments, which are broad conditions and restrictions applicable across all industries listed in the schedule.[14]

Industry-Specific Commitments

The industry-specific section of the schedules essentially consists of a matrix wherein countries have identified market access and national treatment commitments on each service industry[15] in relation to one or more possible delivery channels or "modes of supply." There are four modes of supply:

1. Cross-border supply, whereby a service provider mails, electronically transmits, or otherwise transports a service across a national border;

2. Consumption abroad, whereby a consumer, such as a tourist, medical patient, or student, travels across national borders to consume a service;

3. Commercial presence, whereby a service supplier establishes a foreign-based corporation, joint venture, partnership, or other establishment, to supply services to foreign persons; and

4. Presence of natural persons, whereby an individual, functioning alone or in the employ of a service provider, travels abroad to deliver a service.

For each mode of supply, countries may offer one of two types of commitments on market access and/or national treatment. A "full commitment" creates the most liberal trading environment by guaranteeing *full* market access or national treatment to foreign service providers. Full commitments are denoted on the schedules by the word "none," which indicates that no industry-specific market access or national treatment restrictions exist. A "partial commitment" guarantees partial market access or national treatment by explicitly describing any current limitations imposed on foreign firms, indicating by default that, except for these limitations, market access and national treatment is

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[13] The obligation to develop national schedules is found in part IV, article XX of the GATS. See USTR, *Final Texts of the GATT Uruguay Round Agreements,* p. 299.

[14] Cross-industry commitments are referred to as "horizontal" commitments in the GATS text. To simplify the discussion in this report, however, commitments that apply to all service sectors will be referred to as cross-industry commitments.

[15] In preparing national schedules, countries were requested to organize and define service industries as noted in the GATT *Secretariat's Services Sectoral Classification List*, which draws on the United Nations' *Provisional Central Product Classification (CPC) System*. Accordingly, national schedules frequently make explicit references to the CPC numbers. A concordance of this report's subject industries and their corresponding CPC classifications is provided in appendix D.

accorded. Both full and partial commitments are "binding" in the sense that no further trade impediments may be introduced unless a country is willing to compensate parties adversely affected by the new measure. In the absence of a full or partial commitment, additional restrictions on market access and national treatment may be imposed in the future. The absence of a commitment is indicated by the word "unbound" in the appropriate cell of the matrix.[16]

Most commitments that were submitted by individual countries are, essentially, standstill commitments; i.e., a continuation of current policies.[17] Although standstill commitments do not liberalize trade, they do meet important objectives of the first round of GATS negotiations. They establish benchmarks that identify trade impediments and, under the terms of the GATS, deter the implementation of further restrictions. In addition, standstill commitments enhance the transparency, or clarity, of existing restrictions by listing current regulations.

Commitments scheduled by developing countries, such as certain Asia/Pacific countries, reflect an understanding by members of the WTO that developing countries might require a more gradual approach to scheduling commitments and liberalizing service markets. To accommodate such needs, the Uruguay Round Agreements include measures designed to provide special treatment for developing countries participating in the trade liberalization process. The Decision on Measures in Favor of Least Developed Countries permits such countries to "undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities."[18] The GATS includes a similar provision in Article IV, Increasing Participation of Developing Countries, which states that, with respect to scheduling industry-specific commitments and achieving progressive liberalization, "particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs."[19]

Thus, the GATS acknowledges that developing countries would initially schedule fewer commitments. This is reflected in table 1-1, which indicates which countries scheduled commitments for specific industries by displaying an 'X' in the relevant cell. Also, the GATS urges developed countries to offer assistance to less developed countries by according them access to trade facilitating technology, distribution channels, and information networks. Article IV encourages developed countries to establish "contact points" to help firms in developing countries gain market access by providing commercial and regulatory information. Since some of the subject economies may be considered

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[16] In certain instances, the term "unbound" coupled with an asterisk (i.e., Unbound*) is used to identify modes of supply that are "technically infeasible" in an industry. Cross-border supply of many construction services, for example, may be perceived as technically infeasible.

[17] Negotiations on financial services, basic telecommunication services, and maritime transport services are exceptions to this rule. Because financial, maritime transport, and basic telecommunication services affect so many sectors of the economy, countries sought actual liberalization of these service markets in the first round of negotiations.

[18] *Final Texts of the GATT Uruguay Round Agreements Including the Agreement Establishing the World Trade Organization*, Apr. 1994, p. 385.

[19] Ibid., p. 288.

Table 1-1
Summary of industry-specific commitments scheduled by Asia/Pacific trading partners, by industry

	Australia	Hong Kong	India	Indonesia	Korea	Malaysia	New Zealand	Philippines	Singapore	Thailand
Distribution	X	X			X		X			X
Education	X						X			X
Enhanced telecom-munication	X	X	X	X	X	X	X	X	X	X
Audiovisual		X	X		X	X	X		X	X
Courier		X						X	X	
Health care	X		X			X	X		X	
Accounting	X	X			X	X	X		X	X
Advertising	X	X			X	X	X		X	X
Legal	X					X	X			X
Architectural and engineering	X		X	X	X	X	X		X	X
Construction	X	X	X	X	X	X	X		X	X
Transportation	X				X		X	X		X
Travel/Tourism	X	X	X	X	X	X	X	X	X	X

Source: Compiled by the staff of the U.S. International Trade Commission.

developing countries,[20] it should be expected that these countries would schedule fewer commitments.

Cross-Industry Commitments

Most signatory countries scheduled cross-industry commitments to avoid making repeated entries for measures that apply to every industry listed in the industry-specific section of the national schedules. These commitments generally summarize broad measures affecting investment, real estate transactions, government subsidies or taxation, and the entry and temporary stay of natural persons. Cross-industry commitments must be examined in conjunction with industry-specific commitments to assess the full extent of

[20] In the context of the GATS, countries that have claimed "developing" status generally are those outside the Organization for Economic Cooperation and Development (OECD).

measures relating to a particular service industry. For example, to establish a commercial presence in Australia, an accounting firm would need to consider both the industry-specific limitations found under "accounting," as well as the cross-industry restrictions that apply broadly to investment and the presence of natural persons. Table 1-2 identifies areas in which the Asia/Pacific countries scheduled cross-industry commitments. These are described in further detail in appendix E.

Table 1-2
Summary of cross-industry commitments, by trading partner

	Australia	Hong Kong	India	Indonesia	Korea	Malaysia	New Zealand	Philippines	Singapore	Thailand
Investment	X		X	X	X	X	X	X	X	X
Real estate acquisition				X	X	X	X	X		X
Subsidies and/or taxation	X			X	X	X				
Entry and temporary stay of natural persons	X	X	X	X	X	X	X	X	X	X

Source: Compiled by the staff of the U.S. International Trade Commission.

Annexes and Ministerial Decisions

Eight annexes are attached to the GATS and form an integral part of the agreement. For the purpose of this discussion, the annex on article II Exemptions, which provides for MFN exemptions, may be the most important.[21] This annex allows countries to attach a list of MFN exemptions[22] to national schedules, although the annex stipulates that the duration of these exemptions may not exceed 10 years in principle, and must be reviewed within 5 years. About two-thirds of GATS signatories, including all of the countries examined in this report, attached MFN exemptions to their schedules. Signatories included MFN exemptions because of concerns regarding "free-ridership."[23] For the service industries under examination in this report, most of the MFN exemptions apply either to all service sectors or to audiovisual services (table 1-3). Measures that apply to all sectors generally accord preferential treatment to selected trading partners in order to comply with previously existing agreements or to promote regional economic

[21] See USTR, *Final Texts of the GATT Uruguay Round Agreements*, p. 305.

[22] Most MFN exemptions list measures that are accorded preferentially to selected countries in all or some service industries. A lesser number indicate that certain signatories will be subject to less favorable treatment.

[23] Bernard Hoekman, *Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services*, paper presented at The Uruguay Round and the Developing Economies Conference of the World Bank, Washington, DC, Jan. 26-27, 1995, p. 6. Free-riders enjoy beneficial terms and conditions of trade in foreign markets, but do not accord similar benefits to individuals and foreign firms operating in their own markets.

development. With respect to audiovisual services, most MFN exemptions allow for preferential treatment of co-produced works to encourage the development of the domestic film and television production industry. A detailed presentation of MFN exemptions scheduled by the subject countries may be found in appendix F.

Other annexes and ministerial decisions define the scope of certain industries for the purposes of further negotiations, establish the modalities of ongoing and future negotiations, establish future work programs, and set timetables for concluding negotiations rolled over from the Uruguay Round.[24]

Table 1-3
Summary of MFN exemptions, by trading partner

	Australia	Hong Kong	India	Indonesia	Korea	Malaysia	New Zealand	Philippines	Singapore	Thailand
All services				X		X	X	X	X	X
Accounting										X
Advertising						X				
Audiovisual	X		X				X		X	X
Construction				X						
Legal									X	
Transportation										X

Source: Compiled by the staff of the U.S. International Trade Commission.

Methodological Approach

Since published analysis of the content of GATS schedules is limited, USITC staff were required to collect information through primary sources. The Commission conducted a public hearing on March 27, 1997,[25] and staff conducted extensive in-person and telephone interviews with, and made telefax inquiries of, domestic and foreign service providers, principal service industry associations, and U.S. and foreign regulatory authorities (appendix H).

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[24] Negotiations on financial services, basic telecommunication services, and maritime transport services were not concluded during the Uruguay Round, but provisions were made for them to continue. Negotiations on financial services concluded in June 1995. With respect to these services, the United States registered a broad MFN exemption that preserves the right to differentiate among foreign service providers in terms of regulatory treatment. Currently, financial services negotiations are underway once again, with a scheduled deadline of December 1997. Negotiations on maritime services concluded June, 28, 1996, with no agreement, although negotiations in this area may recommence in January 2000. WTO negotiations on basic telecommunication services concluded with an agreement among 69 countries in February 1997. See U.S. International Trade Commission, *Recent Trends in U.S. Services Trade*, USITC publication 3041, May 1997.

[25] See appendix G for the calendar of witnesses.

Each industry discussion begins by defining the scope of the services covered and identifying the principal channels through which service providers deliver services to foreign consumers.[26] To identify these channels, staff reviewed the best available statistical estimates of international service transactions, published by the Bureau of Economic Analysis of the U.S. Department of Commerce.[27] A brief presentation regarding the volume of trade in the subject service industries is included in each discussion.

The discussions then turn to an examination of the schedule submitted by each trading partner. An overview summarizes pertinent industry-specific commitments, cross-industry commitments, and MFN exemptions. The overview also references a table that summarizes the industry-specific commitments listed by each trading partner in its schedule. Detailed discussions of the individual schedules follow. These discussions focus on the effects of industry-specific and cross-industry commitments.[28] Each discussion concludes with a summary that identifies the principal benefits conferred, and limitations imposed, on U.S. service exporters by the subject trading partners. The summary is qualitative, rather than quantitative in nature, drawing on staff analysis and input provided by U.S. industry representatives. In some cases, anecdotal information gathered from industry interviews has revealed impediments to trade that are not apparent from an examination of the schedules. In other cases, industry representatives have indicated that the trade environment is more open than some national schedules suggest.

In addition to the qualitative analysis of commitments discussed above, an overview of services trade data appears in chapter 2, and a quantitative summary of the commitments is found in chapter 15. Data for the quantitative summary are derived from the schedules of commitments.[29]

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[26] With three exceptions, service industries identified in the request letter are discussed and analyzed separately. The nature of the distribution industry and the commitments regarding distribution services favored broad treatment of the industry, rather than discrete discussions of retailing, wholesaling, and franchising services. Similarly, the nature of commitments regarding architectural, engineering, and construction services favored simultaneous treatment of these services. Also, the nature of commitments regarding land transportation services (i.e., rail and trucking) favored broad treatment of the industry.

[27] Among the member countries of the OECD, only the United States compiles data on sales of services through foreign affiliates. As discussed in chapter 2, this channel of delivery is a principal component of trade in services. See OECD, Statistics Directorate, *Services: Statistics on International Transactions*, 1996, p. 8.

[28] Cross-industry commitments apply to all industries in a signatory's schedule and must be referenced when discussing certain industry-specific commitments. It is important to note that cross-industry commitments do not apply to industries for which no industry-specific commitments were scheduled or where unbound limitations are specified. Repeated references to cross-industry commitments may result in some redundancy across chapters, but improve the discussion in terms of clarity and comprehensiveness.

[29] For a complete discussion of the methodology used in chapter 15, see the annex to that chapter.

Impediments to Examining the GATS

As noted above, the GATS breaks new ground in terms of its comprehensive coverage of services trade in a multilateral framework. As a consequence of the agreement's broad coverage and recent conclusion, an examination of this nature encounters certain impediments. The principal obstacle is the sheer complexity of the agreement, which reflects the diversity of the industries covered and the often technical nature of government regulation pertaining to certain service industries (e.g., telecommunication). This difficulty is compounded further by the imprecise language used in the schedules, which was intended to provide for rapid technological and regulatory change and reflects signatories' desire for some latitude in implementing scheduled commitments. These factors combine to make precise interpretation of certain commitments difficult.

Another complicating factor is that the schedules do not necessarily provide information on all impediments to trade and investment in services. The GATS employed a "positive listing" approach to scheduling commitments, which required countries to list in their national schedules only those sectors in which they accord foreign service providers either market access or national treatment, with respect to at least one mode of supply. Thus, if a signatory offered no market access or national treatment commitment for any mode of supply within a sector, then that sector does not appear in its national schedule and trade impediments remain unbound. As such, signatories may impose new or additional trade restrictions pertaining to this sector in the future, but need not provide any information regarding current restrictions, if any, in their schedules.

In addition, country schedules do not necessarily address all trade impediments that are applied on a cross-industry basis, because no protocol was established for scheduling such measures. For industry-specific measures, the GATT Secretariat issued a Services Sectoral Classification List that delineates service industries that were the subject of negotiations during the Uruguay Round. Thus, industries that do not appear in a country's schedule are understood to be subject to unbound restrictions affecting market access and/or national treatment. No corresponding list, however, was developed to indicate which cross-industry issues should be addressed in national schedules. Consequently, where cross-industry commitments on issues like investment, real estate transactions, subsidies and taxes, and business visas are absent, it is unclear whether these areas are subject to no restrictions, or subject to unbound restrictions.

Finally, as noted earlier, identifying the difference between *de facto* and *de jure*[30] restrictions emerged as another difficulty in analyzing the GATS. In some cases, trading partners have listed restrictions that may not be enforced in practice. In this instance, a country may appear to be more restrictive than it actually is. Conversely, some trading partners impose informal regulatory practices on foreign service providers that constitute effective trade barriers, yet do not appear in country schedules. Staff attempted to identify all such regulations and practices through interviews with industry representatives and government officials.

[30] *De facto* restrictions are restrictions that are imposed in practice, whereas *de jure* restrictions are those that are imposed by law, including by regulation, but which may not be applied in practice.

Organization of Report

Chapter 2 provides an overview of U.S. trade in services, both by industry and by trading partner. Chapters 3 through 14 examine specific service industries. Finally, chapter 15 summarizes the discussions found in chapters 3 through 14 to provide an overall perspective on the accomplishments of the Uruguay Round with respect to services. Chapter 15 employs quantitative techniques to summarize the extent of binding commitments undertaken by the subject countries.

CHAPTER 2
Overview of International Trade in Services

Introduction

This chapter provides some context for the industry-specific discussions that follow in chapters 3 through 14. Examined first is the relationship between the "modes of supply" framework used in the General Agreement on Trade in Services (GATS), reviewed briefly in chapter 1, and the framework used by data collection agencies to report on U.S. trade in services. Presented next is an overview of U.S. trade in services and an examination of the relative importance of the subject trading partners and industries.[1]

Modes of Supply

Official trade data pertaining to services are generally classified as either cross-border sales or sales through affiliates located in foreign markets. In both cases, sales receipts are reported before deductions for expenses and taxes, as gross sales figures are most directly comparable across countries, industries, and firms. Cross-border service transactions are explicitly delineated in a nation's balance of payments. By contrast, transactions through affiliates are not. Instead, the income derived by the parent firm from sales by its foreign-based affiliates enters the balance of payments as investment income.[2] With respect to affiliate transactions, this report covers only affiliate sales reported by majority-owned affiliates.[3] Data regarding sales by affiliates in which U.S. persons hold only minority interests are not available on an industry-specific basis.

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[1] This presentation is based substantively on official trade statistics prepared by the U.S. Department of Commerce (USDOC), Bureau of Economic Analysis (BEA). The methodological difficulties inherent in collecting information on cross-border and affiliate trade in services are implicit in this presentation. Namely, trade data in the detail required for this report are available only through 1994 for affiliate transactions, and only through 1995 for cross-border transactions. In addition, the availability and comparability of information on certain industries vary according to the mode of delivery and year, reflecting the reporting obligations of service providers, the suppression of confidential data, and improvements in BEA's estimation and reporting methodologies.

[2] The balance of payments records income from both majority-owned affiliates and nonmajority-owned affiliates.

[3] Majority-owned foreign affiliates of U.S. firms are defined as foreign affiliates for which the combined direct and indirect ownership interest of all U.S. parents exceeds 50 percent. Majority-owned U.S. affiliates of foreign firms are U.S.-based affiliates for which the combined direct and indirect ownership interest of all foreign parents exceeds 50 percent. For reporting purposes, the country in which the U.S.-based affiliate's "ultimate beneficial holder" resides receives credit for sales to U.S. persons. An ultimate beneficial holder of a U.S. affiliate is the entity, proceeding up the affiliate's ownership chain, that is not owned more than 50 percent by another person.

Services trade is categorized somewhat differently in the GATS, which identifies four different modes of delivering services. These four modes of supply are cross-border supply, consumption abroad, commercial presence, and the presence of natural persons (figure 2-1). Cross-border trade encompasses three of the four GATS modes of supply: cross-border supply, consumption abroad, and the presence of natural persons. For example, when U.S. firms mail, electronically transmit, or otherwise transport services across a national border, the payment received is recorded as a cross-border export in the U.S. balance of payments. So, too, are transactions completed through consumption abroad, whereby services like tourism or education are purchased outside the consumer's home country. Sales made by U.S. persons who have entered a foreign market temporarily (presence of natural persons) are also counted as cross-border exports. Such sales take place, for instance, when a U.S. attorney briefly travels abroad to provide legal services to a foreign-based client, and then returns to the United States.

Sales through affiliates are equated with the third GATS mode of supply, commercial presence. A commercial presence exists when, for example, an advertising agency establishes a foreign-based affiliate to sell its services to other firms located in the foreign market. Sales receipts from majority-owned affiliates of U.S. parents are captured by data collection agencies and the income returned to the U.S.-based parent enters the U.S. balance of payments as investment income.

Cross-Border Trade

U.S. cross-border exports of services have consistently exceeded imports, resulting in a surplus on the services trade account (figure 2-2). The U.S. surplus on cross-border trade in services increased from $5 billion in 1986 to $68 billion in 1995. As a result, trade in services has significantly reduced the deficit on the current account of the U.S. balance of payments (figure 2-3).[4] Cross-border trade in services largely reflects travel and tourism, freight transportation, and passenger fares (predominantly air fares). Taken together, these industries accounted for 67 percent of service exports and 78 percent of service imports in 1995 (figure 2-4).

Private cross-border service exports grew by an average annual rate of 11 percent during 1986-95, increasing from $68 billion in 1986 to $177 billion in 1995. The strongest growth in exports occurred in the professional service industries, which recorded average annual export growth of 16 percent during this period. Intellectual-property-related exports, measured by the collection of royalties and license fees, also increased rapidly, by 14 percent per year. Receipts from tourism and passenger fares grew by 13 percent per annum during the period, reflecting an overall rise in the number of tourists visiting the United States.[5]

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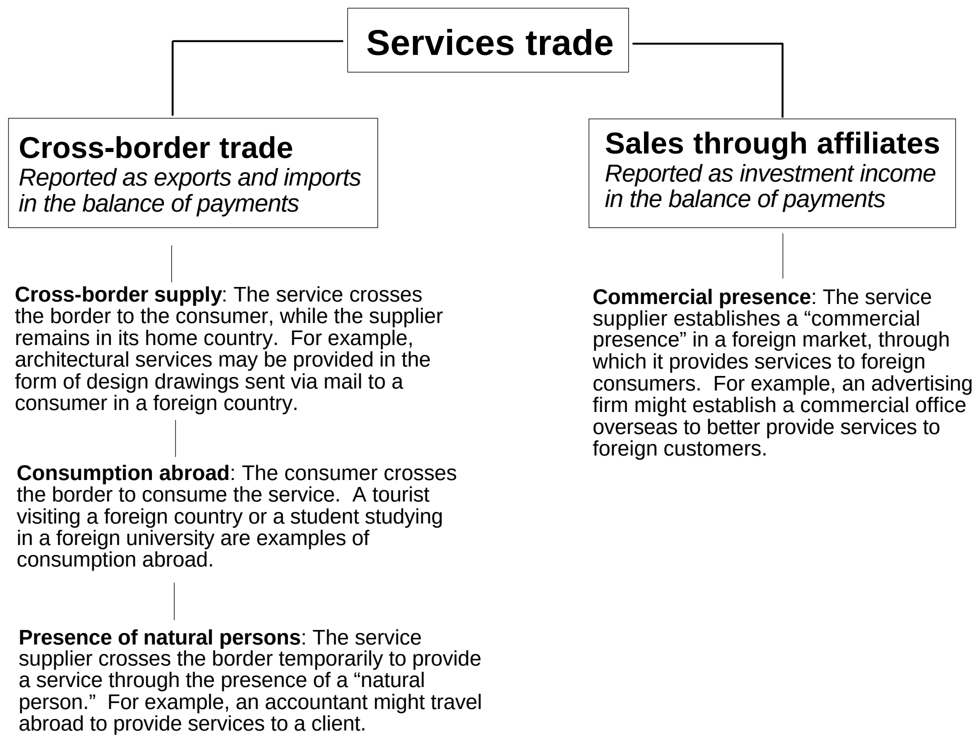
[4] The current account is one component of the balance of payments. The current account reflects cross-border trade in merchandise and services, international flows of investment income, and unilateral transfers (e.g., U.S. Government grants).

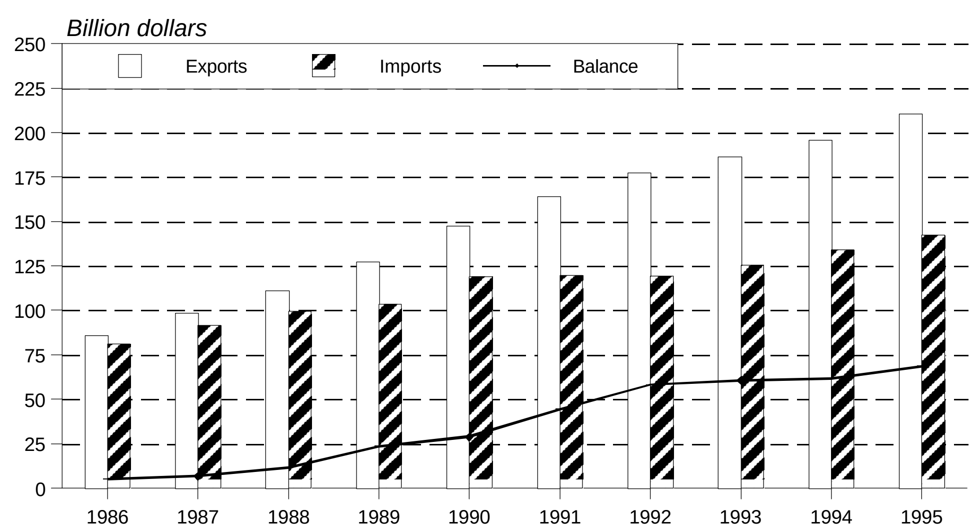
[5] This trend slowed somewhat in 1993 as recessions in foreign economies discouraged inbound tourism in the United States.

Figure 2-1
Modes of supply for international delivery of services



Source: Compiled by the staff of the U.S. International Trade Commission.

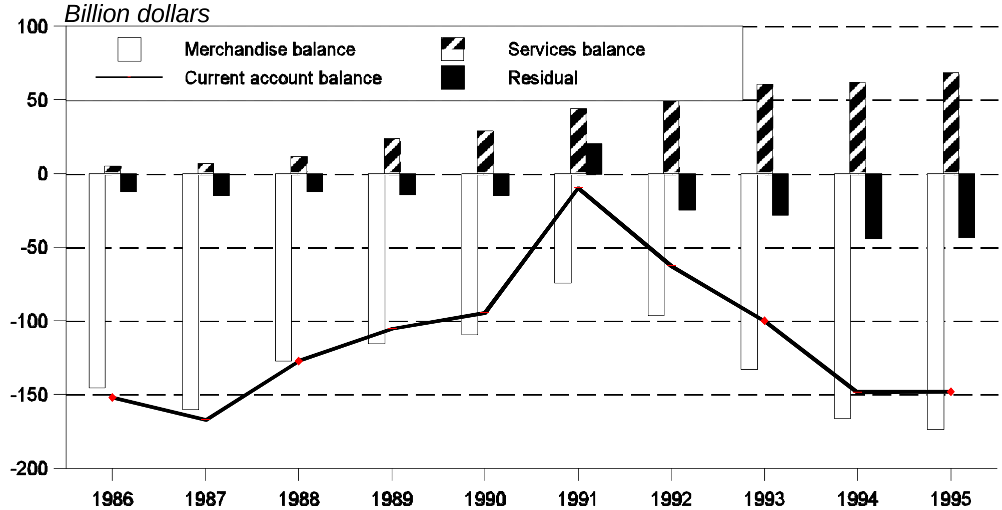
Figure 2-2
Cross-border service transactions: U.S. exports, imports, and trade balance, 1986-95[1]



[1] Data are presented as they appear in the current account of the U.S. balance of payments. Consequently, the services trade balance includes public sector and intra-corporate transactions.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* July 1996, p. 69.

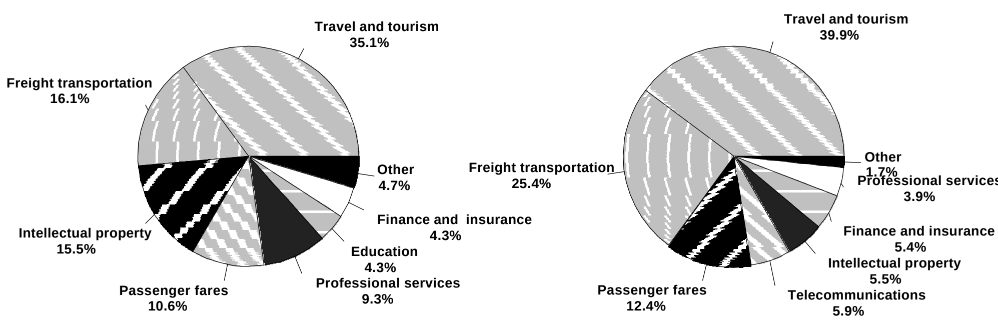
Figure 2-3
U.S. merchandise, services, and current account balances, 1986-95[1]



[1] The balance on trade in services includes public sector and intracorporate trade. The residual reflects the sum of net unilateral transfers and net investment income. The current account balance reflects the sum of total net merchandise trade, net services trade, net unilateral transfers, and net investment income.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* July 1996, p. 69.

Figure 2-4
U.S. cross-border service exports and imports,[1] by industry, 1995[2]



Total exports = $177 billion **Total imports = $116 billion**

[1] Data exclude public sector and intracorporate transactions, other than those of intangible intellectual property.

[2] Due to rounding, figures may not add to 100 percent.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* July 1996, p. 84 and Nov. 1996, pp. 83-84.

Cross-border service imports expanded less quickly than exports, which continued the growth of the U.S. cross-border trade surplus. During 1986-95, U.S. cross-border service imports grew by an average annual rate of 7 percent, increasing from $62 billion in 1986 to $116 billion in 1995. As with exports, imports of intellectual-property-related and professional services were the fastest growing, with average annual growth rates of 18 percent and 15 percent, respectively, during 1986-95. With respect to professional services, imports of legal and advertising services grew most quickly, by 29 percent and 28 percent, respectively. Also similar to exports, travel and tourism services represented the largest category of imports, accounting for 40 percent of all imports in 1995. Growth in this sector measured 7 percent per year during 1986-95.

Sales by Majority-Owned Affiliates

Since many services require continuous contact between service providers and customers, a large share of international trade in services takes place through foreign-based affiliates. In 1994, 47 percent of total U.S. service sales[6] were accounted for by foreign affiliates of U.S. firms, and 57 percent of total U.S. service purchases were accounted for by U.S.-based affiliates of foreign firms.[7] The U.S. balance on affiliate transactions registered a steady surplus during 1987-94, averaging almost $10 billion, with small fluctuations usually reflecting slower economic growth abroad and commensurately slower growing sales by foreign-based affiliates of U.S. companies (figure 2-5).[8]

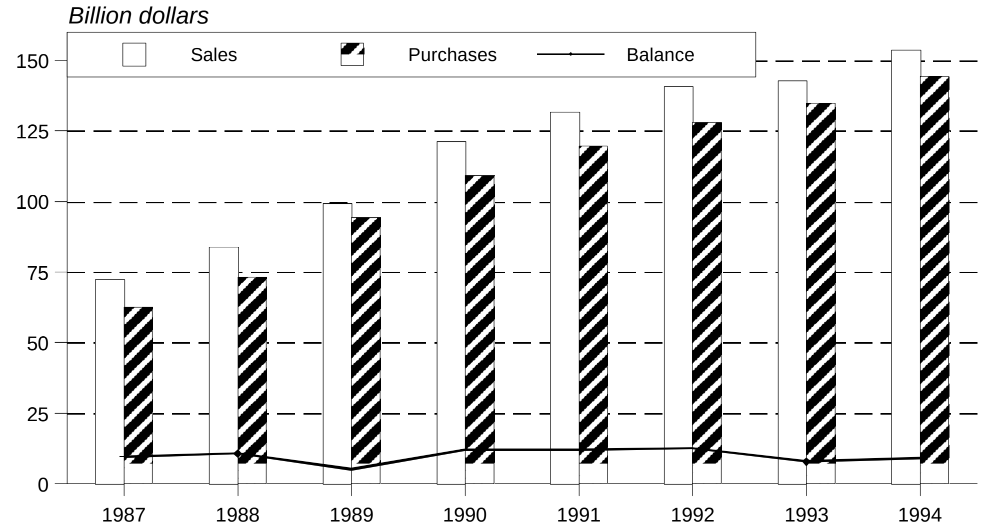
During 1987-94, sales by U.S.-owned affiliates in foreign markets grew by an average annual rate of 11 percent, from $72 billion in 1987 to nearly $154 billion in 1994. Insurance firms, wholesalers, securities firms, and certain professional service firms, such as computer and data processing firms, accounted for the largest shares of sales through U.S.-owned affiliates (figure 2-6). Meanwhile, U.S. purchases of services through U.S.-based affiliates of foreign firms expanded more rapidly than sales, growing by an average annual rate of 13 percent during 1987-94, from $63 billion in 1987 to $144 billion in 1994. Once again, insurance affiliates represented by far the largest source of U.S. purchases with 34 percent, reflecting the strong presence of foreign-owned insurance companies in the U.S. market. Real estate firms accounted for the next largest share of U.S. purchases, 9 percent, followed closely by wholesaling affiliates, with 8 percent of total purchases.

[6] Includes both cross-border sales (exports) and affiliate sales.

[7] Trade figures referenced in this discussion exclude transactions between a foreign affiliate and its U.S. parent company, but include transactions among different affiliates of the parent. Data that exclude all intracorporate trade are not publicly available.

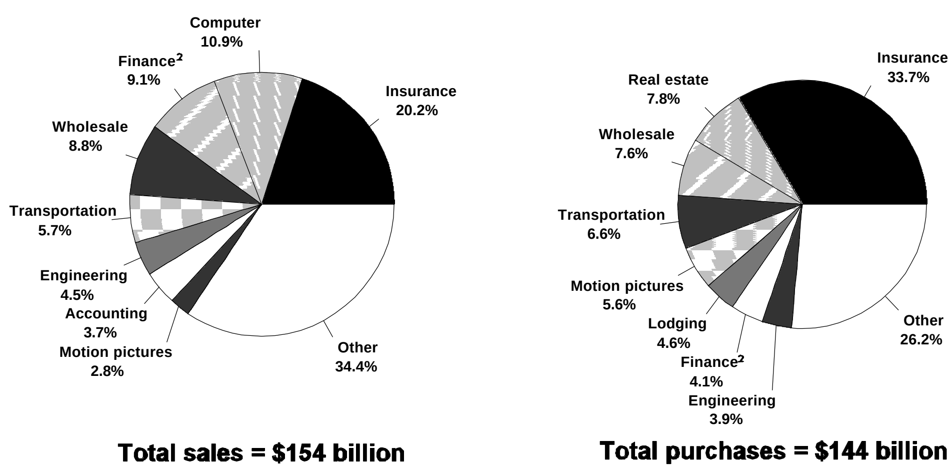
[8] Comparable data for U.S. trade in services through affiliates are available only for the time period 1987-94.

Figure 2-5
Affiliate service transactions: U.S. sales, purchases, and balances, 1987-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996, p. 70.

Figure 2-6
Affiliate service transactions: U.S. sales and purchases, by industry, 1994[1]



[1] Due to rounding, figures may not add to 100 percent.
[2] Excludes transactions by depository institutions.
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*. Nov. 1996, pp. 111-112.

U.S. Trade in Services with Asia/Pacific Trading Partners

In 1995, the volume of cross-border services trade with the 10 subject Asia/Pacific trading partners amounted to 16 percent of total U.S. cross-border services trade, slightly less than the 17-percent share contributed by Latin America (figure 2-7).[9] By comparison, cross-border services trade with Europe accounted for 38 percent and trade with Japan alone accounted for 14 percent of total cross-border services trade. The subject Asia/Pacific economies represent an even smaller portion of affiliate trade in services. In 1994, the volume of affiliate trade with the 10 subject trading partners accounted for only 8 percent of total U.S. affiliate trade. As with cross-border trade, affiliate transactions in services were dominated by trade with Europe, which accounted for 56 percent of affiliate trade in 1994. Japan and Canada represented the second- and third-largest trading partners, accounting for 14 percent and 13 percent of services transactions through affiliates, respectively.

Cross-Border Services Trade

Within the entire Asia/Pacific region,[10] Japan is clearly the dominant U.S. cross-border services trading partner, accounting for 50 percent of U.S. exports and 42 percent of U.S. imports. Taken together, the 10 Asia/Pacific trading partners examined in this study account for 35 percent of U.S. exports to the region. The relative shares of U.S. imports are roughly comparable, although Japan's portion is notably smaller while Taiwan's is larger. The United States records a surplus in cross-border services trade with all 10 of the subject economies, resulting in a cumulative surplus of $10 billion, or 15 percent of the total U.S. surplus in cross-border services trade. Among the subject economies, Korea, Australia, Hong Kong, and Singapore are both the largest trading partners and the greatest contributors to the U.S. surplus (figure 2-8).

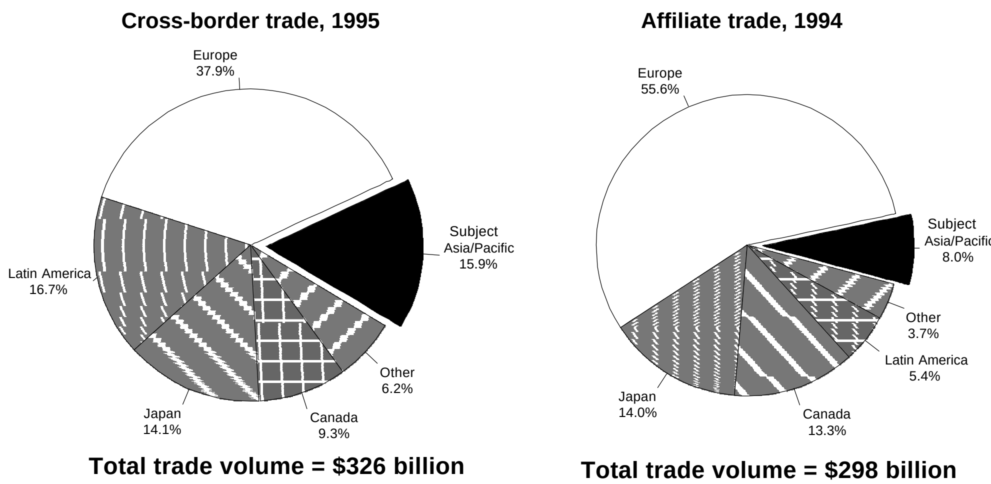
Affiliate Transactions

As noted previously, services trade through affiliates in the Asia/Pacific region excluding Japan represents a small portion (8 percent) of total U.S. affiliate trade in services. However, affiliate services transactions with the region contribute significantly to the U.S. affiliate trade surplus. In 1994, U.S. sales and purchases of services through affiliates with the Asia/Pacific region excluding Japan resulted in a net surplus of $11.5 billion, an amount larger than the $9-billion overall U.S. surplus in affiliate transactions. Thus, the surplus

[9] The volume of cross-border trade is the sum of U.S. exports and imports of services, and the volume of affiliate trade is the sum of sales and purchases through foreign affiliates.

[10] Unless otherwise specified, the Asia/Pacific region refers to the regional classification utilized by the U.S. Department of Commerce, Bureau of Economic Analysis, which is composed of Australia, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Taiwan, Thailand, and other Asia/Pacific trading partners.

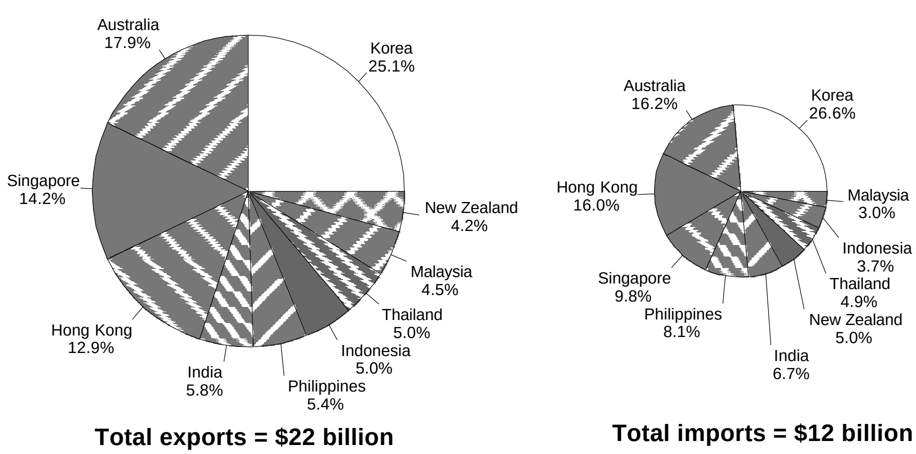
Figure 2-7
U.S. services trade volume, by region[1]



[1] Due to rounding, figures may not add to 100 percent.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996, pp. 84-85 and pp. 111-112.

Figure 2-8
U.S. cross-border services trade with the subject Asia/Pacific economies, by trading partner, 1995[1]

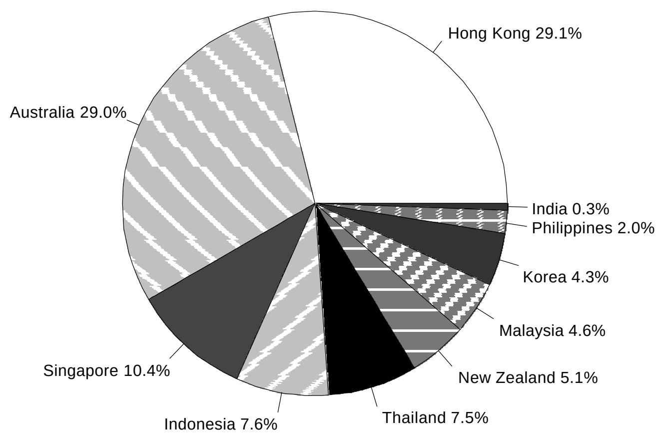


[1] Due to rounding, figures may not add to 100 percent.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996, pp. 84-85.

with Asia/Pacific partners excluding Japan helped to offset the deficit in affiliate transactions recorded with larger trading partners such as Canada, Europe, and Japan. While affiliate sales data are not available on a country-by-country basis, direct investment data suggest that, among the subject trading partners, most affiliate trade takes place with Australia and Hong Kong, each of which account for 29 percent of U.S. direct investment assets in nonmanufacturing activities in the region (figure 2-9).

Figure 2-9
Nonmanufacturing assets of U.S. affiliates in the subject Asia/Pacific economies, 1994[1]



Total = $168 billion

[1] Due to rounding, figures may not add to 100 percent.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *U.S. Direct Investment Abroad, 1994 Benchmark Survey, Preliminary Results,* Jan. 1997, table II B 5 and USITC staff estimates.

CHAPTER 3
Distribution Services

Introduction

The distribution industry provides four major services: commission agents' services, wholesale trade services, retail trade services, and franchising services. Service providers generally are distinguished as follows: commission agents sell products that are supplied and typically owned by others to retailers, wholesalers, or other individuals; wholesalers take title to products supplied by others and subsequently resell them to retailers; retailers sell goods and services mostly to individual consumers and households; and franchisors sell certain rights and privileges, such as the right to use a retail business format or a trademark. In addition to selling, wholesalers often provide inventory maintenance, credit, and advertising services.

International Trade in Distribution Services

Trade in distribution services comprises both affiliate and conventional, cross-border transactions. The two largest components of distribution services, wholesale and retail services, are traded predominantly through majority-owned, foreign-based affiliates. Franchising trade is undertaken on a cross-border basis, and is measured by the exchange of royalties and fees, collected in return for granting rights to use business formats or trademarks. Commission agents' services may take place on both a cross-border and affiliate basis. However, since commission agents typically are individuals or small businesses whose sales are difficult to capture in national data surveys, trade data on commission agents' services are unavailable.

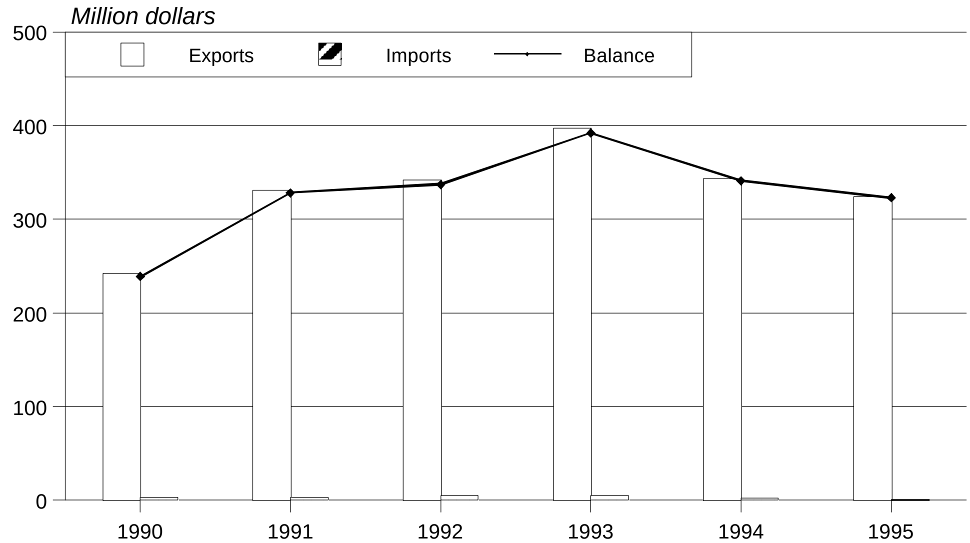
Cross-Border Transactions

Franchising is the only distribution service that is tracked on a cross-border basis. Despite significant declines in exports during 1994-95, U.S. cross-border franchising exports rose by 7.4 percent per year, on average, during the period 1990-95. At the close of the period, U.S. exports stood at $324 million (figure 3-1).[1] In 1995, the largest regional market for U.S. cross-border franchising exports was Europe, accounting for 48 percent of U.S. exports. The 10 trading partners examined in this study accounted for an estimated $40 million in export franchising fees, or about 12 percent of total U.S. exports (figure 3-2). Major export markets featured in this report include Australia, accounting for $12 million in export revenues; and Indonesia, Korea, and Thailand, each accounting

[1] In a 1994 realignment of statistical data, the Bureau of Economic Analysis (BEA) removed credit card enterprises that sell their logos and systems to banks from franchise lists and reassigned them to financial data lists. This accounts for much of the drop in exports. BEA representative, telephone interview by USITC staff, Jan. 28, 1997.

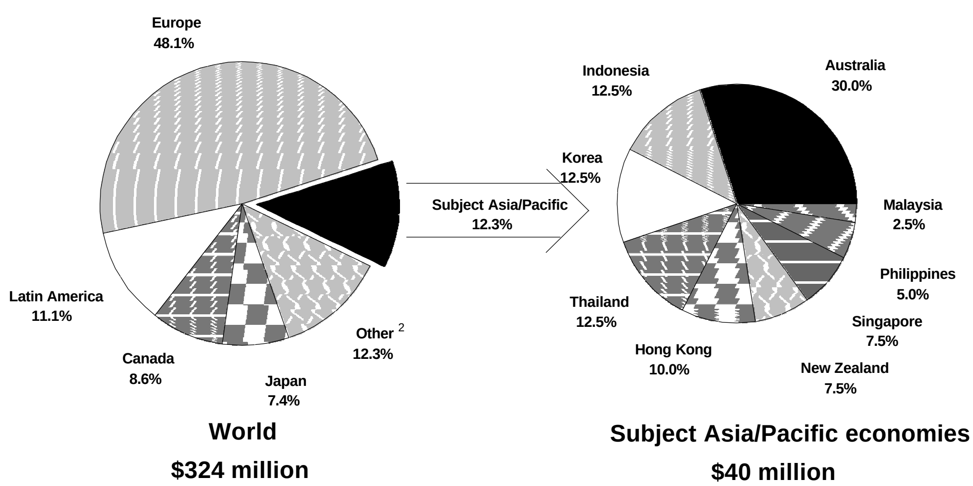
for $5 million. It does not appear that the United States made payments to any of the subject

Figure 3-1
Cross-border trade in franchise fees: U.S. exports, imports, and trade balance, 1990-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1994 and Nov. 1996.

Figure 3-2
Franchise fees: U.S. cross-border exports, by principal markets, 1995[1]



[1] Value may not sum to 100 percent due to rounding.
[2] Principally includes the Middle East, Africa, and other Asia/Pacific trading partners.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

countries in return for franchising rights. U.S. imports of franchising services from all countries measured only $1 million in 1995, resulting in a trade surplus of $323 million.

Sales by Majority-Owned Affiliates

Wholesale trade services represent the largest component of distribution services as well as a significant portion of all U.S. sales through foreign affiliates. Wholesale trade sales by foreign affiliates of U.S. firms stood at $13.5 billion in 1994, approximately $2.9 billion, or 18 percent, below the 1993 level (figure 3-3). Declining U.S. sales through foreign-based affiliates during 1994 were attributable largely to weak economic growth and higher inflation in European markets, which accounted for 60 percent of wholesale trade sales by foreign-based affiliates of U.S. firms in 1994 (figure 3-4). For the countries studied in this report, official sales figures are available only for Australia, which accounted for 7 percent of U.S. wholesale trade service sales in 1994.

In 1994, wholesale trade services provided by U.S.-based affiliates of foreign firms continued to grow strongly, increasing by 13 percent to $10.9 billion. U.S.-based, foreign-owned wholesalers increased in number as well as sales, benefitting from higher economic growth in the United States than in other countries. The resulting wholesale trade surplus of $2.6 billion in 1994 was smaller by $4.2 billion, or 62 percent, than the $6.8-billion surplus recorded in 1993.

Services provided by retailers constitute a much smaller proportion of total trade in services by affiliates. In 1994, U.S. sales and purchases of retailing services through affiliates amounted to only $769 million and $500 million, respectively (figure 3-5). Because purchases contracted by 38 percent, sales exceeded purchases in 1994, creating a surplus of $269 million. The decline of purchases continues a downward trend from a peak of $896 million in 1992, but the appearance of a surplus in 1994 provided a striking contrast to the deficits experienced during 1990-93. More than two-thirds of the decline in purchases reflects changes in the accounting classifications of two foreign-owned affiliates, which no longer are categorized as retailing affiliates.[2]

Country-specific data on sales by retailing affiliates is limited. However, on the basis of foreign direct investment data, it appears that the United Kingdom is one of the largest U.S. trading partners in retail services. The United Kingdom holds 19 percent of foreign retailing assets in the United States, followed by Germany, with 15 percent of foreign assets. The Netherlands, Canada, the Netherlands Antilles and Japan each hold between 10 and 12 percent of total foreign direct investment in the U.S. retailing sector.[3]

The Asia/Pacific region hosts considerable foreign investment from companies such as J.C. Penney, Toys “R” Us, Price Club, Compaq Computer, Wal-Mart, Levi Strauss, Tower Records, Ace Hardware, McDonald’s, Kentucky Fried Chicken, IBM, and Kmart, all of which are based in the United States. Other major competitors established in the subject markets include the well-known names of Marks and Spencer (United Kingdom),

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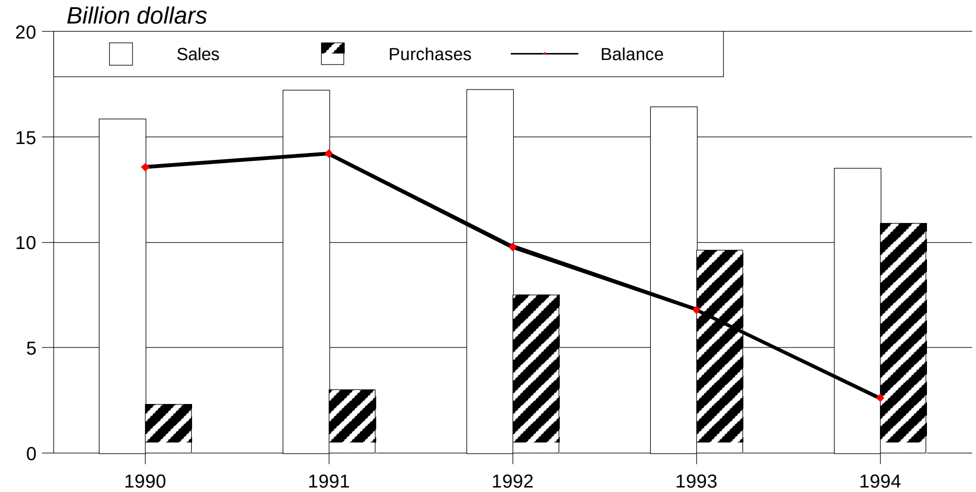
[2] BEA representative, telephone interview by USITC staff, Dec. 13, 1996.
[3] USDOC, BEA, *Survey of Current Business*, Sept. 1996, p. 76.

Siemens (Germany), Makro (Netherlands), Gucci (Italy), HMV (United Kingdom), Virgin
(United

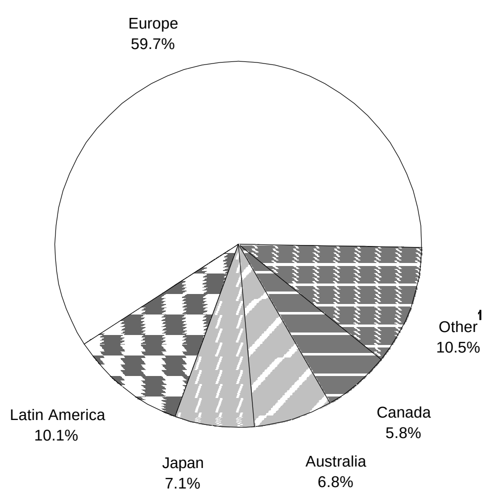
Figure 3-3
Wholesale service sales by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94[1]



[1] Data during 1990-91 understate U.S. purchases because selected data were suppressed in order to avoid disclosure of information about the operations of individual firms.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1992, Sept. 1994, Sept. 1995, and Nov. 1996.

Figure 3-4
Wholesale trade: Sales of services by majority-owned affiliates of U.S. firms, by principal markets, 1994

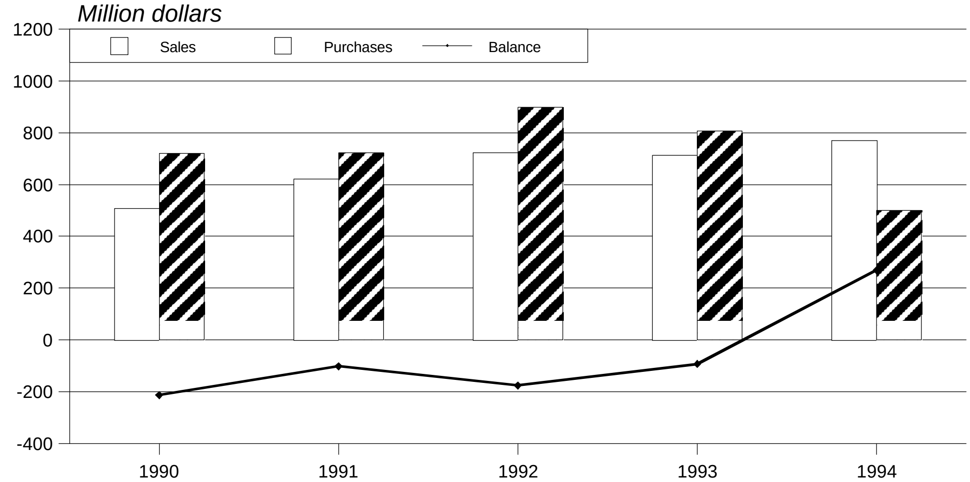


Total = $13.5 billion

[1] Includes Africa, the Middle East, and other Asia/Pacific trading partners.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Figure 3-5
Retail service sales by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94[1]



[1] Sales data for 1990 and purchases data for 1994 were estimated by USITC staff.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1993, Sept. 1994, Sept. 1995, Sept. 1996, and Nov. 1996; and USITC staff estimates.

Kingdom), Carrefour and Delifrance (France), and a host of Japanese wholesalers and retailers such as FamilyMart.

Examination of Commitments on Distribution Services

The schedules of commitments address a number of nontariff trade barriers that affect trade in distribution services (table 3-1). These barriers generally limit the ability of foreign distribution service firms to establish a commercial presence in the subject markets and to staff their establishments with nationals from their home country. Among the four distribution services, wholesalers and retailers rely most heavily on the freedom to establish commercial presence in the form of a foreign affiliate. Consequently, commercial presence barriers adversely affect these distribution services more significantly than franchising and commission agents' services. Franchising and commission agents' services tend to be unaffected by commercial presence barriers because such establishments typically are owned by local residents and therefore are not treated as foreign establishments.

The primary commercial presence and natural person barriers to trade in distribution services include economic needs tests,[4] limitations on the purchase or rental of real estate, restrictions on equity holdings, product or service exclusions due to state monopolies or

[4] Economic needs tests assess the impact of proposed investment on the domestic social, political, and economic environment. The findings of these tests are often subjective, which reduces regulatory transparency and leaves foreign regulators with broad discretionary powers.

Table 3-1
Highlights of industry-specific restrictions on distribution services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**ALL DISTRIBUTION SERVICES:** **Market Access:** • Unbound except for mail order. **National Treatment:** None	**ALL DISTRIBUTION SERVICES:** **Market Access:** None **National Treatment:** None	**ALL DISTRIBUTION SERVICES:** **Market Access:** None **National Treatment:** None	**ALL DISTRIBUTION SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 62113-62118 - Commission agents' services, excluding sales of agricultural raw materials and live animals (CPC 62111), and food products, beverages, and tobacco (CPC 62112). • CPC 6223-6228 - Wholesale trade services, excluding sales of agricultural raw materials, and live animals (CPC 6221), and food, beverages, and tobacco (CPC 6222). • CPC 631, 63212, and 6322-6329 - Retailing services, excluding the dispensing of pharmaceutical, medical, and orthopaedic goods (CPC 63211), sales of motor vehicles (CPC 6311), sales of motor vehicle parts and accessories (CPC 6113), and sales of motorcycles and snowmobiles and related parts and accessories (CPC 6121). • CPC 8929 - Franchising services.
Hong Kong	**RETAILING SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**RETAILING SERVICES:** **Market Access:** None **National Treatment:** Unbound	**RETAILING SERVICES:** **Market Access:** None **National Treatment:** None	**RETAILING SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • Retailing services, limited to the resale (without transformation) of certain new and used consumer goods to the general public which are normally used for final personal or household consumption or utilization. Exact CPC coverage uncertain. These commitments exclude: • CPC 621 - Commission agents' Services • CPC 622 - Wholesale Trade Services. • CPC 8929 - Franchising.

Table 3-1, *continued*
Highlights of industry-specific restrictions on distribution services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Korea	**COMMISSION AGENTS' SERVICES:** **Market Access:** Unbound **National Treatment:** None	**COMMISSION AGENTS' SERVICES:** **Market Access:** Unbound **National Treatment:** None	**COMMISSION AGENTS' SERVICES:** **Market Access:** None **National Treatment:** None	**COMMISSION AGENTS' SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 621 - Commission agents' services, excluding sales of agricultural raw materials, and live animals (CPC 6211), and food products, beverages, and tobacco (CPC 62112) as well as financial future contracts.
	WHOLESALE TRADE SERVICES: **Market Access:** Unbound **National Treatment:** None	**WHOLESALE TRADE SERVICES:** **Market Access:** Unbound **National Treatment:** None	**WHOLESALE TRADE SERVICES:** **Market Access:** • Subject to an economic needs test for stores over 3,000 square meters, trade centers; wholesale trade of used cars, gaseous fuels, and related products; and for foreign trade services. **National Treatment:** None	**WHOLESALE TRADE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 622 - Wholesale trade services, excluding grain in 62211, raw milk in 62222, all 62223 (meat, poultry and game), red ginseng, noodles, and other farinaceous products in 62229, and fertilizers in 62276.
	RETAILING SERVICES: **Market Access:** Unbound **National Treatment:** None	**RETAILING SERVICES:** **Market Access:** Unbound **National Treatment:** None	**RETAILING SERVICES:** **Market Access:** • The building or buying of department stores and shopping centers is prohibited. Retail of used cars and gaseous fuels is subject to an economic needs test. **National Treatment:** None	**RETAILING SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 6111, 61130, 61210, 63101, 64104, and 632 - Retailing services, excluding animal feed, livestock and other animals in 63295, as well as dairy products and eggs (CPC 63102), meat and meat products, including poultry (CPC 63103) bread and flour confectionery (CPC 63105), sugar (CPC 63106), beverages not consumed on the spot (CPC 63107), tobacco (CPC 63108), rice, edible oils and fats, salt, coffee, tea, cocoa, spices, noodles and similar farinaceous products (CPC 63109).

Table 3-1, *continued*
Highlights of industry-specific restrictions on distribution services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Korea ***(continued)***	**FRANCHISING:** **Market Access:** None **National Treatment**: None	**FRANCHISING:** **Market Access:** None **National Treatment:** None	**FRANCHISING:** **Market Access:** None **National Treatment:** None	**FRANCHISING:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 8929 - Franchising services. A footnote limits franchising services to those items allowed under Wholesale Trade Services and Retailing Services. Korea's commitments exclude: • Trade in firearms, explosives, swords, works of art, antiques, and the establishment and operation of distribution services at public wholesale markets for agricultural, fishery and livestock products.
New Zealand	**COMMISSION AGENTS' SERVICES, WHOLESALE TRADE SERVICES, AND RETAILING SERVICES:** **Market Access:** None **National Treatment:** None	**COMMISSION AGENTS' SERVICES, WHOLESALE TRADE SERVICES, AND RETAILING SERVICES:** **Market Access:** None **National Treatment:** None	**COMMISSION AGENTS' SERVICES, WHOLESALE TRADE SERVICES, AND RETAILING SERVICES:** **Market Access:** None **National Treatment:** None	**COMMISSION AGENTS' SERVICES, WHOLESALE TRADE SERVICES, AND RETAILING SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 6211 - Commission agents' services, excluding sales of agricultural raw materials and live animals (CPC 62111), and food products, beverages, and tobacco (CPC 62112), and such services relating to wool trade (CPC 2613-2615). • CPC 622 - Wholesale trade services, excluding agricultural raw materials and, live animals (CPC 6221), food, beverages, and tobacco (CPC -6222), as well as such services relating to wool trade (CPC 2613-2615). • CPC 631, 632, 6111, 6113 and 6121 - Retailing services. These commitments exclude: • CPC 8929 - Franchising services.

Table 3-1, *continued*
Highlights of industry-specific restrictions on distribution services

Trading Partner[1]	Mode of Supply: Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments
Thailand	**COMMISSION AGENTS' SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**COMMISSION AGENTS' SERVICES:** **Market Access:** None **National Treatment:** None	**COMMISSION AGENTS' SERVICES:** **Market Access:** • Commercial presence permitted only through a limited liability company registered in Thailand in which foreign equity participation must not exceed 49 percent of the registered capital. Also, the number of foreign shareholders must be less than half of the total number of shareholders. • Foreign nationals or domestic companies which are deemed foreigners are not allowed to purchase or own land in Thailand. However, they may lease land and own buildings. **National Treatment:** • None as long as foreign equity participation does not exceed 49 percent.	**COMMISSION AGENTS' SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • CPC 621 - Commission agents' services. These commitments exclude: • CPC 622 - Wholesales trade services. • CPCs 631, 632, 6111, 6113, 6121 - Retailing services. • CPC 8929 - Franchising. In addition: • Thailand's MFN exemptions include the termination of the favorable treatment afforded U.S. firms under the U.S. /Thai Treaty of Amity and Economic Relations, in January 2005.

[1]India, Indonesia, Malaysia, the Philippines, and Singapore did not schedule commitments on distribution services.

national interest, nationality quotas, residence requirements, and limitations on the lengths of stay of foreign nationals. Trade barriers to distribution services may appear in the schedules as either cross-industry restrictions or industry-specific restrictions, depending upon how each country completed its schedule.[5]

Limitations on the activities of distribution service firms have a variety of effects. Restrictions on equity investment, for example, may limit the ability of foreign distribution service firms to retain control over their foreign affiliates. State monopolies on the distribution of selected products and exclusion from product or service areas that are considered to be of national interest may adversely affect goods distribution service firms by limiting product mix. Finally, restrictions on the temporary entry and stay of natural persons, such as nationality quotas, residence requirements for boards of directors, and limits on the length of time foreign persons may reside in the country, may restrict the ability of distribution firms to select and manage staff.

One-half of the countries examined in this report, comprising Australia, Hong Kong, Korea, New Zealand, and Thailand, offered full or partial commitments on distribution services. The remaining five countries, including India, Indonesia, Malaysia, the Philippines, and Singapore, did not offer commitments on these services. Those countries that did not address distribution services in their schedules may impose additional market access and national treatment limitations on foreign distribution service firms in the future without penalty.

Australia

Australia scheduled commitments on all four subsectors of distribution services. However, by excluding certain product categories from the scope of the commitments, Australia reserves the right to impose unbound restrictions on the distribution of all agricultural products through foreign commission agents, wholesalers, and retailers, and on the distribution of motor vehicles, motor vehicle parts, motorcycles, and pharmaceuticals through foreign-owned retail outlets. Foreign retailers, other than those operating mail order businesses, are also subject to unbound market access limitations that may restrict retailing of goods that would normally be supplied from abroad via commercial courier or cargo services.

In its cross-industry commitments, Australia continues to list a provision requiring notification and examination for foreign investment in all services, although it notes that investors need not demonstrate economic benefits or provide for Australian equity participation. However, Australia's cross-industry commitments state that foreign direct investment will be approved "unless national interest considerations arise." Such imprecise language may leave Australia with considerable flexibility in applying future restrictions on investment. Australia permits the temporary entry and stay of executives, senior managers, and other business visitors on unrestrictive terms, but reserves the right to condition the entry of specialists (i.e., those with technical or professional skills) on labor market tests, the elements of which are unclear.

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[5] See appendix E for a detailed presentation of the cross-industry commitments. In addition, general exemptions to most-favored-nation treatment are listed in appendix F.

Hong Kong

Hong Kong offers limited commitments on distribution, addressing only retailing services. Commission agents' services, wholesale trade services, and franchising services are not addressed in the schedule and thus limitations on these subsectors remain unbound. Hong Kong's limited retailing commitments accord full market access and national treatment to foreign retailers that establish a commercial presence. Restrictions on retailing services provided through cross-border supply and the presence of natural persons remain unbound. Cross-industry commitments scheduled by Hong Kong regulate only the entry and temporary stay of foreign personnel. General managers, senior managers, and specialists are permitted stays of 1 year initially, but stays may be extended to a total of 5 years.

Korea

Korea's commitments apply to all four distribution services, but generally exclude distribution of agricultural products.[6] For commission agents, full market access and national treatment are guaranteed only if a commercial presence is established. National treatment is also guaranteed for cross-border supply and consumption abroad, but market access is not guaranteed, which may negate the value of the national treatment commitments. In regard to certain wholesale trade services, the establishment of large or specialty commercial presences is contingent upon an economic needs test. As with commission agents' services, national treatment of foreign wholesalers is guaranteed. With respect to retailing services, Korea prohibits foreign firms from establishing a commercial presence by building or buying department stores and shopping centers. An economic needs test is required before foreign retailers may sell used cars and gaseous fuels. Finally for franchising services, both market access and national treatment are guaranteed for commercial presence, cross-border supply, and consumption abroad.

Korea maintains comparatively restrictive cross-industry commitments regarding foreign firms' land ownership, investment, and store sizes. Foreign firms are also subject to a nontransparent licensing process prior to establishing and operating any business. In addition, there are natural persons restrictions limiting who may enter and work inside the country, although provisions are made for the limited entry of foreign personnel. Executives, senior mangers, and specialists are permitted initial stays of 3 years, which may be extended if deemed necessary. Foreign individuals setting up commercial presences and contracting the sale of services are permitted stays of no more than 90 days.

[6] In a footnote, Korea's schedule indicates that commitments on distribution services do not apply to trade in firearms, explosives, and swords; works of art and antiques; and the establishment and operation of public wholesale markets for agriculture, fishery, and livestock products. Footnotes do not have a clear legal status in the GATS, but do enhance transparency.

New Zealand

The New Zealand schedule lists commitments for three of the four distribution subsectors, including commission agents' services, wholesale trade services, and retailing services. Franchising services are not included in the offer, and are consequently subject to unbound limitations in the future. For the three subsectors listed, New Zealand guarantees both market access and national treatment without limitation. However, New Zealand's schedule excluded distribution of agricultural raw materials, live animals, food, beverages, and tobacco, leaving these activities subject to unbound limitations. In its cross-industry commitments, New Zealand notes that government permission is needed to make investments exceeding $NZ10 million or to buy rural land. New Zealand's commitments on entry and temporary stay permit executives and senior managers to remain in New Zealand for up to 3 years; specialists, up to 3 years if approved through labor market tests; and business persons negotiating the sale of services, up to 3 months.

Thailand

Thailand makes a very limited commitment only for commission agents' services. It schedules no commitments on wholesale trade services, retailing services, or franchising. Thailand accords full market access and national treatment to commission agents when services are provided through consumption abroad. For services provided through commercial presence, foreign equity participation is limited to 49 percent and the number of foreign shareholders must be less than half the total number of shareholders. Also, foreigners may not purchase or own land, but they may lease land and own buildings. For services provided through cross-border supply and consumption abroad, neither market access nor national treatment is guaranteed. Thailand's MFN exemptions include the phase-out, over a 10-year period (to 2005), of the favorable treatment accorded U.S. firms under the U.S.-Thai Treaty of Amity and Economic Relations, which may be relevant to distribution services industries.

Industry Opinion

U.S. distribution service firms generally approve of the results of the Uruguay Round as they pertain to the Asia/Pacific trading partners. Reductions in tariff levels are expected to increase sales volume and profitability for all distribution service providers,[7] and potential improvements in intellectual property protection, as a result of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, could benefit retailers and franchisors that rely heavily on trademarks or brand names. Industry representatives also regard the inclusion of distribution services in the General Agreement on Trade in Services as a step forward by clarifying existing barriers and providing a forum for future liberalization. Moreover, they recognize that distribution is one of the few service sectors where there may well be a reciprocal interest by firms from less developed economies to open retail, wholesale, or franchise shops in the U.S. market.

[7] In contrast to most services discussed in this report, distribution services have a very close relationship with trade in goods due to their primary functions of sourcing, transporting, and merchandising goods.

Korea's New Core department store chain, for example, is reportedly looking to open joint ventures in New York and Los Angeles, where there are high concentrations of Koreans.[8]

Nevertheless, U.S. distribution service organizations believe that considerable work remains to be done.[9] In particular, industry representatives believe nontransparent barriers persist, such as variable administrative fees, poor customs clearance procedures, and a dearth of managerial experience with distribution systems in newly privatized industries.[10] Retailers and wholesalers in India note, for example, that in addition to the high tariffs still existing on many goods, prolonged customs clearance procedures often make it difficult to keep retailing, wholesaling, and franchising products on local shelves.[11] There are few such complaints by retailers and wholesalers in economies such as Hong Kong[12] or Singapore.[13] There is U.S. industry agreement that Korea has historically been one of the most difficult markets in which to operate due to economic needs tests, structural impediments, regulatory rules that discourage investment, and cultural practices that make effective and profitable foreign investment difficult.[14] Despite recent reforms, Korea reportedly still maintains nontariff barriers that impede foreign provision of distribution services, such as burdensome practices for certification and testing of products, product standards that are not universally consistent, and excessive and nontransparent labeling requirements.[15]

Other concerns raised by U.S. distribution service firms include the lack of adequate intellectual property protection, as the revenue loss from infringement of intellectual

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[8] STAT-USA, "Korea-Retail Distribution Overview-IMI960721," Market Research Reports, July 21, 1996.

[9] Industry representative, telephone interview by USITC staff, June 5, 1996.

[10] Industry representatives, interviews by USITC staff, New Delhi, Singapore, Hong Kong, and Seoul, Jan.-Feb. 1997.

[11] Industry representative, interview by USITC staff, New Delhi, India, Feb. 5, 1997.

[12] Hong Kong's wholesale and retail market is completely open, according to government officials. Hong Kong Government official (Trade Department), interview by USITC staff, Hong Kong, Jan. 29, 1997. This opinion is generally shared by U.S.-based market participants who report observing no significant restrictions on foreign distribution services. Industry representatives, interviews by USITC staff, Hong Kong, Jan. 29, 1997.

[13] Representative of the International Mass Retail Association, telephone interview by USITC staff, Jan. 22, 1997.

[14] There are indications that with GATS/WTO and OECD accession pressures, Korea is slowly relaxing, or planning to limit, formal and informal trade barriers. Restrictions on foreign commercial presences have been eased, the Foreign Capital Investment Act was recently rewritten to permit a much higher level of foreign investment, and the Korean Fair Trade Commission is pushing for greater use of Generally Accepted Accounting Principles. However, the current account difficulties encountered by Korea beginning in late 1996 have reportedly prompted renewed efforts to slow the flow of imported goods through such tactics as unofficial changes to customs procedures and phytosanitary or product content requirements. STAT-USA, "Korea - Retail Distribution Overview - IMI960721," Market Research Reports, July 21, 1996; Korean Government official, interview by USITC staff, Seoul, Korea, Jan. 28, 1997; industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997; and industry representatives, interviews by USITC staff, Washington, DC, Mar. 12, 1997.

[15] Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

property rights amounts to many millions of dollars for U.S. producers and foreign affiliates.[16] Foreign ownership restrictions or nationality requirements, which are reportedly imposed by Indonesia and the Philippines, particularly with respect to retailing,[17] are also problematic. These restrictions force foreign firms to enter the market through licensing agreements or minority joint ventures that afford the parent organization little control over the use of the brand name or the quality of the services provided.[18] Finally, pressure from domestic retail associations and concern over the displacement of local operators may effectively slow liberalization and block foreign competitors from entering the distribution sector.[19] In the view of U.S. industry, of the 10 countries studied, India, Indonesia, and Korea have the greatest number of significant trade barriers and structural impediments to foreign participation in distribution services.[20]

Negotiations failed to achieve any commitments whatsoever by 5 of the 10 countries examined in this report, including India, Indonesia, Malaysia, the Philippines, and Singapore. Moreover, among the five countries that made some commitments, the exclusion of selected products and sectors significantly limited the scope of coverage. Both the paucity of commitments and the narrow scope of schedules are explained by the fact that distribution services generally were not a high priority sector during the Uruguay Round. At the time of the negotiations in 1992-93, U.S. businesses were more concerned with the developed markets of Europe, Japan, and Canada. The growing markets studied in this report were of interest, but of secondary importance, as U.S. distribution services businesses in the Asia/Pacific countries were limited to a few firms operating outlets in a few major cities.[21] According to a former USTR negotiator, because U.S. distribution businesses, with notable exceptions, did not place a high priority on the negotiations, U.S. negotiators did not press trading partners for major commitments.[22]

Despite the reported persistence of trade barriers and the lack of GATS commitments, foreign distribution firms have been expanding rapidly in the Asia/Pacific region. For example, the U.S. retailer Price Costco has operated in Seoul since 1993 through a joint-venture;[23] Tower Records has established shops in Hong Kong, Singapore, South Korea, Taiwan, and Thailand;[24] the French flour-miller and integrated food processing group, Delifrance, already operates 91 restaurant shops in Asia, and has scheduled 40 more;[25] Levi Strauss is considering opening 100 direct sales outlets in Korea;[26] Toys "R" Us has

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[16] "Estimated Trade Losses Due to Piracy of U.S. Copyrighted Works in 97 Countries (1994)" (Washington, DC: International Intellectual Property Alliance, Dec. 1995).

[17] In the Philippines, only Filipinos may engage in retail trade. Philippine Government representative, letter dated Mar. 25, 1997.

[18] Industry representative, telephone interview by USITC staff, Apr. 15, 1997, and facsimile letter dated Apr. 23, 1997.

[19] Industry representatives, interviews by USITC staff, Jakarta, Indonesia, Feb. 20-21, 1997.

[20] Ibid., and industry representatives, telephone interviews by USITC staff, Jan. 16, 1997.

[21] Ibid.

[22] Former USTR negotiator, telephone interview by USITC staff , Jan. 9, 1997.

[23] "South Korea: Open to Question," *Business Asia*, July 5, 1993.

[24] "Playing a Different Tune," *Asian Business*, Apr. 1996, p. 24.

[25] "French Fair is Tasting Success," *Asian Business*, Mar. 1996, p. 24.

[26] STAT-USA, "Korea-Retail Distribution Overview-IMI960721," Market Research Report, July 21, 1996.

19 outlets in Asia, having opened a second Indonesian outlet in 1996 with 8 more planned;[27] the British department store chain Marks & Spencer has 31 stores in Asia;[28] and Japan's FamilyMart (convenience stores) franchise has 105 outlets in Taiwan and 90 in Korea, with plans to open 400 more in the Asia/Pacific region.[29] Thus, the Asia/Pacific region is rapidly becoming a significant market for international branded distribution service firms, although the terms of ownership appear to remain somewhat restricted.

Summary

Australia and New Zealand are generally viewed as offering the broadest commitments to market access and national treatment. The distribution services schedule of Australia provides commitments and guarantees in all distribution subsectors, but exempts most agricultural distribution services. New Zealand similarly offers full market access and national treatment without limitation in all subsectors except franchising, but also excludes distribution of agricultural products from the scope of its commitments.

By contrast, the schedules of Hong Kong, Korea, and Thailand are very limited in both the scope of the subsectors covered and the amount of market access and national treatment they guarantee. India, Indonesia, Malaysia, the Philippines, and Singapore made no GATS commitments whatsoever on distribution services in their schedules. This is true even though Singapore, for example, has few known limitations, in practice, for foreign retailers, wholesalers, and franchisors. Malaysia, as well, reportedly is flexible with respect to equity limits on wholesalers and retailers, and encourages all forms of franchising as a means of transferring entrepreneurial skills.[30] However, the failure to list the sector deprives trading partners of any knowledge of the trade barriers which may be present in a country, and thus fails to improve transparency. From the U.S. industry perspective, the trade rules and practices of Korea and India represent the most onerous restraints on foreign investment and operation in distribution services.[31]

The schedules reflect the relatively low priority and interest given distribution services during the GATS negotiations, by either businesses or governments. To the degree there was interest, U.S. negotiators were more concerned in obtaining commitments from the advanced economies of Europe, Japan, and Canada, than from the countries studied here.[32]

Now that a methodology for scheduling trade barriers in distribution services has been developed by the WTO, and that the process of scheduling commitments is much better understood, a framework has been set for future trade negotiations to liberalize this service sector. Similarly, distribution is one of the few service sectors where firms headquartered in less developed economies may wish to open enterprises in the United

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[27] "Retailing Retrenchment in Asia," *Business Asia*, Aug. 26, 1996.

[28] Ibid.

[29] "Japanese Franchiser Expands Into Other Asian Markets," *Business International*, Jan. 25, 1993.

[30] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 19, 1997.

[31] Industry representatives, telephone interviews by USITC staff, Jan. 23, 1996.

[32] Former USTR negotiator, interview by USITC staff, Washington, DC, Dec. 18, 1996.

States, especially in cities with large immigrant populations and numbers of foreign residents. This factor gives many U.S. trading partners some incentive to ensure that distribution services trade is liberalized on an international basis.

CHAPTER 4
Education Services[1]

Introduction

Education services principally entail formal academic instruction in primary, secondary, and higher education institutions.[2] In addition, education services include adult and other education services, with the latter including English language instruction, for example.

International Trade in Education Services

Trade in education services occurs predominantly through the cross-border exchange of students. U.S. cross-border exports of education services are the estimated tuition and living expenses of foreign students studying in the United States.[3] U.S. cross-border imports consist of the estimated tuition and living expenses of U.S. residents who study abroad in foreign educational institutions.

Although relatively uncommon, affiliate transactions in education services occur when U.S. institutions locate facilities abroad to provide courses to foreign students, or when foreign institutions locate facilities in the United States to provide education to U.S. citizens. U.S. institutions operating abroad usually provide English-as-a-second-language courses or corporate-sponsored management and technical training to foreigners. In some instances, U.S. universities offer accredited undergraduate or graduate courses to foreigners through affiliate institutions established abroad. Comprehensive data on affiliate transactions are not available.

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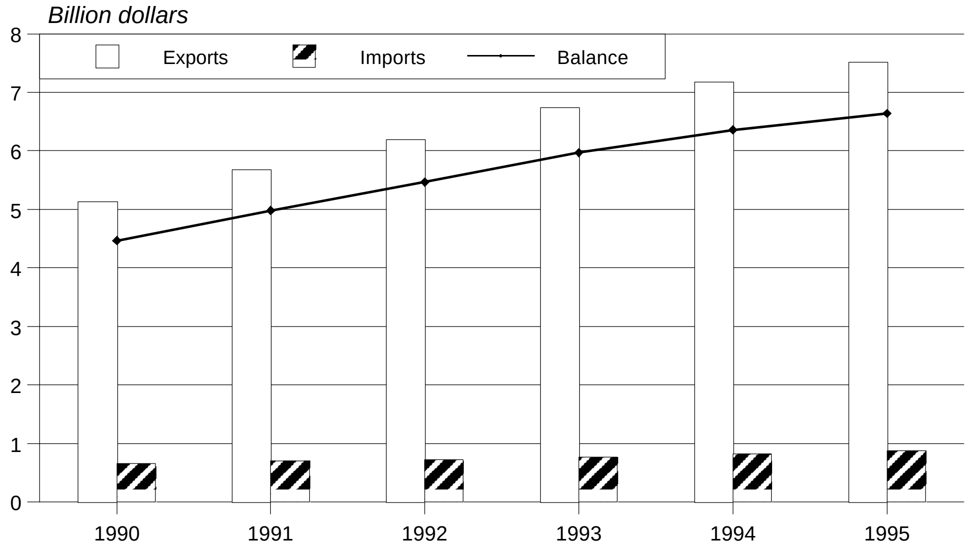
[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following companies and organizations: Alliance for International Education and Cultural Exchange, Assumption University, Thailand, Boston University, Center for Quality Assurance in International Education, Institute of International Education (IIE), International Employment Recruiting, Ladder International, NAFSA: Association of International Educators, Worldwide Educational Service, Inc., New York University, the State University of New York at Buffalo, and the University of Delaware.

[2] The corresponding U.N. Central Product Classification (CPC) codes are 921, primary education services; 922, secondary education services; 923, higher education services; 924, adult education services; and 929, other education services.

[3] Foreign students are foreign residents enrolled in U.S. education service programs, excluding U.S. citizens, immigrants, and refugees.

Figure 4-1
Cross-border trade in education services: U.S. exports, imports, and trade balance, 1990-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Cross-Border Transactions

In 1995,[4] U.S. exports of education services totaled $7.5 billion (figure 4-1). These exports grew by 5 percent in 1995, less than the 9-percent average annual growth rate experienced

during 1990-94. U.S. imports were estimated at $887 million in 1995. Imports grew by 7 percent in 1995, compared to average annual growth of 5.5 percent during 1990-94. U.S. cross-border trade in education services generated a surplus of $6.6 billion in 1995.

All of the leading U.S. trading partners in education services are located in Asia. In 1995, the largest single-country U.S. market for education services was Japan, accounting for U.S. exports valued at $745 million. Japan was followed by China and Taiwan, which accounted for $531 million and $490 million of U.S. exports, respectively. The 10 trading partners addressed in this report accounted for 23 percent of total U.S. exports of education services (figure 4-2). However, growth in U.S. education service exports to Asia has been declining recently as high-quality Asian institutions have emerged, attracting some foreign students who otherwise may have studied in the United States.[5] In addition, the United States has encountered increasing competition from Australia and

[4] BEA trade data reported for 1995 on education services include services provided during the 1994-95 academic year. The same pattern of reporting holds for each year beginning in 1989, which spans the 1988-89 academic year.

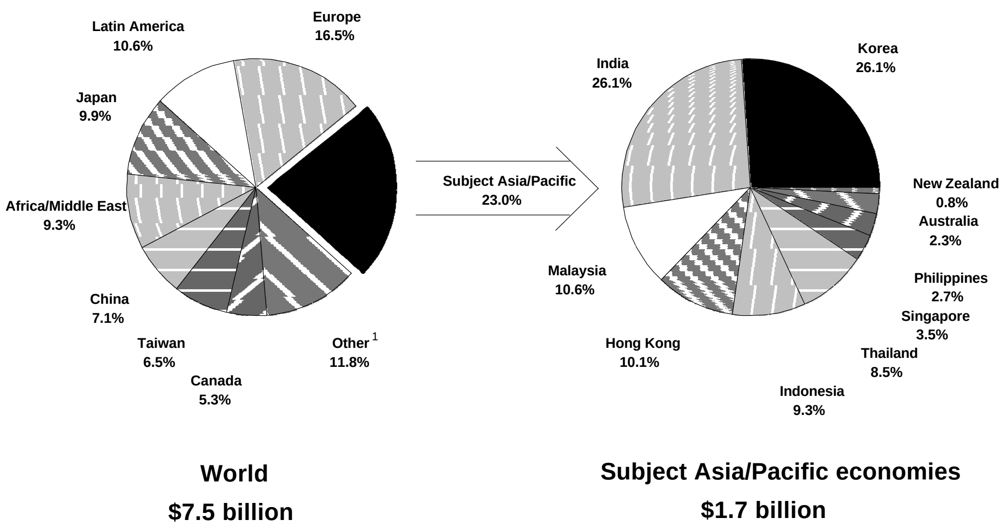
[5] NAFSA: Association of International Educators, "East Asia's Education Boom: Brain Drain the Sequel," *International Educator*, Spring 1996, pp. 16-21.

the United Kingdom, which have successfully promoted education services in their countries to a growing number of Asian students.[6]

Although growth in the number of Asian students studying in the United States has declined, they continue to enter in large numbers. In the 1995-96 academic year, over

[6] NAFSA: Association of International Educators, “Luring Students to the U.K.,” *International Educator*, Summer 1996, p. 30; and NAFSA: Association of International Educators, “Australia Takes Center Stage,” *International Educator*, Summer 1996, pp. 26-28.

Figure 4-2
Education services: U.S. cross-border exports, by principal markets, 1995



[1]Principally includes other Asia/Pacific trading partners.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

264,000 Asian students enrolled in colleges and universities in the United States.[7] Asian students attend U.S. institutions because the United States has a flexible and high-quality system of higher education.[8] About two-fifths of foreign students enrolled in the United States study business management, engineering, or the physical sciences.[9]

Sales by Majority-Owned Affiliates

Comprehensive data on the relatively small volume of sales by U.S. majority-owned affiliates in Asia are unavailable. Nevertheless, U.S. institutions have been able to establish a commercial presence in Asian markets, mostly through collaborating with Asian institutions. One example is an M.B.A. program established in Singapore by the State University of New York at Buffalo (SUNY-Buffalo).[10] The program is designed for Singapore executives working for subsidiaries of U.S. corporations. In collaboration with the Singapore Institute of Management, SUNY-Buffalo provides curriculum, course materials, and faculty for the program.

Affiliate trade also occurs in the form of licensing or management fee arrangements. In Korea, for instance, the Samsung Art and Design Institute, owned and operated by the

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[7] IIE, *Open Doors 1995-96: Report on International Educational Exchange* (New York: IIE, 1996), pp. 26-34.

[8] U.S. industry officials, telephone interviews by USITC staff, Washington, DC, Dec. 1996-Jan. 1997.

[9] IIE, *Open Doors 1995-96: Report on International Educational Exchange* (New York: IIE, 1996), pp.102-103.

[10] U.S. industry officials, telephone interviews by USITC staff, Washington, DC, Jan. 1997; and *The Chronicle of Higher Education*, "SUNY-Buffalo Starts Graduate Business Program in Singapore," Sept. 13, 1996, p. A49.

Samsung Corporation, has an arrangement with the Parsons School of Design in New York City.[11] The Parsons School of Design formulates curriculum, recruits faculty, and recommends teaching materials for the Korean school in exchange for fees. Furthermore, students enrolled in Korea are eligible to transfer to the Parsons School in New York in order to earn a U.S. bachelor-of-fine-arts degree. In a similar arrangement, some U.S. providers of "English as a Second Language" have established agreements with Asian institutions, wherein they receive fees for the exclusive use of the U.S. companies' name, course materials, lesson plans, and consultation services.[12]

Examination of Commitments on Education Services

As noted in the preceding section, trade in education services occurs primarily through the cross-border exchange of students. Consequently, an open regime for consumption abroad is critical for trade in education services. To a lesser extent, trade in education services is generated by institutions that establish an affiliate abroad and by scholars who physically travel abroad to teach or perform research. Commercial presence and the presence of natural persons, therefore, are also important modes of trade in education services. The principal means by which countries may restrict trade in education services include limitations on international payments and capital movements, nationality requirements, or discriminatory criteria for professional certification, licensing, and accreditation.

Among this reports' subject trading partners, Australia, New Zealand, and Thailand offered commitments on education services (table 4-1), although Thailand's commitments pertain only to specific subsectors of education services. All three countries made full commitments with respect to consumption abroad. Australia and New Zealand also offered commitments with respect to cross-border supply. Measures concerning the presence of natural persons were left unbound by each of these three countries except for cross-industry commitments permitting the entry and temporary stay of selected personnel.[13] The seven remaining countries examined in this report did not offer commitments on education services.

Australia

Australia scheduled commitments to accord full market access and national treatment to foreign providers of private secondary, private tertiary, and other education services, including English language education, through cross-border supply and consumption abroad. Australia also scheduled commitments that accord full market access through commercial presence in those sectors. However, Australia's schedule leaves national

[11] U.S. industry officials, telephone interviews by USITC staff, Washington, DC, Jan. 1997; and *The Chronicle of Higher Education*, "An Affiliate of Parsons School of Design to Open in Korea," Nov. 2, 1996, p. A62.

[12] U.S. industry officials, telephone interviews by USITC staff, Washington, DC, Jan. 1997.

[13] See appendix E for a detailed presentation of cross-industry commitments.

treatment limitations on commercial presence unbound, which means that foreign

Table 4-1
Highlights of industry-specific restrictions on education services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** Unbound	**Market Access:** Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 922 - Secondary education services, limited to general, technical, and vocational education in private institutions only. • CPC 923 - Higher education services, limited to private tertiary education services at the university level only. • CPC 929 - Other education services, limited to English language courses. These commitments exclude: • CPC 921 - Primary education services. • CPC 924 - Adult education services.
New Zealand	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 921 - Primary education services in private institutions only. • CPC 922 - Secondary education services in private institutions only. • CPC 923 - Higher education services in private institutions only. These commitments exclude: • CPC 924 - Adult education services. • CPC 929 - Other education services.

Table 4-1, *continued*
Highlights of industry-specific restrictions on education services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Thailand	**Market Access:** Unbound except for technical and vocational education services, which are subject to no limitations. **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** None except as indicated in the cross-industry commitments. **National Treatment:** No limitations as long as foreign equity participation does not exceed 49 percent.	**Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • CPC 9219 - Other primary education services. • CPC 9221 - General secondary education services. • CPC 9222 - Higher secondary education services. • CPC 9223 - Technical and vocational secondary education services. • CPC 9224 - Technical and vocational secondary school-type education services for handicapped students. • CPC 9240 - Adult education, limited to professional and/or short courses education services only. These commitments exclude: • CPC 9211 - Preschool education services. • CPC 923 - Higher education services. • CPC 929 - Other education services.

[1] Hong Kong, India, Indonesia, Korea, Malaysia, the Philippines, and Singapore did not schedule commitments on education services.

educational institutions that establish a presence in Australia may not be accorded the same rights and privileges as Australian institutions. Limitations on the presence of natural persons were left unbound for both market access and national treatment, allowing Australia to restrict the entry of foreign education professionals into the country or to limit the practice of foreign professionals. Australia's cross-industry commitments permit the entry and temporary stay of senior managers and specialists, but it is unclear whether these commitments apply to educators. Australia's commitments do not cover primary education services or adult education services, and may also exclude other subsectors of secondary and higher education services, such as services for handicapped students.

New Zealand

New Zealand scheduled a relatively open regime with respect to education services. Full commitments covering private primary, secondary, and tertiary education services were made for all modes of supply, except the presence of natural persons. Limitations on the presence of natural persons were left unbound for both market access and national treatment, although cross-industry measures may permit the entry and temporary stay of senior managers and specialists employed by foreign educational institutions. New Zealand's commitments exclude adult and all other educational services.

Thailand

Thailand's commitments apply only to the following specific subsectors: other primary education services, defined as basic unspecialized primary education services; general and higher secondary education services; higher secondary education services; technical and vocational secondary educational services; technical and vocational secondary educational services for handicapped students; and professional education services and/or short courses. According to industry representatives, foreign education institutions have already established commercial presences in these specific markets, thus confirming that the commitments reflect a standstill position rather than market liberalization.[14] With respect to establishing commercial presences, foreign equity may account for no more than 49 percent of registered capital and foreign shareholders must represent less than half of total shareholders. Thailand places no restrictions on consumption abroad, but restrictions on the presence of natural persons are unbound. Thailand made no commitments concerning preschool education, higher education, and other education services such as English-language education.

Industry Opinion

Institutions that provide education services generally approve of the results of the GATS.[15] They are encouraged by GATS principles that call for the establishment of rules and regulations based on fair, objective, and transparent criteria. Representatives of cross-border service providers report that the policies of Asia/Pacific governments do not

[14] Ibid.
[15] Industry representatives, telephone interviews by USITC staff, Dec. 2-6, 1996.

significantly restrict trade in education services.[16] Government representatives in both Malaysia and Singapore indicated that policies regarding foreign education services have been relaxed and that demand for outside expertise has been rising.[17]

Students from the Asia/Pacific region enter the United States in large numbers each year, dominating the foreign student population. Industry representatives appear more concerned that U.S. immigration and labor policies may restrict Asia/Pacific students from entering the United States.[18] The U.S. industry also reports that some foreign students are concerned about currency restrictions imposed by their home governments, although industry representatives feel these restrictions do not significantly affect the lifestyle or education of foreign students while they are in the United States. Most of the more restrictive currency and travel restrictions have been removed or substantially eased. Finally, U.S. educators are increasingly interested in negotiating an international set of education standards.[19] Once foreign students complete their education in the United States, they sometimes encounter difficulty translating their degrees into national equivalents, which often are based on subjective criteria. Representatives are optimistic that future agreements will achieve international standards for professional training, licensing, and accreditation. They perceive the GATS as a first step toward realizing that goal.[20]

A relatively limited number of U.S. education service firms are interested in providing English language training in the Asia/Pacific region.[21] These firms are concerned about their ability to obtain national licenses, recruit American teachers, and access large segments of Asia/Pacific markets. They also report that there are barriers significantly limiting direct investment by foreign education service firms. These sources indicate that some Asia/Pacific governments continue to restrict the supply of private education by exercising government monopolies, nationality requirements, and equity limitations, and by providing heavy subsidies for local institutions. Others, notably Hong Kong and Singapore, appear to offer a fairly liberal environment for the foreign provision of education services. In Hong Kong, foreign institutions may open a registered school by following a somewhat complicated but fair application procedure,[22] and in Singapore, foreign participation is reportedly encouraged, particularly for training related to business administration.[23]

Summary

Although only 3 of 10 Asia/Pacific trading partners offered commitments on education

[16] Industry representatives, interview by USITC staff, Richmond, VA, Nov. 21-23, 1996.
[17] Malaysian and Singapore Government representatives, interviews by USITC staff, Singapore, Feb. 25, 1997, and Kuala Lumpur, Malaysia, Feb. 26, 1997.
[18] Industry representatives, interview by USITC staff, Richmond, VA, Nov. 21-23, 1996.
[19] Ibid.
[20] U.S. industry officials, telephone interviews by USITC staff, Washington, DC, Jan. 1997.
[21] Industry representatives, telephone interviews by USITC staff, Dec. 11-13, 1996.
[22] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.
[23] Singapore and U.S. Government representatives, interviews by USITC staff, Singapore, Feb. 24-25, 1997.

services, cross-border trade is reasonably unimpeded.[24] In recent years, large numbers of students from the Asia/Pacific region have pursued education in the United States without significant barriers. Nevertheless, countries that did not make commitments on education services may choose to impose restrictions on consumption abroad in the future. Furthermore, although Asian countries, in practice, are quite liberal regarding consumption abroad, some remain restrictive concerning commercial presence.[25] Nevertheless, some U.S. institutions have been able to establish a commercial presence through arrangements with local institutions, contributing to the relatively small volume of affiliate trade.

Industry sources are optimistic about future liberalization in the field of education services, although they feel that some of their concerns cannot be addressed within the GATS framework.[26] Industry representatives are encouraged by the efforts of the World Trade Organization's Working Party on Professional Services, which has made progress toward developing international recognition of foreign professionals' credentials. Wider recognition of credentials and greater mobility of professionals are expected to benefit trade in education services as foreign-earned degrees become more portable.

With the exception of Australia, New Zealand, and Thailand, Asia/Pacific trading partners did not establish effective benchmarks or improve transparency. Consequently some industry sources are concerned that restrictions can be placed on trade in education services without penalty.[27] They are also concerned that foreign governments' efforts to encourage and support local education may lead to future trade impediments in the absence of binding commitments to unrestricted trade in education services.

[24] Ibid., and industry representatives, telephone interviews by USITC staff, Dec. 11-13, 1996.

[25] Industry representatives, telephone interviews by USITC staff, Dec. 11-13, 1996.

[26] Industry representatives, interviews by USITC staff, Richmond, VA, Nov. 21-23, 1996.

[27] Industry representatives, telephone interviews by USITC staff, Dec. 1996.

CHAPTER 5
Enhanced Telecommunication Services

Introduction[1]

Enhanced telecommunication services include a wide range of services that add value to the transmission of basic voice and data signals over telecommunication networks.[2] This chapter examines enhanced telecommunication services as defined in the GATS, which include: electronic mail, voice mail, on-line information and data base retrieval, electronic data interchange (EDI), enhanced/value-added facsimile services (including store and forward, and store and retrieve), code and protocol conversion, and on-line information and/or data processing (including transaction processing).

International Trade in Enhanced Telecommunication Services

Enhanced telecommunication services, also called value-added services, are delivered to foreign consumers via public and private telecommunication networks. Service providers develop private networks by leasing lines from a multitude of telecommunication carriers.[3] Leased lines may provide a permanent link between two points or be adapted as either part of a wider private network, sometimes called closed user groups, or linked to the public switched network to form an international virtual private network.[4]

Users may connect to an enhanced telecommunication network to access services such as electronic mail or EDI through a number of methods. Typically, the customer will dial directly from a personal computer into the network using a local or toll-free number provided by the enhanced telecommunication service provider. When a local connection is not available, users may access the network through direct long-distance dialing, by using an Integrated Services Digital Network (ISDN)[5] connection through the local

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[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following organizations: AT&T, MCI, GlobalOne (Sprint), General Electric (GE), Advantis (IBM subsidiary), the Bureau of Economic Analysis (BEA), and U.S. Department of Commerce (USDOC).

[2] Enhanced telecommunication services are captured under the U.N. Central Product Classification (CPC) codes 7523, electronic mail, voice mail, on-line information and database retrieval, electronic data interchange (EDI), enhanced/value-added facsimile services (including store and forward, store and retrieve); and 843, on-line information and/or data processing (including transaction processing). The GATS also encompasses code and protocol conversion, for which there is no applicable CPC code.

[3] Lyle Deixler, "Millions of Minutes," *Teleconnect*, Feb. 1997, pp. 116-117.

[4] International Telecommunications Union (ITU), *World Telecommunication Development Report* (Geneva, ITU, 1995), p. 60.

[5] ISDN provides high capacity digital transmission of information using an

(continued...)

telephone network, or through arrangements with the local telephone company to connect to a public data network. The provision of such services is complex, and a single message may be transmitted across several national borders. Leading global suppliers of enhanced telecommunication services include: IBM Global Network, AT&T and partners, GE Information Services, Sprint International and partners, SITA (Société Internationale de Telecommunication Aéronautiques, a European consortium), Concert (United Kingdom), Infonet (a predominantly European consortium), and Cable & Wireless Business Networks (United Kingdom) (table 5-1). The leading providers of enhanced services in Asia include: NTT (Japan), KDD (Japan), DGT Taiwan, and DACOM (Korea) (table 5-2).

Aggregate data pertaining to cross-border supply of enhanced telecommunication services are not categorized by country and are not compiled on a yearly basis. The most recent surveys on enhanced services by the U.S. Government were completed in 1986 and 1991, and the next survey is not expected until the latter part of 1997. The 1986 survey reported that the United States registered a cross-border trade surplus of $31 million in enhanced telecommunication services. This figure doubled during the next 5 years, to $60 million in 1991.[6] Unfortunately, since data pertaining to foreign affiliate sales of telecommunication services are not available, it is not known if cross-border trade is larger or smaller than sales by affiliates.

Data provided by other sources offer some additional insight into the nature and extent of trade in enhanced telecommunication services. International value-added network service (IVANS) providers generated $14.5 billion in global revenues in 1994.[7] Eight of these providers were estimated to account for 36 percent of global enhanced service revenues in 1996 (table 5-1). These eight firms represented over one-fifth of the $4.1-billion Asia/Pacific enhanced telecommunication market in 1994.[8] Asian service providers, such as NTT and KDD, controlled the remaining four-fifths of the Asia/Pacific enhanced telecommunication service market (table 5-2).[9] Multinational businesses and large corporate users continue to be the primary customers and the driving force behind the global IVANS industry, contributing to a significant portion of enhanced telecommunication providers' revenue.[10]

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[5] (...continued)
internationally accepted standard for voice, data, and signaling.

[6] USDOC, BEA, *Survey of Current Business*, Oct. 1988, pp. 27-29, and Sept. 1992, p. 84.

[7] Michael Galbraith, Marta Kindya, Courtney Munroe, et al., *Global VANS markets: 1995 Edition* (New York: McGraw-Hill, 1996).

[8] Galbraith, *Global VANS markets: 1995 Edition*, 1996, p. 307.

[9] NTT of Japan along with several other Japanese carriers were the dominant providers in the region. Galbraith, *Global VANS markets: 1995 Edition*, 1996. Also, as of 1996, the Japanese market accounted for more than 60 percent of the region's overall enhanced telecommunication revenue. CIT Research, retrieved from http://www.citresearch.com/studies/apvas.htm, Jan. 1997.

[10] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

The provision of enhanced services in the Asia/Pacific region is growing faster than in any other region, facilitated by increasing liberalization in the region.[11] Online services and EDI
remain among the largest revenue-generating enhanced services in Asia.[12] Revenues derived from providing Internet access are likely to remain small for most carriers, with the exception of Sprint, which reportedly accounts for 85 percent of the Asia/Pacific Internet market.[13]

Table 5-1
Major non-Asian enhanced telecommunication service providers, by market share, revenue, and country, 1996 estimates

VAN provider	World Market Share (percent)	Asian Market Share[1] (percent)	Global enhanced service revenues (Million dollars)	Country
IBM Global Network (IBM GN)	9.8	3.6	1,920	United States
AT&T and partners (ATT)	6.1	4.3	1,190	United States
GE Information Services (GEIS)	4.8	3.8	937	United States
Global One (Sprint)	4.7	1.7	922	United States
SITA	3.9	2.4	760	Airline Consortium
Concert (BT/MCI)	3.7	2.3	730	United Kingdom
Infonet	1.7	1.0	340	Carrier Consortium[2]
Cable & Wireless Business Networks (CWBN)	1.6	2.0	300	United Kingdom

[1] Includes Japan and China.
[2] Infonet's shareholders are: Deutsche Telekom (23.3%), Transpac (23.3%), Telstra (7.6%), Belgacom (7.7%), Swiss PTT (7.7%), Telefonica (7.7%), Telia International (7.7%), and KDD (7.2%).

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[11] Ibid.
[12] In 1996, revenue in Asia for packet switched services was $2.1 billion; for messaging and online services, $1.1 billion; and for EDI, $786 million. Galbraith, *Global VANS markets: 1995 Edition*, 1996, p. 480.
[13] Galbraith, *Global VANS markets: 1995 Edition*, 1996, p. 4.

Source: Michael Galbraith, Marta Kindya, Courtney Munroe, et al., *Global VANS markets: 1995 Edition* (New York: McGraw-Hill, 1996).

Table 5-2
Major Asian enhanced telecommunication service providers, by Asian market share, revenues, and country, 1996 estimates

VAN Provider	Asia Market Share[1] (percent)	Enhanced Service Revenues (Million dollars)	Country
NTT	23.6	1,300	Japan
KDD	4.7	260	Japan
DGT Taiwan	2.2	121	Taiwan
DACOM	6.2	340	Korea
Hong Kong Telecom	2.7	147	Hong Kong
Japanese Type II Carriers[2]	14.8	811	Japan
Korea Telecom	3.0	168	Korea
Singapore Telecom	1.8	96	Singapore
Telestra	7.5	411	Australia
Other Asian Service Providers	12.5	688	Not applicable

[1] Includes Japan and China.
[2] Japanese Type II Carriers include: Nippon Information and Communication (NI+C), Information Services International-Dentsu (ISI-D), AT&T Japan Enhanced Network Services (AT&T JENS), NEC, NIFTY, Recruit, NomuraResearch Institute (NRI), Network Information Services (NIS), and Japan Research Institute (JRI).

Source: Michael Galbraith, Marta Kindya, Courtney Munroe, et al., *Global VANS markets: 1995 Edition* (New York: McGraw-Hill, 1996).

Examination of Commitments on Enhanced Telecommunication Services

Enhanced telecommunication services are either supplied to foreign consumers across borders or through a foreign commercial presence. Some of the major impediments affecting these delivery channels include restrictive licensing requirements;[14] explicit prohibitions on the provision of certain services; limitations on foreign ownership and

[14] To guard against potential bottlenecks posed by foreign public telecommunication network carriers, the GATS, through provisions outlined in the Telecommunications Annex, ensures a signatory member "access to and use of public telecommunication transport networks and services" when such services or facilities are required to supply a service included in its national schedule. Under the terms of the Annex, firms must be provided access on "reasonable and nondiscriminatory terms and conditions," but the annex does not impose disciplines in this area.

participation in joint ventures; discriminatory access to, and non-cost-based pricing[15] of, leased telecommunication lines; and technical difficulties caused by underdeveloped or unreliable telecommunication infrastructure.[16] Regulatory limitations vary widely among the Asia/Pacific economies, as the region contains some of the most open and most restrictive telecommunication markets in the world.

All 10 of this report's subject countries scheduled commitments pertaining to enhanced telecommunication services. Australia and Korea bound the most open environments with respect to these services, with New Zealand following closely behind. Enhanced services that appear to be subject to most restrictions include electronic data interchange, enhanced facsimile, and code and protocol conversion. Table 5-3 highlights the industry-specific limitations imposed on market access and national treatment by trading partner and mode of supply.

Australia

Among the Asia/Pacific countries that scheduled commitments on enhanced telecommunication services, Australia appears to have the least restrictive market. Australia accords full market access and national treatment to foreign providers of all value-added services, whether provided on a cross-border basis or through an Australian affiliate.

Australia's limitations on the presence of natural persons remain unbound, except as they apply to the entry and temporary stay of executives, senior managers, independent executives, service sellers, and specialists. Under Australia's cross-industry commitments,[17] the length of stay permitted depends upon the position of the employee. Executives and senior managers are allowed to reside in Australia for 4 years; independent executives, for 2 years; service sellers, for 6 months; and specialists, for 2 years with a potential 2-year extension.

Hong Kong

Hong Kong's schedule addresses all enhanced telecommunication services and certain other services such as teletex and videotex services that may be classified as basic telecommunication services. Hong Kong's schedule leaves limitations on the cross-border

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[15] Leased lines are often subject to volume-sensitive, rather than flat-rate, pricing. Volume sensitive pricing does not accurately reflect the public operator's cost of leasing the line.

[16] Industry representatives, interviews by USITC staff, Hong Kong, Jan. 30, 1997, and New Delhi, India, Feb. 2, 1997.

[17] See appendix E for a detailed presentation of cross-industry commitments.

Table 5-3
Highlights of industry-specific restrictions on enhanced telecommunication services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in cross-industry commitments. **National Treatment:** • Unbound except as indicated in cross-industry commitments.	These commitments cover: • CPC 7523 - Electronic mail, voice mail, on-line information and database retrieval, electronic data interchange, and enhanced facsimile services. • Code and protocol conversion. • CPC 843 - Data processing services.
Hong Kong	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** • None, except that the commercial presence must be incorporated in Hong Kong or registered in compliance with the Companies Ordinance. **National Treatment:** None	**Market Access:** • Unbound except for the intra-corporate transfer of general managers, senior managers, and specialists. **National Treatment:** Unbound	These commitments cover: • CPC 7523 - Electronic mail, voice mail, on-line information and database retrieval, electronic data interchange (only between private companies), and enhanced facsimile services. • CPC 75212 - Teletex services. • CPC 75299 - Videotex services. • CPC 843 - On-line information and/or data processing. • Code and protocol conversion. • Services are limited to public services accessed by its subscribers via, and offered over, circuits provided by public telecommunications transport network services.
India	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Permitted only through incorporation with no more than 51 percent foreign equity. **National Treatment:** None	**Market Access:** • Unbound except as indicated in cross-industry commitments. **National Treatment:** • Unbound except as indicated in cross-industry commitments.	These commitments cover: • CPC 7523 - Electronic mail, voice mail, on-line information and database retrieval, and enhanced facsimile services. • CPC 843 - On-line information and/or data processing. These commitments exclude: • Electronic data interchange and code and protocol conversion.

Table 5-3, *continued*
Highlights of industry-specific restrictions on enhanced telecommunication services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Indonesia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Access granted to five foreign service providers, in addition to existing companies. **National Treatment:** • Higher paid-in capital is required from foreign service suppliers than from domestic service suppliers. This measure will be eliminated in 2020.	**Market Access:** • Unbound except for director and technical experts. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7523 -Electronic mail and voice mail services. • CPC 84330 - Computer time sharing services. • CPC 75299 - Videotex services, file transfer, home telemetering alarm, entertainment, and management information services. These commitments exclude: • Enhanced facsimile, on-line information and database retrieval and processing, electronic data interchange, and code and protocol conversion services.
Korea	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7523 - Electronic mail, voice mail, on-line information and database retrieval, electronic data interchange, and enhanced facsimile services. • Code and protocol conversion. • CPC 843 - On-line information and/or data processing services.
Malaysia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Access allowed through a locally incorporated joint venture with Malaysian individuals or Malaysian-controlled corporations, or through the acquisition of shares of an existing licensed value-added service provider. • Aggregate foreign shareholding may not exceed 30 percent. • A licence must specify the type of services provided. • Simple resale is not permitted. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7523 - Electronic mail, voice mail, on-line information and database retrieval, enhanced facsimile, • Code and protocol conversion, mobile data, and telegraph and telex services. • Services must be provided by lines from licensed network providers. These commitments exclude: • Electronic data interchange and on-line information and data processing services.

Table 5-3, *continued*
Highlights of industry-specific restrictions on enhanced telecommunication services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
New Zealand	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Shareholding by any single foreign entity is limited to 49.9 percent. • At least half of the members of any board of directors are required to be New Zealand citizens.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7523 - Electronic mail, voice mail, on-line information and database retrieval, electronic data interchange, and enhanced facsimile services. • Code and protocol conversion. • CPC 843 - On-line information and/or data processing services.
Philippines	**Market Access:** • Provision of services must be provided through enfranchised and certified domestic, public telecommunication carriers. **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Service providers are required to obtain a franchise from the Congress of the Philippines and a Certificate of Public Convenience and Necessity from the National Telecommunications Commission. • Franchises or certificates for the operation of a public utility will be granted only to Philippine citizens or to locally incorporated companies with less than 40 percent foreign equity. **National Treatment:** None	**Market Access:** • None, except as listed in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 7523 - Voice mail, on-line information and database retrieval, and electronic data interchange. • CPC 75299 - Videotex services. These commitments exclude: • Electronic mail, enhanced facsimile, code and protocol conversion, and on-line information and/or data processing services.
Singapore	**Market Access:** • Service providers must be licensed by the Telecommunication Authority of Singapore, which requires: (1) foreign companies to either set up a local branch of their company that is registered with the Registry of Companies and Businesses of Singapore, or grant a power of attorney to a local agent; (2) foreign companies to avoid carrying traffic that resembles basic telecommunication services. **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Service providers must be licensed by the Telecommunication Authority of Singapore, which requires: (1) foreign companies to either set up a local branch of their company that is registered with the Registry of Companies and Businesses of Singapore, or grant a power of attorney to a local agent; (2) Foreign companies to avoid carrying traffic that resembles basic telecommunication services. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • CPC 7523 - Electronic mail, voice mail, on-line information and data-base retrieval, and electronic data interchange services. • CPC 843 - On-line information and/or data processing. These commitments exclude: • Enhanced facsimile services and code and protocol conversion.

Table 5-3, *continued*
Highlights of industry-specific restrictions on enhanced telecommunication services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Thailand	**Market Access:** • Service providers must use the public telecommunication network. • Radio application is subject to frequency availability. **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Foreign providers must be registered in Thailand. • Foreign equity participation may not exceed 40 percent. • Foreign shareholders may not exceed 40 percent of total shareholders. • A build-operate-transfer system is allowed. • Service providers must use the public telecommunication network. **National Treatment:** • None except foreign equity must not exceed 40 percent.	**Market Access:** • As indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 7523 - Database access services. • CPC 843 - On-line information and/or data processing services.
	Market Access: As above. **National Treatment**: None	**Market Access**: None **National Treatment**: None	**Market Access**: • As above, including a provision that selection of additional service providers shall be based on open tender. **National Treatment**: • None except foreign equity must not exceed 40 percent.	**Market Access**: As above **National Treatment**: None	• CPC 75299 - Videotex and domestic leased circuit services. • CPC 75292 - Teleconference services.
	Market Access: Unbound **National Treatment**: Unbound	**Market Access**: None **National Treatment**: None	**Market Access**: • None except as indicated in the cross-industry commitments. **National Treatment**: • None except foreign equity ownership may not exceed 49 percent.	**Market Access**: • Unbound except as indicated in the cross-industry commitments. • Unbound for civil engineers. **National Treatment**: None	• CPC 75420 - Telecommunications equipment sales services. • CPC 75440 - Telecommunications consulting services. Thailand's commitments exclude: • Electronic mail, voice mail, electronic data interchange, enhanced facsimile, and code and protocol conversion.

supply of enhanced telecommunication services unbound, but places no restrictions on the commercial presence of a foreign provider, other than requiring incorporation or registration in compliance with the Companies Ordinance. Value-added services supplied through commercial presences must be provided over the public telecommunication network, meaning that foreign telecommunication firms may only provide enhanced services over leased lines. Bypass of the public telecommunications network is prohibited. Hong Kong'scommitments on the presence of natural persons permit the intracorporate transfer of general managers, senior managers, and specialists. These personnel are limited to an initial stay of 1 year, which may be extended to a total of 5 years.

India

India's commitments apply to all value-added services, except EDI and code and protocol conversion. India accords full market access and national treatment to foreign providers of enhanced telecommunication services through cross-border supply. With respect to services delivered through a commercial presence, market access is permitted only through incorporation, and foreign equity is limited to 51 percent. In addition, cross-industry commitments indicate that India would give preference to those foreign service providers involved in a joint venture with an Indian public-sector enterprise that offer the best terms for the transfer of technology.

India's commitments on the presence of natural persons are unbound, except for measures permitting the temporary stay of managers, executives, specialists, business visitors, and professionals. Managers, executives, and specialists may reside in India for a maximum period of 5 years, while persons visiting for business negotiations, or for conducting preparatory work to establish a commercial presence, may reside for no more than 90 days. Professionals are subject to a 1-year stay.

Indonesia

Indonesia's commitments apply only to two of the seven value-added services listed in the GATT Secretariat's Services Sectoral Classification List: electronic mail and voice mail. In addition to these services, Indonesia listed commitments pertaining to videotex, file transfer, home telemetering alarm, entertainment, and management information services, none of which appear explicitly on the classification list. Indonesia undertook no commitments with respect to on-line information and data base retrieval, EDI, enhanced facsimile services, code and protocol conversion, and on-line information and/or data processing services.

With respect to electronic mail and voice mail, the limited scope of services, Indonesia accords full market access and national treatment on cross-border supply and consumption abroad. Regarding the establishment of a commercial presence, Indonesia grants market access to five foreign service providers in addition to existing service providers. Concerning limitations on national treatment of a commercial presence, Indonesia requires higher paid-in capital from foreign service providers.[18] In addition, Indonesia's cross-industry commitments require foreign providers to form a joint venture or to establish a local office. Such a joint venture must be in the form of a Limited Liability Enterprise with foreign equity holdings of no more than 49 percent. Indonesia's cross-industry commitments also impose a 20-percent withholding tax for nonresidents on income derived from interest, royalties, dividends, and fees for services performed in Indonesia. Furthermore, according to Indonesian law, no foreigner or Indonesian citizen may own land, although land and buildings may be leased by a joint venture.

Indonesia left limitations on the presence of natural persons unbound, except for measures permitting the entry and temporary stay of directors, managers, and technical experts or advisors. These personnel are limited to a maximum stay of 2 years with a potential 1-year extension. However, the intracorporate transfer of managers and technical experts is subject to a needs test, and foreign personnel may be subject to taxes imposed by Federal, Provincial, and municipal authorities.

Korea

Korea accords full market access and national treatment to foreign providers of all enhanced telecommunication services with respect to cross-border supply, consumption abroad, and commercial presence. Registered enhanced service providers may also provide basic data transportation services although, like other service providers, they may only do so through lines leased from the public telecommunications network. In addition, with respect to establishing a commercial presence, both market access and national treatment may be affected by cross-industry commitments that limit the acquisition of Korean stock. Foreign portfolio investment is only permitted for stocks listed on the Korean stock exchange, and individual foreign investment is limited to 3 percent of a firm's total stock, while aggregate foreign investment in a single firm cannot exceed 10 percent. Furthermore, foreign affiliates must meet requirements set forth by Korea's Foreign Exchange Management Act. With respect to national treatment limitations, Korea's cross-industry commitments indicate that foreign firms must invest at least 50 million won.[19] Measures concerning the acquisition of land were left unbound, although foreign companies that are approved by the Alien Land Law may supply services and house senior company personnel. Furthermore, Korea noted that tax benefits may be limited to firms that are "established according to pertinent laws."

Korea's measures concerning the presence of natural persons remain unbound, except for measures listed in the cross-industry commitments pertaining to the entry and temporary stay of executives, senior managers, and specialists. These personnel are limited to a maximum stay of 3 years, which may be extended by an undefined period of time if deemed necessary. Certain consultants are limited to stays of 90 days.

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[18] This equity requirement is scheduled to be eliminated in 2020.

[19] This threshold stood at $58,000 as of Jan. 21, 1997. *The Wall Street Journal*, Jan. 22, 1997, p. A7.

Malaysia

Malaysia accords full market access and national treatment to foreign firms that provide enhanced telecommunication services through cross-border supply or consumption abroad. However, these commitments do not apply to EDI and on-line information and/or data processing services, mobile data services, and telex and telegraph services.[20] Foreign firms may provide value added services only through lines leased from the public telecommunications network; bypass is prohibited. With regard to commercial presence, market access is allowed only through a locally incorporated joint venture with Malaysian individuals or a Malaysian-controlled corporation, or through the acquisition of shares of an existing, licensed value-added service provider. Aggregate foreign shareholding may not exceed 30 percent. Furthermore, foreign companies must obtain a license that specifies the type of services provided and simple resale of leased line capacity is prohibited. Malaysia's cross-industry commitments indicate that approval is required for all mergers and acquisitions that involve more than 15-percent foreign ownership by a single firm or majority control of a Malaysian company by foreign firms. Malaysia notes in its schedule that approval is normally granted, but may be denied where the proposed investment conflicts with the interest of the state. Malaysia also notes that approval may not be granted for the acquisition of land by foreigners if this is determined to be in conflict with the interest of the state. In addition, any government-owned company that intends to purchase services must give first consideration to government-owned service suppliers.

Malaysia left limitations on the presence of natural persons unbound, except for measures permitting the entry and temporary stay of senior managers, specialists, professionals, and business visitors. With the exception of business visitors, these personnel are limited to a maximum stay of 5 years. Business visitors are limited to a period of 90 days.

New Zealand

New Zealand's commitments, which apply to all enhanced telecommunication services, accord full market access and national treatment with respect to cross-border supply and consumption abroad. New Zealand also accords full market access to foreign firms that establish a commercial presence, but national treatment for such firms is limited by measures that restrict foreign shareholding of any single entity in the Telecom Corporation of New Zealand to 49.9 percent and require at least half of the board of directors to be New Zealand citizens. New Zealand also indicates in its cross-industry commitments that approval from the Overseas Investment Commission is required for foreign acquisition of more than 25 percent of a New Zealand company with assets greater than 10 million New Zealand dollars,[21] or for the acquisition of a firm in which the total expenditure exceeds 10 million New Zealand dollars. Furthermore, additional consent is necessary for the acquisition of rural land.

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[20] Telex and telegraph services are listed among basic telecommunication services in the GATT Secretariat's Services Sectoral Classification List. Mobile data services, although not on the list, could also be classified as basic telecommunication services.

[21] This threshold stood at $7 million as of Jan. 21, 1997. *Wall Street Journal*, Jan. 22, 1997, p. A7.

With respect to the presence of natural persons, limitations on market access and national treatment were left unbound, except for measures permitting the entry and temporary stay of executives, senior managers, senior personnel, specialists, installers, service personnel, and service sellers. Executives, senior managers, and specialists are limited to a maximum stay of 3 years; senior personnel to 1 year; and installers and service sellers to an aggregate of 3 months in any calendar year.

The Philippines

The Philippines' commitments apply to less than one-half of the enhanced services. Electronic mail, enhanced facsimile, code and protocol conversion, and online information and/or data processing services were excluded from the scope of the Philippines' schedule. For foreign firms that provide the remaining services, the Philippines accords national treatment, but indicates that cross-border services must be provided through Certified, domestic public telecommunication carriers. For services supplied through a commercial presence, the Philippines limits market access to service providers who are able to obtain a franchise and a Certificate of Public Convenience and Necessity. However, only Philippine citizens, or corporations with 60 percent of capital owned by Philippine citizens, may receive franchises and certificates to operate a public utility. Furthermore, the Philippines' cross-industry commitments indicate that executive and managing officers must be Philippine citizens, and only Philippine citizens or corporations are permitted to own nonpublic land. Finally, the Philippines' cross-industry commitments specify that foreign workers may be granted entry and temporary stay only if it is determined that there is no individual in the Philippines who is competent, able, and willing to perform a specified service at the desired time.[22]

Singapore

Singapore's commitments apply to all enhanced telecommunication services, except enhanced facsimile and code and protocol conversion services.[23] Singapore accords full market access and national treatment only with respect to consumption abroad. Concerning services provided through commercial presence and cross-border supply, Singapore indicates that foreign service providers need a license from the Telecommunication Authority of Singapore (TAS), which requires that foreign providers either set up a local, registered affiliate or grant power of attorney to a local agent. Also, foreign providers may not carry any basic telecommunication traffic. In its cross-industry commitments, Singapore listed several domestic personnel requirements that limit national treatment of a commercial presence.

With respect to the presence of natural persons, limitations on market access and national treatment were left unbound. However, cross-industry commitments permit the entry and

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[22] The Philippine cross-industry commitments note that this is subject to review in 2 years.

[23] According to the Government of Singapore's "Guidelines for the Provision of VAN Services in Singapore," foreign providers are allowed to offer code and protocol conversion and enhanced facsimile services. Singapore Government official, interview by USITC staff, Singapore, Feb. 25, 1997.

temporary stay of managers, executives, and specialists. These personnel are limited to a stay of 3 years, which may be extended for 2 additional years.

Thailand

Among the Asia/Pacific trading partners that scheduled commitments on enhanced telecommunication services, Thailand appears to have one of the most restrictive markets. Thailand scheduled no commitments pertaining to electronic mail, voice mail, EDI, enhanced facsimile, and code and protocol conversion services. Thailand's commitments apply to only two of the enhanced services specified by the GATT Secretariat's Services Sectoral Classification list, database access and on-line information processing services. However, Thailand did schedule commitments on four other narrowly defined telecommunication services. Thailand's schedule presents different limitations for the various enhanced services. Regarding database access and on-line information services, as well as videotex and teleconference services, Thailand indicated in its schedule that the public telecommunication network must be used to provide services through cross-border supply or commercial presence. In addition, firms that provide services through a commercial presence must be registered, and the share of foreign equity as well as the number of foreign shareholders may not exceed 40 percent.[24] With respect to sales and consulting services, limitations on market access and national treatment remain unbound for cross-border supply, and foreign equity is restricted to 49 percent for services provided through a commercial presence.

With respect to the presence of natural persons, Thailand scheduled no restrictions on national treatment, but restrictions on market access were left unbound except for measures permitting the entry and temporary stay of managers, executives, and specialists.[25] These personnel are limited to a stay of 1 year that may be extended for up to 2 additional years.

Industry Opinion

U.S. firms express general satisfaction with market conditions in most of the subject countries and optimism about the prospects of providing enhanced as well as basic telecommunication services (e.g., voice and data transmission) in the future. Generally, U.S. telecommunication service providers view the Asia/Pacific region as the most important market for their own expansion.[26] Underlying this optimism is the prediction that $300 billion will be invested in telecommunications in the Asia/Pacific region over the next 5 years.[27]

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[24] The 40-percent limitation for foreign equity participation and percentage of foreign shareholders is less than the ceilings specified in the cross-industry commitments, which are 49 percent and less than 50 percent, respectively.

[25] Market access for civil engineers was left unbound.

[26] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997, and New Delhi, India, Feb. 2, 1997.

[27] David Sandham, editor of *Pacific Telecommunications Profile* (Commonwealth Communications Limited: London, 1996) p. 7, and industry representative, interview by (continued...)

Several industry representatives indicate that market conditions for enhanced telecommunication service providers in the subject countries are not accurately reflected in the GATS schedules. For example, industry representatives state that Hong Kong offers one of the most open and competitive markets in the region, whereas commitments scheduled under the GATS appear onerous because limitations on three out of four modes of supply were left unbound.[28] In practice, Hong Kong reportedly affords foreign providers of enhanced telecommunications full national treatment and imposes no restrictions on foreign ownership.[29] Also, in the recently concluded WTO basic telecommunication services agreement, Hong Kong scheduled commitments that allow 100-percent foreign ownership of firms that provide resale of voice, data, and facsimile services, or that provide services for closed user groups, which are intensive consumers of enhanced services. While licenses are required for the provision of enhanced telecommunication services in Hong Kong, they are reportedly available within 14 days for a yearly fee of $750.[30] In April 1996, Hong Kong issued guidelines for the provision of virtual private networks (VPN),[31] although some industry representatives voiced concern as their applications for VPN licenses are still pending.[32] Interconnection fees paid to Hong Kong's four facilities-based operators by enhanced telecommunication providers are negotiated between the two parties and reportedly are among the least expensive in the world, ranging between one and nine Hong Kong cents per minute.[33]

India allows 51-percent direct foreign investment in enhanced telecommunication service providers, and another 23 percent in portfolio investment.[34] In India, licenses are required for the provision of all enhanced telecommunication services, including cellular services.[35] Industry representatives note that license fees are published by the Government of India and that the licensing procedure is transparent and without quantitative restrictions.[36] The cost of these licenses varies, depending upon the service, and ranges from $45,000 to $60,000.[37] Although closed user groups are allowed to operate in India, they are not permitted to interconnect with one another. Rather, closed user groups are required to transmit data through the Indian telephone monopoly, Videsh Sanchar Nigam Ltd. (VSNL), before terminating the traffic with another closed user group.[38] While industry representatives laud the Department of Telecommunications for having made great

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[27] (...continued)
USITC staff, Hong Kong, Jan. 30, 1997.

[28] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[29] Ibid.

[30] Hong Kong Government official, interview by USITC staff, Hong Kong, Jan. 28, 1997, and industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[31] A virtual private network utilizes the public switched network to provide capabilities similar to those of private lines, such as high speed, error testing, and four-wire transmission with a line quality adequate for data transmission.

[32] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[33] Nine Hong Kong cents equals 1.2 U.S. cents, *Wall Street Journal*, May 12, 1997. Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[34] Indian Government official, interview by USITC staff, New Delhi, India, Feb. 2, 1997.

[35] Cellular services are considered enhanced services in India. Indian Government official, interview by USITC staff, New Delhi, India, Feb. 2, 1997.

[36] Industry representative, interview by USITC staff, New Delhi, India, Feb. 2, 1997.

[37] Veena Shekhar, "Telecom Value-added Services," *Indian Economy Overview*, World Wide Web, retrieved Jan. 15, 1997, http://www.m-web.com/vee002.html.

[38] Industry representative, interview by USITC staff, New Delhi, India, Feb. 2, 1997.

advances in a relatively short period of time and for increasing opportunities for foreign investors, they report that their continued inability to directly connect two private networks, without routing the transmission through VSNL, places them at a disadvantage.[39] Routing calls through VSNL results in additional costs because enhanced providers must pay interconnection fees to the monopoly. Also, industry representatives note that foreign providers are not permitted to provide Internet, voice telephony, or frame-relay services.[40] Nonetheless, industry representatives state that their operations have experienced consistent growth in recent years.[41]

According to U.S. industry representatives, Indonesia still has a very restrictive market, although the government recently took a step toward liberalization by dividing the country into seven separate service areas.[42] Two areas were reserved for national carriers, while the other five areas were reserved for joint operating ventures, or KSOs, which, in turn, were granted monopoly operating rights until 2011.[43] Although each joint venture[44] operates as a monopoly, each partnership must pay Indonesia Telekom a percentage of all profits. In addition, 1.5 percent of profits must be allocated for local training programs and another 1.5 percent for local research and development.[45]

Industry representatives note that Indonesia's licensing process is fairly transparent and timely. However, a principal concern for foreign service providers in Indonesia is the importation of telecommunication equipment. According to Indonesian law, a company must submit a "master list" of merchandise it wishes to import one year in advance of the expected date of importation. This list may not be changed. Industry representatives note that if technology changes after the submission of the list, the list may not be altered to include the new technology. This system is viewed as cumbersome by industry representatives.[46]

Korea's enhanced telecommunication sector is reportedly open to competition and allows 100-percent foreign ownership.[47] Enhanced telecommunication providers are limited to providing services through lines leased from the public network.[48] Foreign enhanced service providers are able to directly negotiate interconnection fees with Korean operators, along guidelines established by the government.[49] Currently, foreign service providers are not allowed to build and operate their own facilities,[50] and aggregate foreign investment in facilities-based carriers is limited to 33 percent. However, in the recently concluded WTO basic telecommunication agreement, Korea scheduled commitments to

[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Industry representative, USITC staff interview, Indonesia, Feb. 21, 1997.
[43] In addition, there are seven licensed cellular service companies who may serve all of the country. Ibid.
[44] Foreign service providers are only allowed a minority ownership position. Ibid.
[45] Ibid.
[46] Ibid.
[47] Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.
[48] Korean Government official, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.
[49] Ibid.
[50] Ibid.

permit 49-percent foreign ownership of firms that supply voice services over leased lines until January 1, 2001, and 100-percent foreign ownership thereafter.

Malaysia remains a comparatively restrictive market. The Malaysian Government initiated privatization of Telecom Malaysia several years ago, but still holds 70 percent of the company's shares through various holding companies.[51] Enhanced service providers individually negotiate interconnection fees with Telecom Malaysia. Such fees, which strongly affect the price at which enhanced services may be offered, reportedly change from year to year, although Jabatan Telecom Malaysia (JTM), Malaysia's regulatory authority, is said to be changing the method by which these fees are set. JTM also regulates the licensing of enhanced service providers. Industry representatives report that the licensing process is complex and time consuming, with JTM requiring about one year to process each license. The complexity of the licensing process appears to stem, in part, from JTM's assessment that the market is saturated and consequently the number of available licenses should be limited.[52] In addition, JTM reportedly favors extending licenses to joint ventures, and actively promotes foreign ventures with Bumiputra parties[53] by extending privileges, such as tax benefits, to ventures with at least 30-percent Bumiputra ownership.[54] With respect to the entry and temporary stay of foreign workers, industry representatives have reported few difficulties, although local partners sometimes exert pressure to replace such workers with local hires.[55]

Singapore, which began to liberalize its telecommunication market in 1992, reportedly allows foreign provision of the full range of enhanced services despite the fact that its schedule excludes some services.[56] Service providers must obtain an enhanced service license from the TAS.[57] Industry representatives indicate that the licensing process can be somewhat problematic due to the vast amounts of information required by TAS for the license application. Although 6 of the 10 licenses granted by TAS have been granted to foreign providers,[58] Singapore Telecom currently provides 80 percent of all enhanced services.[59] Also, to date, most foreign providers of enhanced services are partners in a joint venture with a Singapore company, with either a minority or a majority equity arrangement. Until recently, it has been difficult for a foreign provider to obtain a license to provide the full range of enhanced services without a local partner.[60]

With respect to Thailand, industry representatives report that the telecommunication services market is very restrictive, with the provision of enhanced services being almost

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[51] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997.

[52] Ibid.

[53] Bumiputra, who are indigenous Malaysians, make up 55 percent of the population of Malaysia.

[54] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997.

[55] Ibid.

[56] Industry representative, interview by USITC staff, Singapore, Feb. 27, 1997, and Singapore Government official, interview by USITC staff, Singapore, Feb. 25, 1997.

[57] Industry representative, interview by USITC staff, Singapore, Feb. 27, 1997.

[58] Singapore Government official, interview by USITC staff, Singapore, Feb. 25, 1997.

[59] Industry representative, interview by USITC staff, Singapore, Feb. 27, 1997.

[60] Ibid.

exclusively reserved for Thai nationals.[61] Foreign firms may only provide services by forming a joint venture with either of Thailand's two providers, and foreign investment may not exceed 49 percent.[62] Thailand does not yet have an independent regulatory body,[63] although it indicated in February 1997 that it may form such a body upon the passage of future telecommunication legislation.

In addition to the obstacles posed by foreign regulation, industry sources indicate that infrastructure weaknesses also impede their operations in the Asia/Pacific region. Industry representatives note that the low penetration of telephone services in the Philippines, India,[64] and Indonesia may hinder the growth of enhanced telecommunication service markets, partially due to the inability of the existing infrastructure to accommodate increased data flows.[65] Another obstacle for the provision of enhanced services is the low level of computer penetration in the region. For example, in India, 90 percent of all computers are concentrated in only 8 cities, and out of India's population of nearly 1 billion, there are only 25,000 Internet subscribers.[66] On the other hand, new wireless communication technologies such as cellular, personal communication, and satellite communication technologies are creating opportunities for U.S. service providers. For example, in Hong Kong, the number of cellular subscribers is growing by 50 percent per year and cellular penetration is predicted to reach 35 percent by the turn of the century.[67]

Industry representatives generally expressed satisfaction with the transparency of the existing regulatory regimes in the Asia/Pacific region. Industry representatives voiced some concerns regarding the regulatory bodies in India and Malaysia, but acknowledged that conditions in both countries seem to be improving.[68] Further, industry representatives have expressed great optimism[69] concerning the endorsement of the WTO's pro-competitive regulatory principles, adopted in full by 7 of the 10 trading partners examined in this study.[70]

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[61] *Asia-Pacific Telecoms Analyst*, "Thailand plans to better WTO market access offer," Jan. 13, 1997, p. 13.

[62] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[63] *Asia Pacific Telecoms Analyst*, Jan. 13, 1997.

[64] The teledensity of the Philippines and India is 1.68 and 1.07 telephone lines per hundred people, respectively.

[65] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997, and New Delhi, India, Feb. 2, 1997.

[66] Indian Government official and industry representative, interviews by USITC staff, New Delhi, India, Feb. 2, 1997.

[67] *Pacific Telecommunications Profile*, "Riding the mass market wave" (Commonwealth Communications Limited: London, 1996), p. 13-14.

[68] Industry representatives, interviews by USITC staff, New Delhi, India, Feb. 2, 1997, and Kuala Lumpur, Malaysia, Feb. 18, 1997.

[69] Industry representative, Center for Strategic and International Studies (CSIS), press conference, Feb. 21, 1997.

[70] Australia, Indonesia, Korea, Malaysia, New Zealand, Singapore, and Thailand adopted the WTO regulatory principles in full. India and the Philippines adopted some of the regulatory principles.

Summary

Based on the national schedules and interviews with government officials and industry representatives, the markets of Australia, New Zealand, Singapore, and Hong Kong appear to be the most open for enhanced telecommunication services. However, the commitments submitted by Singapore and Hong Kong are not as comprehensive as those provided by Australia and New Zealand. Of the 10 subject trading partners, all except Hong Kong scheduled at least partial commitments to accord market access and national treatment to foreign providers of enhanced telecommunication services on a cross-border basis. Australia, Hong Kong, and Korea scheduled full commitments for provision of enhanced services through a commercial presence, although Korea's commitments may be weakened somewhat by its cross-industry measures. These national schedules have therefore accomplished most in terms of improving transparency and establishing effective benchmarks, which ultimately could benefit U.S. firms. Furthermore, market forces are bringing about liberalization in most of the subject countries such that the current market environment is more open than may be suggested by the national schedules.

CHAPTER 6
Audiovisual Services

Introduction

For the purpose of this study, audiovisual services[1] are the production and distribution of motion pictures, television programs, radio programs, recorded music, music videos, and videotapes. These services are distributed through rental or sale of prerecorded work, projection in movie theaters, and television and radio broadcasting.

International Trade in Audiovisual Services

Trade in audiovisual services occurs both through cross-border and affiliate channels. Cross-border trade data record transactions in film and tape rentals between the United States and foreign countries. Affiliate sales data reflect sales of motion pictures by U.S.-owned affiliates abroad to foreign film distributors and purchases of motion pictures by U.S. distributors from foreign-owned affiliates in the United States. Available data suggest that most U.S. trade in audiovisual services is transacted through affiliate channels.

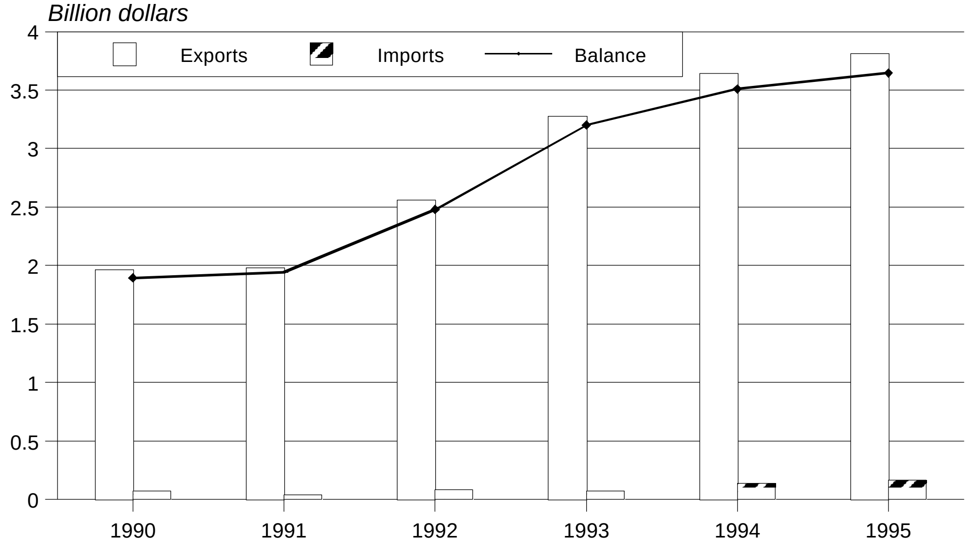
Cross-Border Transactions

As noted, cross-border trade data on audiovisual services capture film and tape rentals. In 1995, U.S. cross-border exports of audiovisual services totaled $3.8 billion. Cross-border receipts in film and tape rentals increased by 5 percent in 1995, which fell far short of the 17-percent average annual growth rate recorded during 1990-94 (figure 6-1). The Asia/Pacific trading partners that are the subject of this report accounted for $287 million, or 8 percent, of U.S. exports. Within this group, Australia was by far the largest trading partner, accounting for $181 million, or 63 percent, of U.S. sales to the region. The European Union is the largest market for U.S. cross-border sales of audiovisual products, followed by Japan (figure 6-2).

In 1995, the United States imported $167 million in film and tape rentals. Imports increased by 23 percent in 1995, faster than the average annual growth rate of 18 percent recorded during 1990-94. With imports totaling less than 5 percent of exports, the United States enjoys a large surplus, measuring $3.6 billion, in cross-border trade in audiovisual services.

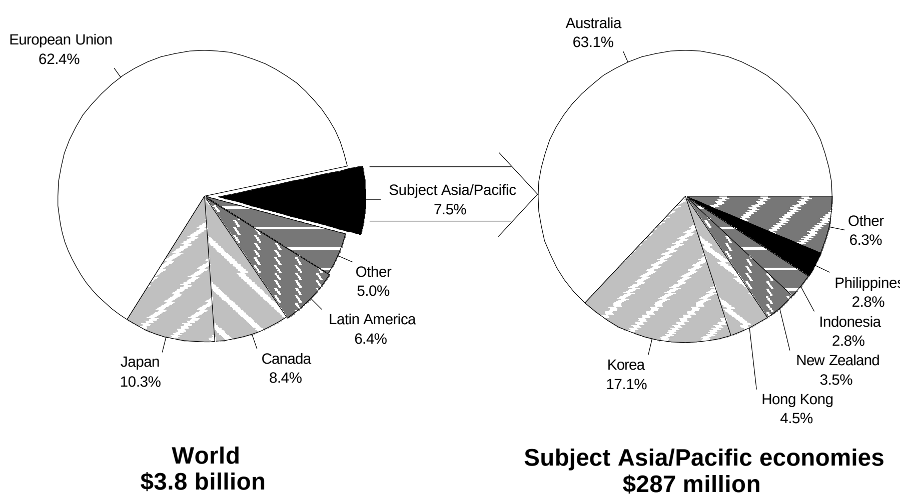
[1] Audiovisual services are captured in the U.N. Central Product Classification (CPC) codes 9611, motion picture and videotape production and distribution services; 9612, motion picture projection services; 9613, radio and television services; and 7524, radio and television transmission services. Sound recording, which is covered by the GATS, does not have a corresponding CPC code.

Figure 6-1
Cross-border trade in audiovisual services: U.S. exports, imports, and trade balance, 1990-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1994, Sept. 1995, and Nov. 1996.

Figure 6-2
Audiovisual services: U.S. cross-border exports, by principal markets, 1995[1]



[1] Due to rounding, figures may not add to 100 percent.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Sales by Majority-Owned Affiliates

Data on affiliate transactions in audiovisual services reflect sales of motion pictures, television tapes, and films[2] by U.S. film studios' affiliates to foreign film distributors, and sales by foreign-owned studios' affiliates to U.S. distributors. Foreign-based affiliates of U.S. film studios recorded sales of $4.2 billion in 1994, representing 3 percent of total service sales by U.S.-owned overseas affiliates (figure 6-3). U.S. affiliate sales declined by 28 percent in 1994 following an average annual increase of 2.5 percent during 1990-93. This decline is due partly to a decrease in the sale of U.S. movies in certain EU member states, Japan, and Canada.[3] Among the subject Asia/Pacific countries, only sales to Australia are large enough to be reported individually. Such sales accounted for 4 percent of U.S.-owned affiliates' sales of motion pictures (figure 6-4).

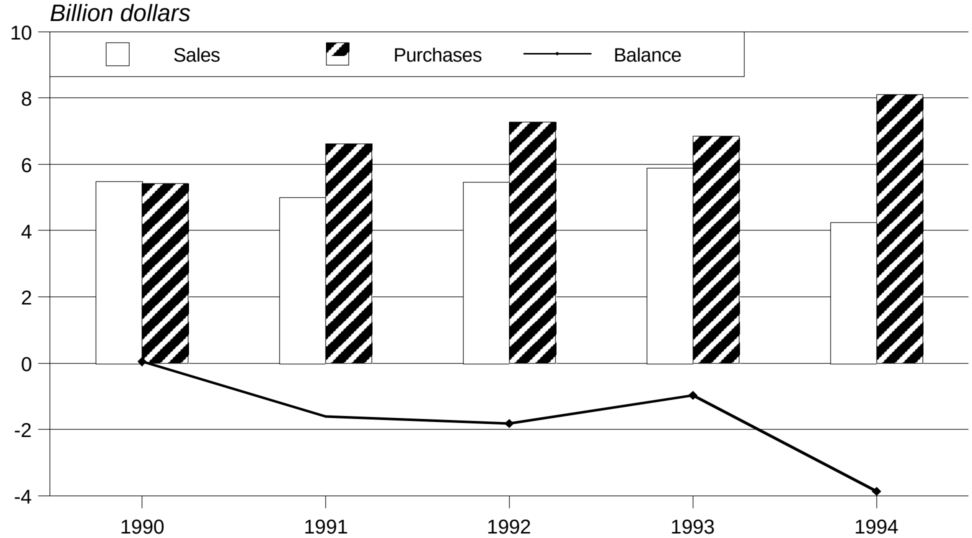
Foreign-owned affiliates' sales to U.S. distributors measured $8.1 billion in 1994, increasing by more than 18 percent over the previous year. In large part, this drove the balance on affiliate transactions from a deficit of almost $1 billion in 1993 to a deficit of $3.9 billion in 1994. The sharp increase in sales by U.S. affiliates of foreign studios reflects foreign investment in several major film studios. These studios, including Columbia Pictures, TriStar, MCA, and MGM/UA,[4] collectively accounted for 25 percent of domestic box office sales in 1994.[5]

Examination of Commitments on Audiovisual Services

As noted earlier, trade in audiovisual services occurs mainly through affiliate channels, although cross-border transactions are also large. Investment restrictions, applied either on a cross-industry[6] or industry-specific basis, are the main impediments to affiliate trade, while import quotas, screen time limitations, and language requirements restrict cross-border trade (table 6-1). Commitments on audiovisual services offered under the GATS generally are limited in scope. For example, three of the trading partners examined in this study declined to schedule any commitments, and India scheduled commitments only on the distribution of film products. Among the remaining six trading partners, all made commitments that cover motion picture and videotape production and distribution services, but only New Zealand scheduled commitments that cover broadcasting services as well.

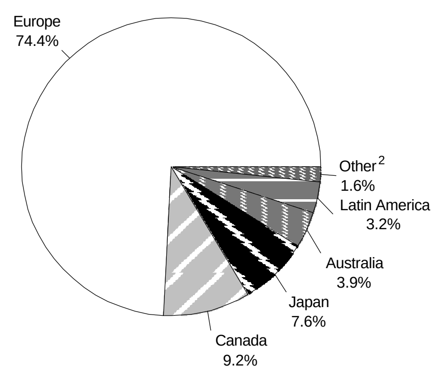
[2] These data also reflect sales of television tapes and films.
[3] Standard and Poor's Industry Surveys, *Leisure Time Basic Analysis*, Apr. 18, 1996, p. L20.
[4] Sony (Japan) owns Columbia Pictures and TriStar, Seagram (Canada) owns MCA, and Credit Lyonnais (France) controlled MGM until 1996.
[5] Standard and Poor's Industry Surveys, *Leisure Time Basic Analysis,* Apr. 6, 1995, p. L27.
[6] See appendix E for a detailed presentation of cross-industry commitments.

Figure 6-3
Audiovisual service transactions by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Figure 6-4
Audiovisual services: Sales of services by majority-owned affiliates of U.S. firms, by principal markets, 1994[1]



Total = $8.1 billion

[1] Due to rounding, figures may not add to 100 percent.
[2] Principally includes countries in Africa and the Middle East.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current business*, Nov. 1996.

Table 6-1
Highlights of industry-specific restrictions on audiovisual services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Hong Kong	**Market Access:** None **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • CPC 96112 and 96113 - Motion picture and videotape production and distribution services. Distribution is limited to the sale or rental of film and videotapes and excludes broadcasting services. • CPC 96114 - Other services in connection with motion picture and videotape production and distribution. Dubbing services, limited to the translation of soundtrack of motion pictures and videotapes. • Sound recording services, limited to the provision of soundtrack. These commitments exclude: • CPC 96111 - Promotion or advertising services. • CPC 9612 - Motion picture projection services. • CPC 9613 - Radio and television services. • CPC 7524 - Radio and television transmission services.

Table 6-1, *continued*
Highlights of industry-specific restrictions on audiovisual services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
India	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Limited to representative offices which will be allowed to function as branches of companies incorporated outside India. • Import of titles restricted to 100 per year. **National Treatment:** • Subject to certification by the relevant authority that the motion picture has: a) won an award in any of the international film festivals recognized by the Ministry of Information & Broadcasting, Government of India; or b) participated in any of the official sections of the recognized international film festivals; or c) received good reviews in prestigious film journals recognized by the Ministry of Information & Broadcasting, Government of India.	**Market Access:** • Unbound except as indicated in the cross-industry section. **National Treatment:** • Unbound except as indicated in the cross-industry section.	These commitments cover: • CPC 96113 - Motion picture or videotape distribution services. These commitments exclude: • CPC 96111 - Promotion or advertising services. • CPC 96112 - Motion picture or videotape production services. • CPC 96114 - Other services in connection with motion picture and videotape production. • CPC 9612 - Motion picture projection services. • CPC 9613 - Radio and television services. • CPC 7524 - Radio and television transmission services. • Sound recording. • MFN exemption accords preferential treatment to countries with which India has established coproduction agreements.

Table 6-1, *continued*
Highlights of industry-specific restrictions on audiovisual services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Korea	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access**: • Unbound except as indicated in the cross-industry section. **National Treatment:** • Unbound except as indicated in the cross-industry section.	These commitments cover: • CPC 96112 and 96113 - Motion picture and videotape production and distribution services excluding cable TV broadcasting. • Sound recording. These commitments exclude: • CPC 96111 - Promotion or advertising services. • CPC 96114 - Other services in connection with motion picture and videotape production and distribution. • CPC 9612 - Motion picture projection services. • CPC 9613 - Radio and television services. • CPC 7524 - Radio and television transmission services.

Table 6-1, *continued*
Highlights of industry-specific restrictions on audiovisual services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Malaysia	**Market Access:** • Commercial presence is required; i.e., cross-border distribution is prohibited. **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Only through a locally incorporated joint-venture with Malaysian individuals or Malaysian-controlled corporations or both, and the aggregate foreign share holding shall not exceed 30 percent. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment**: • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 96113 - Motion picture and videotape distribution services. • Sound recording, limited to distribution of audio recordings.
	Market Access: • Limited to 20 percent of total screening time. Dubbing into the national language may be required. **National Treatment**: • Unbound for the government channel.	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	These commitments cover: • CPC 7524 - Broadcasting services covering transmission of foreign broadcast matter from foreign broadcast station from foreign territory through television or radio. Malaysia's commitments exclude: • CPC 96111 - Promotion or advertising services. • CPC 96112 - Motion picture and videotape production. • CPC 96114 - Other services in connection with motion picture and videotape production and distribution. • CPC 9612 - Motion picture projection services. • CPC 9613 - Radio and television services. • MFN exemption reserves the right to impose investment measures on foreign firms in a differentiated manner.

Table 6-1, *continued*
Highlights of industry-specific restrictions on audiovisual services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
New Zealand	**Market Access:** None **National Treatment:** • Pursuant to the Broadcasting Act of 1989, the Broadcasting Commission must allocate a minimum of 6 percent of its budget to Maori programming. From 1995, all public funding for Maori broadcasting is controlled by Te Reo Whakapuaki Irirangi (Maori Broadcasting Funding Agency). • Government assistance to the film industry through the New Zealand Film Commission is limited to New Zealand films as defined in Section 18 of the New Zealand Film Commission Act 1978.	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Pursuant to the Broadcasting Act of 1989, the Broadcasting Commission must allocate a minimum of 6 percent of its budget to Maori programming. From 1995, all public funding for Maori broadcasting is controlled by Te Reo Whakapuaki Irirangi (Maori Broadcasting Funding Agency). • Government assistance to the film industry through the New Zealand Film Commission is limited to New Zealand films as defined in Section 18 of the New Zealand Film Commission Act 1978.	**Market Access:** • The New Zealand Immigration Service policy, based on the Immigration Act 1987 and the Immigration Regulations 1991 stipulate a special procedure for the granting of visas to entertainers, performing artists, and associated support personnel for work purposes. To be eligible for a work visa or work permit, such applicants must come within the policy guidelines agreed to among the Minister of Immigration, independent promoters, agents or producers and the relevant performing artists' unions. Otherwise, unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 9611-9613, 96192, 7524, 753 - Production, distribution, exhibition, broadcasting, and cable transmission of audiovisual works. • Sounding recording. • MFN exemption accords certain countries preferential treatment under film coproduction agreements.

Table 6-1, *continued*
Highlights of industry-specific restrictions on audiovisual services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Singapore	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • CPC 9611-9613 - Production, distribution and public display of motion pictures and video recordings, limited to non-broadcasting services. • Sound recording, limited to non-broadcasting services. These commitments exclude: • CPC 7524 - Broadcasting and broadcasting-related services and materials, such as free-to-air broadcasting, cable and pay television, direct broadcasting by satellite, and teletext. • MFN exemption accords preferential treatment to countries with which Singapore has signed bilateral agreements on broadcast and transmission rights.

Table 6-1, *continued*
Highlights of industry-specific restrictions on audiovisual services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Thailand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • No limitations as long as foreign equity participation does not exceed 49 percent.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 96112-96113 - Film and videotape production and distribution services. • CPC 96131-96132 - Production of radio and television programs. These commitments exclude: • CPC 96111 - Promotion or advertising services. • CPC 96114 - Other audiovisual services in connection with motion picture and videotape production and distribution. • CPC 9612 - Motion picture projection services. • CPC 96133 - Combined program making and broadcasting services. • CPC 7524 - Program transmission or broadcasting services. • Sound recording. • MFN exemption accords preferential treatment to U.S. citizens as a result of the bilateral Treaty of Amity and Economic Relations.

[1] Australia, Indonesia, and the Philippines did not schedule commitments on audiovisual services.

Australia, Indonesia, and the Philippines made no commitments in audiovisual services. These countries thus reserve the right to impose new trade or investment restrictions, or make existing restrictions more burdensome, without penalty. In addition, Australia listed extensive MFN exemptions that accord preferential treatment to selected countries through coproduction arrangements for film and television productions. For the stated purpose of promoting collaborative efforts with foreign film producers and preserving cultural links, Australia reserves the right to bar foreign firms' access to finance, tax concessions, and simplified requirements for the temporary entry of skilled personnel. This exemption, of indefinite duration, benefits firms from Italy, the United Kingdom, Canada, and France. Australia also reserves the right to respond to "unreasonable measures imposed on Australian services or service suppliers" by other countries. The wording of this exemption appears to grant Australian regulators broad discretion to restrict trade and investment in audiovisual services.

Hong Kong

Hong Kong's commitments cover motion picture and videotape production and distribution, soundtrack recording, and dubbing services. For these services, Hong Kong accords full market access and national treatment to foreign firms wishing to establish a commercial presence. Services provided through cross-border supply and consumption abroad are subject to unbound restrictions on national treatment, although market access is unlimited. Audiovisual services provided through the presence of natural persons are subject to unbound restrictions on both market access and natural treatment.

Despite the narrow range of audiovisual services scheduled by Hong Kong, the country is considered a model trading partner by the U.S. film industry.[7] Hong Kong is the second-largest film exporter in the world, and the third-largest producer after India and the United States. Hong Kong-based films have gained increasing popularity in the United States,[8] where several works have won critical and box office success in recent years. The Hong Kong market, accounts for 4.5 percent of U.S. film exports to this report's subject countries. Hong Kong's reversion to China in 1997 causes some concern for the U.S. industry in light of fears that China may impose restrictions where Hong Kong scheduled no bindings. Should China's control of Hong Kong result in the imposition of new limitations on national treatment or freedom of expression, U.S. audiovisual trade would suffer adverse consequences.

India

India's commitments include motion picture or videotape distribution services, but exclude all production and broadcast services. India offers partial commitments to market access and national treatment for services delivered through a commercial presence, leaving limits on all other modes of supply unbound. Market access restrictions on commercial presence require foreign companies to work through representative offices

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[7] Wade Major, "Special Report: Hollywood's New Orientation," Box office Online Special Report, *Boxoffice Magazine*, World Wide Web, retrieved Dec. 19, 1996, http://www.boxoff.com/sneak1feb.html/.

[8] Ibid.

and limit the number of movies imported to 100 per year. The national treatment limitation stipulates that foreign films must receive a certificate from the Indian Government. Certification is contingent upon the film's participation in official sections of recognized international film festivals or receipt of good reviews in prestigious film journals. The determination of the status of film festivals and journals is left to the discretion of the Ministry of Information and Broadcasting of the Government of India. India also listed an MFN exemption that allows it to accord preferences to films from countries with which India has established coproduction agreements. The exemption, with a stated purpose of promoting cultural exchange, may be applied to all countries for an unspecified period.

According to industry sources, India's commitments do not reflect a current restriction that limits remittances for foreign movies to $6 million per title. However, due to India's recent economic reform and more open market policy, the sale of U.S. motion pictures is growing rapidly. U.S. industry representatives indicate that revenue from theatrical projection of U.S. movies in India increased by 400 percent in 1995.[9] Growing revenues are attributable, in part, to the recent dubbing of movies in the Hindi language, which makes them accessible to the large non-English-speaking market.[10]

Korea

Korea's commitments accord full market access and national treatment to foreign firms wishing to provide audiovisual services through cross-border supply, consumption abroad, or commercial presence. However, Korea's commitments apply only to motion picture and videotape production and distribution services, and sound recording services. Korea excludes cable television broadcasting, motion picture projection, and radio and television transmission services, leaving existing restrictions concerning these services unbound. Korea also places unbound limitations on the provision of services through natural persons, although cross-industry commitments provide for the entry and temporary stay of senior managers and specialists for periods of 3 years, or more if deemed appropriate.

Malaysia

Malaysia's commitments cover the distribution of motion pictures, videotapes, and audio recordings, along with the broadcast of foreign content from stations in foreign territories. Cross-border distribution of motion pictures, videotapes, and audio recordings is prohibited. Foreign distribution of material may occur only through a commercial presence, which must take the form of a locally incorporated joint venture with at least 70-percent Malaysian participation. Natural persons may not distribute motion pictures and other material, although joint ventures may employ senior managers, specialists, and various business persons in their distribution operations for up to 5 years. Malaysia permits the provision of cross-border broadcasting services, but limits these broadcasts to 20 percent of total screening time. In addition, Malaysia may require that broadcasts

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[9] Ibid.
[10] Ibid.

be dubbed into the national language. Limitations on broadcasting through government channels are left unbound.

The value of the audiovisual service commitments scheduled by Malaysia may be diminished by a most-favored-nation (MFN) exemption that allows Malaysia to impose investment measures on foreign firms in a differentiated manner. The objective of the MFN exemption is to maximize the benefits of foreign investment in the Malaysian economy.

New Zealand

New Zealand's commitments cover the production, distribution, projection, broadcasting, and cable transmission of audiovisual works. New Zealand accords full market access to foreign firms providing audiovisual services through cross-border supply, consumption abroad, or commercial presence. With respect to the presence of natural persons, New Zealand permits the entry and temporary stay of performing artists and associated personnel, subject to compliance with immigration regulations. As for national treatment, New Zealand's schedule notes that government assistance and public funding may only be provided to New Zealand films or programs and that a portion of the public broadcasting budget must be allocated to Maori productions.

New Zealand's comparatively ambitious commitments on audiovisual services are qualified by a broad MFN exemption. The exemption accords certain countries preferential access to finance and tax concessions, as well as simplified temporary entry requirements under film coproduction agreements or arrangements. Countries that presently benefit from the preferences include Canada, France, and the United Kingdom. The stated purpose of New Zealand's MFN exemption is to support the development of the national film industry.

Singapore

Singapore has a relatively open market for audiovisual production and distribution services, which is reflected by full commitments to market access and national treatment for services delivered through cross-border supply, consumption abroad, and commercial presence. Singapore's limitations on the presence of natural persons remain unbound, except for measures permitting the entry and temporary stay of managers, executives, and specialists. Singapore's commitments cover the production, distribution, and public display of motion pictures, video recordings, and sound recordings. Excluded from coverage are broadcasting and broadcasting-related services such as free-to-air broadcasting, cable and pay television, direct broadcasting satellite, and teletext.

For the stated purpose of promoting social, economic, and cultural relations with neighboring countries, Singapore registered an MFN exemption in broadcasting. The exemption covers all countries with which the Singapore Broadcasting Corporation has signed bilateral agreements on preferential broadcast and transmission rights. Singapore currently has such agreements with Brunei and Indonesia.

Thailand

Thailand's commitments cover film and video production and distribution services, as well as radio and television program production services. Thailand's commitments exclude broadcasting, motion picture projection, and various other audiovisual services such as sound recording. For the services covered, Thailand accords full market access and national treatment only for services consumed abroad. Limitations on services provided through cross-border supply remain unbound. Thailand accords foreign firms the right to establish a commercial presence, although foreign equity participation is limited to 49 percent and the number of foreign shareholders must be less than half of the total. Thailand's limitations on commercial presence are mitigated for U.S. firms by an MFN exemption granting U.S. citizens national treatment with respect to operating a business and providing services in Thailand in accordance with the existing bilateral Treaty of Amity and Economic Relations.

Industry Opinion

According to industry representatives, the economies in the Asia/Pacific region represent a large potential market for U.S. filmed entertainment. Fast-growing disposable incomes enable the populations to consume more leisure products such as movies. Increasing penetration of television sets and VCRs also permits wider distribution of audiovisual products. The dynamic and relatively open markets of Hong Kong and Singapore offer immediate opportunities to U.S. service providers, while large but less developed markets like India present considerable future opportunities for investment and sales by U.S. audiovisual service firms.[11]

In general terms, industry sources identify New Zealand, Hong Kong, and Singapore as the most open Asia/Pacific markets and Korea, Malaysia, and Thailand as the most restrictive markets for audiovisual trade.[12] With respect to the GATS commitments, the U.S. audiovisual services industry is concerned with the lack of offers by the large and increasingly attractive markets of Australia, Indonesia, and the Philippines, and by the narrow scope of commitments that were offered by others.[13] By declining to make binding commitments, countries like the Philippines that have virtually open markets[14] offer foreign firms no assurance that such favorable market conditions will continue. The absence of commitments on broadcasting services by all but New Zealand adversely affects the fastest growing distribution channel for audiovisual products.[15]

In many cases, the paucity of audiovisual service commitments enables trading partners to maintain nontransparent trade limitations. For example, Korea reportedly imposes a

[11] Wade Major, "Special Report: Hollywood's New Orientation," and industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.
[12] Industry representatives, interviews by USITC staff, Washington, DC, Jan. 9, 1997, and Singapore, Feb. 24, 1997.
[13] Ibid.
[14] Philippines Government representative, written response to questions posed by USITC staff, Mar. 25, 1997.
[15] Industry representative, interview by USITC staff, Washington, DC, Jan. 9, 1997.

limitation on screen access of foreign films, including projection in theaters and television broadcasts, by restricting the level of foreign content sometimes to as little as 20 percent.[16] Korea also prohibits foreign companies from broadcasting independently or becoming registered producers of videotapes, which impedes the distribution of foreign filmed entertainment.[17] None of these measures is evident in Korea's schedule, however. Similarly, Malaysia requires a 70-percent minimum broadcasting time for local programming,[18] while Singapore requires video distributors to be majority-owned by local residents and licensed separately.[19] The lack of commitments by some nations may also lead to regression from presently favorable conditions. For example, industry sources cite Indonesia as one of the more liberal markets in practice, but are concerned that the government is considering imposing foreign content limitations.[20]

An important problem limiting the sale of box office tickets in Asia is the low ratio of movie screens to population. In Korea, for example, the ratio is 1 screen for every 90,000 people, compared to 1 for 10,000 people in the United States. This is partially caused by the high cost of real estate, which is motivating a trend to replace single-screen movie houses with multiscreen theaters several stories high.[21] Local and regional firms such as The Golden Village, a Korea-Australia joint venture, are constructing multiplex cinemas in urban areas throughout Southeast Asia.[22] U.S. entertainment companies are also active in the Asian market. United Artists (UA) has teamed with Lark Entertainment International in Hong Kong, with Pacific Media in Singapore, and with Siam TV in Thailand to build multiscreen theaters. UA also plans to expand in India in cooperation with the Modi Group, a local company.[23]

Industry representatives also consider the lack of intellectual property protection to be an important immediate problem facing the U.S. industry in many of the subject countries, although increasingly governments are enforcing piracy laws. India, Indonesia, Malaysia, Thailand, the Philippines, and Korea figure prominently on the U.S. industry's list of countries with copyright violations.[24]

Summary

U.S. audiovisual service firms are performing well throughout the world, although Europe remains the principal export market. Due to the perceived influence of audiovisual services on culture and politics, some Asia/Pacific governments have been reluctant to

[16] Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.
[17] Ibid., and Wade Major, "Special Report: Hollywood's New Orientation."
[18] Malaysian Government representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.
[19] Industry representative, interview by USITC staff, Washington, DC, Jan. 8, 1997.
[20] Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.
[21] Wade Major, "Special Report: Hollywood's New Orientation," and Christine James, "United Nations: The top U.S. circuits vie for screens on the international exhibition scene," Boxoffice Online Special Report, *Boxoffice Magazine,* July 19, 1996, World Wide Web, retrieved Jan. 15, 1997, http://www.boxoff.com/specjuly96un.html/.
[22] Wade Major, "Special Report: Hollywood's New Orientation."
[23] Ibid.
[24] Industry representative, interview by USITC staff, Washington, DC, Jan. 8, 1997.

accord market access and national treatment to foreign-produced works and foreign-owned companies. This position encourages other countries that may not be concerned about such influences to withhold commitments on audiovisual services in order to retain negotiating leverage. Consequently, three Asia/Pacific trading partners declined to offer any audiovisual services commitments,[25] others scheduled commitments that applied to only selected portions of the industry, and only one country, New Zealand, extended its commitments to the full range of audiovisual services, including broadcasting. Thus, few of the subject countries achieved significant progress in terms of establishing benchmarks or enhancing regulatory transparency.

Among those seven trading partners that offered commitments, New Zealand clearly went furthest toward guaranteeing full market access and national treatment to foreign providers of all audiovisual services. By contrast, India's schedule appears to offer the least, primarily because it addresses only the subsector of motion picture or videotape distribution services, for which it committed only to permit the establishment of a commercial presence subject to significant market access and national treatment limitations. However, industry representatives observe that India's restrictions are not rigorously enforced, making that market less restrictive than its schedule suggests. On the other hand, Korea's market appears to be more restrictive than its schedule would suggest, despite commitments that appear to provide liberal market access for motion picture and videotape production and distribution services.

The Asia/Pacific region is very important to the U.S. audiovisual services industry due to the size of the market and ongoing economic growth. Currently, Australia and Korea are among the top 10 markets for U.S. movies,[26] and India and Indonesia, with their large populations, offer additional strong prospects.[27] However, restrictions on audiovisual trade are likely to continue to impede trade and investment in these services, particularly with respect to broadcasting. Since broadcasting or transmission services account for nearly 50 percent of all revenues from filmed entertainment in developed countries such as the United States,[28] persistent restrictions on these distribution channels represent a major concern to the industry.

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[25] Indonesia initially intended to schedule commitments on audiovisual services but withdrew its offer due to a conflict with national legislation which states that such services must coincide with the national philosophy. Indonesian Government representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[26] Standard and Poor's Industry Surveys, *Leisure Time Basic Analysis*, Apr. 18, 1996, p. L20.

[27] Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.

[28] Standard and Poor's, Apr. 18, 1996, p. L20.

CHAPTER 7
Courier Services

Introduction

Courier services[1] are performed by numerous firms that are engaged in the pick-up and expedited delivery of parcels, packages, letters, and other articles destined for domestic or international locations. Large integrated companies, such as Federal Express Corp. (FedEx), United Parcel Service (UPS), DHL Worldwide Express (DHL), and approximately 10,000 small independent messenger and delivery operations are the principal providers of courier services in the United States. Large companies specialize in providing overnight courier services to both domestic and international destinations, whereas smaller companies generally provide same-day local delivery.[2] Although this report focuses only on land-based courier services as requested by the United States Trade Representative, air transportation is the predominant means of delivering parcels and other articles to distant locations.[3]

International Trade in Courier Services

Official data showing U.S. trade in courier services are not available. Industry representatives have stated, however, that the United States is a net exporter of these services.[4] U.S. exports reach customers primarily through foreign-based affiliates of U.S. companies, such as FedEx, UPS, and DHL. In certain countries, these companies provide services through contractual agreements with foreign-owned trucking or air-transport operations.[5] In addition to transporting packages from the United States to foreign countries, U.S. couriers also may provide point-to-point service within Asia/Pacific countries as well as transport packages from the region to other regions or countries,

[1] The U.N. Central Product Classification (CPC) code applicable to courier services is 7512.

[2] With respect to the large integrated companies, courier services include a number of activities related to various service sectors, such as customs brokerage, aviation, air cargo (including freight forwarding), telecommunications, ground transportation, postal services (delivery services), ground handling of aircraft and cargo, warehousing and distribution, and consulting and management services. For the small companies courier services are generally limited to in-hand transport of documents by a courier. *Prehearing Brief of Federal Express Corp.*, submitted to the United States International Trade Commission, inv. No. 332-367, July, 12, 1996, pp. 5-8.

[3] Air transportation and issues related to aircraft parking fees, taxes, duty rates, and ground handling services are subjects that are of vital concern to U.S. couriers operating in the Asia/Pacific region. Some of these issues are discussed in the "*Industry Opinion*" section of this chapter.

[4] Industry representative, telephone interview by USITC staff, Jan. 27, 1995.

[5] Industry representatives, telephone interview by USITC staff, May 1, 1996, and interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997, and Singapore, Feb. 25, 1997.

including the United States. Regardless of the type of service provided, approval by the national government is generally required before services can be rendered.

DHL is the largest supplier of express courier services (measured by weight) to the Asia/Pacific region, accounting for an estimated 36 percent of the regional courier shipments. Following DHL are Australian-owned TNT Express Worldwide, representing 27 percent; FedEx, 13 percent; and UPS, 5 percent.[6] Economic growth in Asia/Pacific countries and government efforts to spur future growth have significantly increased demand for courier services, creating new opportunities for U.S. couriers.[7] To meet demand for such services, both FedEx and DHL established major distribution centers in the Philippines, while UPS established similar operations in Singapore. In addition to facilitating courier services to customers in both of these countries, the distribution centers allow these couriers to establish air-cargo network systems through which products can be more easily distributed to customers in other Asian countries.[8] Both UPS and FedEx also have distribution facilities in Taiwan that improve their ability to provide overnight delivery services to Korea, Thailand, Singapore, Malaysia, and the Philippines and, in the case of FedEx, that provide a backup for the distribution center in the Philippines should that facility close for political reasons or adverse weather conditions.[9]

Examination of Commitments on Courier Services

As noted, U.S. land-based couriers provide services to consumers in the Asia/Pacific region through affiliated operations within the country being serviced and through contractual agreements with agents of a particular country. Therefore, both industry-specific and cross-industry commitments regarding cross-border supply, commercial presence, and the presence of natural persons have an important impact on trade in courier services.[10] The following discussion focuses on these three modes of supply in Hong Kong, the Philippines, and Singapore, which were the only Asia/Pacific trading partners to schedule commitments on courier services. Table 7-1 presents highlights of these countries' commitments on courier services.

Hong Kong

Hong Kong's commitments accord full market access and national treatment to foreign courier service firms that establish a commercial presence. However, those courier services reserved to the Post Office under the Post Office Ordinance are excluded from the scope of the commitments. Hong Kong's limitations on cross-border supply are unbound and therefore subject to further trade-restrictive measures limiting either market access or national treatment. In addition, Hong Kong's limitations on the presence of

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[6] Douglas A. Blackmon, "Transportation: Federal Express, UPS Battle for a Foothold in Asia," *Wall Street Journal*, Jan. 22, 1997, p. B1.

[7] Industry representatives, telephone interview by USITC staff, May 1, 1996, and interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997, and Singapore, Feb. 25, 1997.

[8] Ibid.

[9] Blackmon, "Transportation: Federal Express, UPS Battle for a Foothold in Asia."

[10] See appendix E for a detailed presentation of cross-industry commitments.

natural persons remain unbound.

Table 7-1
Highlights of industry-specific restrictions on courier services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Hong Kong	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** None. **National Treatment:** None	**Market Access:** Unbound. **National Treatment:** Unbound.	These commitments cover: • CPC 7512 - Courier services, excluding services reserved to the Post Office under the Post Office Ordinance.
Philippines	**Market Access:** Commercial presence is required. **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None except as indicated in the cross-industry commitments. **National Treatment:** None except as indicated in the cross-industry commitments.	**Market Access:** None except as indicated in the cross-industry commitments. **National Treatment:** None except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7512 - Courier services. • MFN exemption accords preferential treatment to countries with which the Philippines has concluded treaties on entry rights and agreements of amity, commerce, and navigation.
Singapore	**Market Access:** Unbound **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** None	**Market Access:** Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • CPC 7512 - Courier services.

[1] Australia, India, Indonesia, Korea, Malaysia, New Zealand, and Thailand did not schedule commitments on courier services.

The Philippines

With the exception of requiring foreign courier services to establish a commercial presence, the Philippines imposes no specific restrictions on courier services. However, the Philippines maintains several cross-industry measures that may affect courier services. These include limitations on foreign investment, acquisition of land, access to domestic credit, and the entry and temporary stay of natural persons supplying services to that country. Under MFN exemptions, a special visa category is provided for traders and investors from countries with which the Philippines has concluded treaties on entry rights.

This exemption waives a labor market test and simplifies market entry procedures. In addition, countries with which the Philippines has concluded agreements of amity, commerce, and navigation are provided limited access to cabotage transport privileges. These exemptions may be beneficial to U.S. courier service firms.

Singapore

Singapore accords national treatment to foreign couriers that provide services either through cross-border supply or through a commercial presence. However, Singapore's limitations on market access for these modes of supply remain unbound and therefore subject to the imposition of trade and investment restrictions. Singapore's limitations regarding the presence of natural persons also remain unbound, except for measures permitting the entry and temporary stay of intra-corporate transferees, including managers, executives, and specialists who provide services within Singapore through a branch, subsidiary, or affiliated operation. Singapore's cross-industry commitments indicate that residency and local hiring requirements also may be applied to foreign commercial presences.

Industry Opinion

U.S. industry representatives maintain that the value of GATS commitments by Asia/Pacific trading partners regarding courier services is extremely limited because they do not address basic ground operational rights such as customs clearance, self-handling, and in most cases the right to conduct pick-up and delivery services.[11] Throughout the subject region, nontariff barriers in these areas delay delivery to consignees, add to the cost of services, and limit business prospects.[12] Hong Kong, for example, does not allow express carriers the right to self-handle their aircraft, which increases operational costs and requires additional time for the clearance of cargo. Hong Kong also requires trans-shipments to be formally imported and re-exported, unless the shipments remain on the arriving aircraft or are transloaded to an aircraft that departs within 5 hours of the arriving aircraft. Such restrictions impede operational flexibility.[13]

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[11] Statement submitted to the U.S. International Trade Commission by the Air Courier Conference of America-International Committee, Apr. 9, 1997.
[12] Ibid.
[13] Ibid.

In Thailand, industry representatives report difficulties with current customs clearance policies that recognize only two types of inbound materials at Thailand's major cargo airport: (1) unaccompanied cargo and (2) courier-delivered items. For courier-delivered items, Thailand permits express clearance of merchandise only for goods arriving on passenger aircraft with a value less than $100, that are accompanied by an on-board courier, and that weigh no more than the amount granted to a single passenger.[14] U.S. companies find these requirements unnecessary and objectionable.[15] Industry representatives are participating in a working group with members of the Thai Government to try to resolve some of these difficulties.[16] The working group is considering a proposal to create a third category, "express items," which would be cleared through customs more quickly and with a minimum amount of security.[17] Items in this category, however, would still be subject to size limitations.

Under current regulations in Indonesia, U.S. couriers are denied rights to provide multimodal courier services, to wholly own or control express courier companies, and to obtain certain licenses (trucking, customs, postal, brokerage, warehouse, etc.), which limit the efficiency of express services.[18] In addition, U.S. couriers operating in Indonesia may have no direct contact with customs because locally contracted services must be used, which reportedly slows customs clearance of merchandise.[19] Indonesia is allegedly seeking to establish a more restrictive bilateral agreement with the United States that will remove all cargo rights, which would severely restrict express courier services.[20]

U.S. industry representatives also are concerned about customs clearance policies in Malaysia, where U.S. couriers must obtain pick-up, delivery, and customs clearance services through locally incorporated subsidiaries that are majority-owned by Malaysians.[21] U.S. courier service firms operating in Malaysia indicate that they would prefer to choose their business partners purely on the basis of commercial considerations.[22]

Finally, U.S. representatives of courier services are concerned with numerous alleged discriminatory practices imposed by Korea. These practices include unwarranted

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[14] Ibid., and interviews by USITC staff, Jakarta, Indonesia, Feb. 20, 1997, and Singapore, Feb. 25, 1997.

[15] Industry representatives, interviews by USITC staff, Jakarta, Indonesia, Feb. 20, 1997, and Singapore, Feb. 25, 1997.

[16] The "working group" consists of representatives of FedEx, UPS, DHL, freight forwarders, Thai International Airlines, and Royal Thai Government officials. Industry representatives, interviews by USITC staff, Jakarta, Indonesia, Feb. 20, 1997, and Singapore, Feb. 25, 1997 and U.S. Department of State telegram, "U.S. Official Confers with RTG on FedEx Situation," message reference No. 47554, prepared by U.S. Embassy, Bangkok, Nov. 1, 1996.

[17] Ibid.

[18] Ibid. and interviews by USITC staff, Jakarta, Indonesia, Feb. 20, 1997, and Singapore, Feb. 25, 1997.

[19] Interviews by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[20] Ibid.

[21] Industry representatives, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997.

[22] Ibid.

surcharges on aircraft catering services; non-transparent methods of computing rent and user fees at the airport; and the government's control over the allocation of parking spaces at the airport, which limits U.S. couriers' ability to add new flights.[23] Also of concern are new customs procedures that infringe on U.S. couriers' ability to self-handle incoming cargo shipments. The new procedures require certain shipments to be physically moved to an approved, bonded warehouse for inspection. U.S. couriers find these procedures to be burdensome and unnecessary.[24]

Summary

Although numerous barriers to trade currently exist in the Asia/Pacific region, U.S. providers of courier services still consider this region to be a promising market for courier services. Therefore, U.S. couriers have established distribution facilities in key Asia/Pacific locations to enhance operations throughout that part of the world. On the basis of the national schedules and industry sources, the Philippines and Singapore appear to offer the greatest level of market access to foreign courier service firms. By contrast, U.S. industry representatives have identified Hong Kong, Indonesia, Korea, Malaysia, and Thailand as countries with potentially prohibitive trade measures.

Since only three of the subject countries scheduled specific commitments on courier services, the GATS achieved little in terms of establishing benchmarks and improving transparency in the Asia/Pacific region. In addition, U.S. industry representatives indicate that some of the most significant market access barriers involve practices, such as those pertaining to customs clearence, that are not adequately addressed by the GATS. They therefore suggest that future negotiations focus on the elimination of nontariff barriers that restrict the movement of goods and on ensuring that domestic postal monopoly rights may not be extended to international services.[25]

[23] U.S. Department of State telegram, "Open Skies Meetings in Seoul," message reference No. 006294, prepared by U.S. Embassy, Seoul, Oct. 25, 1996.

[24] Statement submitted to the U.S. International Trade Commission by the Air Courier Conference of America-International Committee, Apr. 9, 1997.

[25] Ibid.

CHAPTER 8
Health Care Services

Introduction[1]

The health care services covered in this report include those performed by hospitals and investor-owned hospital companies and chains; offices and clinics of medical doctors, veterinarians, and other health service professionals; nursing homes and other long-term health care facilities; rehabilitation facilities; home health care providers; managed care organizations;[2] medical and dental laboratories; kidney dialysis centers; and specialty outpatient facilities.[3]

International Trade in Health Care Services

Trade in this sector comprises both cross-border transactions and sales by affiliates in foreign markets. Cross-border exports largely consist of treatment of foreign persons in the United States by U.S. hospitals, clinics, medical doctors, and other health care service professionals. Cross-border imports comprise the treatment of U.S. citizens overseas by foreign hospitals and doctors.[4] Transactions through affiliates include health care services provided to foreign persons by foreign-based affiliates of U.S. hospital companies, and services provided to U.S. persons by U.S.-based affiliates of foreign hospital companies. The volume of affiliate transactions appears to exceed the volume of cross-border transactions by a significant margin.

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[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following organizations: Mayo Clinic; Johns Hopkins University Hospital; Tenet Healthcare; Columbia/HCA Healthcare; American Hospital Association; Federation of American Health Systems; the Health Care Financing Administration; India Ministry of Health and Family Services; Hong Kong Hospital Authority; Korean Ministry for Health and Welfare; Korean Hospital Association; the Singapore Ministry of Health; and the U.S. Department of Commerce (USDOC), Bureau of the Census, Bureau of Economic Analysis (BEA), and International Trade Administration.

[2] Includes health maintenance organizations (HMOs) and similar organizations engaged in providing medical or other health care services to members. However, health care services do not include HMOs that provide only insurance against hospitalization or medical costs.

[3] These health care services are classified under the U.N. Central Product Classification (CPC) codes 9311, hospital services; 9312, medical and dental services; 9319, other human health services; and 932, veterinary services.

[4] Cross-border health care service transactions therefore correspond to consumption abroad in the General Agreement on Trade in Services (GATS) terminology.

Cross-Border Transactions

In 1995, U.S. exports of health care services totaled $841 million (figure 8-1), representing a 6-percent rise over the previous year's exports.[5] The subject Asia/Pacific countries absorbed a total of 3 percent of U.S. cross-border exports (figure 8-2).[6] These exports, which have been rising over the past several years, result primarily from increased numbers of Asia/Pacific tourists who obtain treatment from U.S. health care providers while traveling in the United States. India, Singapore, Hong Kong, and Korea are the largest Asia/Pacific markets for U.S. exports of health care services. Canada remained the leading export market for U.S. health care services in 1995, accounting for approximately 45 percent of total U.S. exports . Other leading markets for U.S. cross-border exports of health care services are the United Kingdom, Germany, Mexico, and Japan.

U.S. cross-border imports of health care services amounted to an estimated $525 million in 1995.[7] Such imports represented a 5-percent increase from 1994, compared to the 9-percent average annual rate of increase of cross-border imports during 1990-94. A significant amount of the 1995 increase was accounted for by U.S. tourists obtaining treatment from foreign health service providers while traveling abroad.[8] Asia/Pacific health care providers and institutions accounted for an estimated 3 percent of total U.S. cross-border imports of health care services.[9]

The U.S. cross-border trade surplus in health care services amounted to an estimated $316 million in 1995. This represented a 7-percent increase in the trade balance from 1994, compared to an average annual increase of 4 percent recorded during 1990-94. Rapid export growth can be attributed at least partially to a rebound in health care markets following several years of stringent cost-containment and budget uncertainty due to health care reform proposals in the United States and in important foreign markets. Although cross-border trade in health care services largely reflects trends in inbound and outbound tourism as tourists require medical treatment while traveling abroad, premier medical institutions such as the Mayo Clinic, Johns Hopkins Medical Center, and Massachusetts General Hospital continue to attract wealthier foreign citizens to the United States for medical treatment.[10]

Sales by Majority-Owned Affiliates

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[5] USDOC, BEA, *Survey of Current Business*, Nov. 1996, pp. 82-83.

[6] USITC staff estimate, based on telephone interviews with U.S. industry representatives and BEA officials, Dec. 12-17, 1996. Official BEA data are not publicly available.

[7] Ibid.

[8] Ibid.

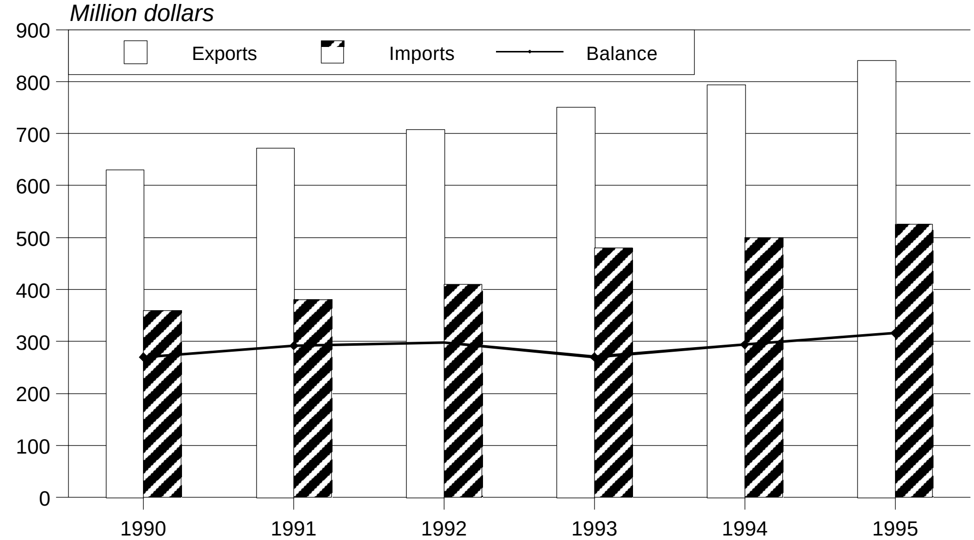
[9] U.S. industry representatives, telephone interviews by USITC staff, Jan. 21-23, 1997.

[10] Lucette Lagndo, “Hospitals Court Foreign Patients to Fill Beds,” *Wall Street Journal*, Oct. 7, 1996, p. B1; and U.S. hospital officials, telephone interviews by USITC staff, Jan. 21-23, 1997.

Sales by foreign-based affiliates of U.S. majority-owned health care service companies amounted to $476 million in 1994 (figure 8-3).[11] This represented a 25-percent increase in such sales from 1993. Much of the 1994 increase reflected the opening of a newly

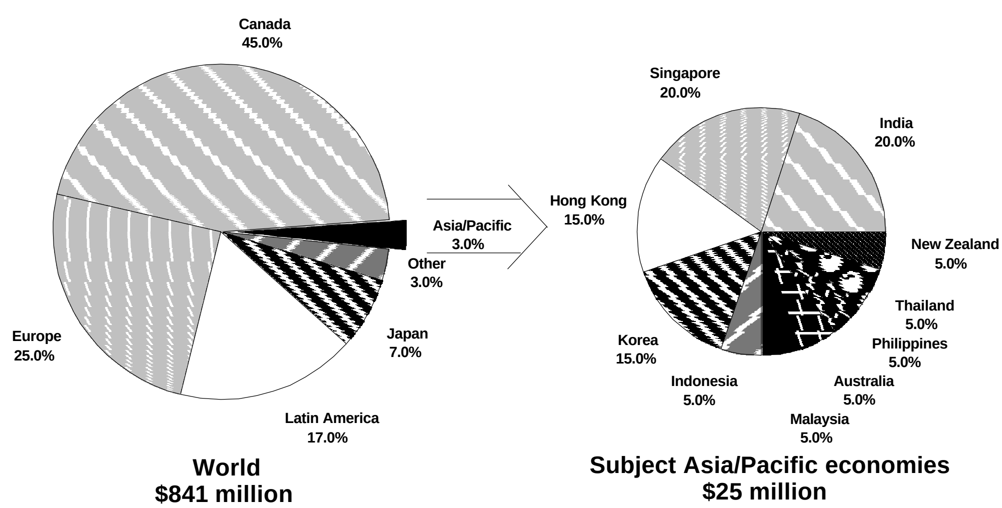
[11] USDOC, BEA, *Survey of Current Business*, Nov. 1996, p. 111.

Figure 8-1
Cross-border health care services: U.S. exports, imports, and trade balance, 1990-95



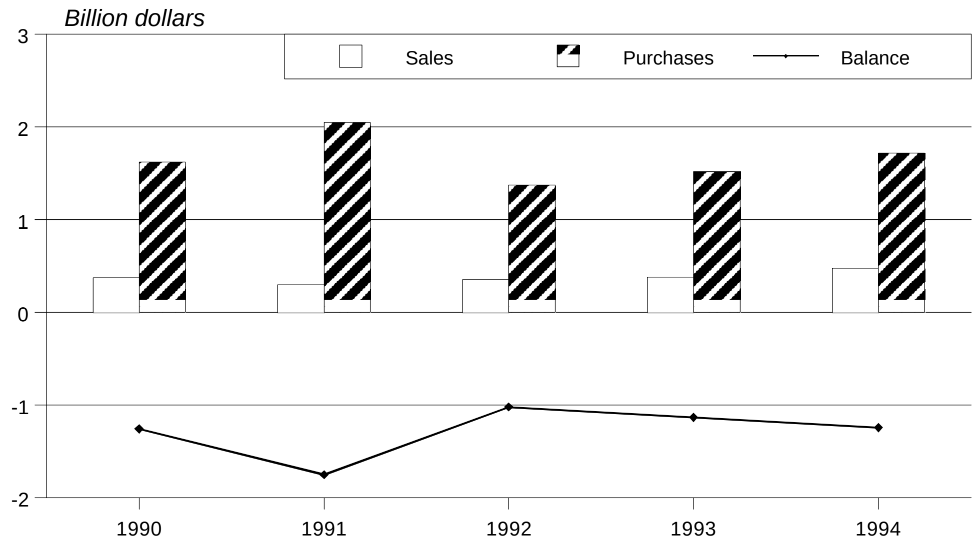
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996 and USITC staff estimates.

Figure 8-2
Health care services: U.S. cross-border exports, by principal markets, 1995



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Nov. 1996 and USITC staff estimates.

Figure 8-3
Health care service transactions by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1992-95, and USITC staff estimates.

constructed hospital in Switzerland by one major U.S. investor-owned hospital company and the acquisition of several new psychiatric hospitals in the United Kingdom by another U.S.-based company.[12] Contributing to this increase, the second-largest private hospital company in the United States, Tenet Healthcare, achieved a significant portion of its overseas earnings in 1994 from affiliate operations in Australia, Malaysia, Singapore, and Thailand. However, Tenet divested its operations in those countries in 1995 to refocus its efforts on consolidating and rationalizing its U.S. operations.[13] Despite such recent pullbacks in overseas investment activities by U.S. health care companies, the Asia/Pacific region, with its rapidly developing economies and expanding middle class, offers several potentially lucrative markets for U.S. health care firms once adjustments in the U.S. market have taken place.[14]

Sales by U.S.-based affiliates of foreign health care companies amounted to $1.7 billion in 1994, which represented a 14-percent increase over the previous year. These gains largely accrued to the U.S. subsidiaries of the German hospital company, Paracelsus, and

[12] U.S. industry representatives, interviews by USITC staff, Nashville, TN, July 15-16, 1996.

[13] After two large privately owned hospital systems, National Medical Enterprises and American Medical International, merged in 1995 to form Tenet Healthcare, Tenet divested its international operations in Australia, the United Kingdom, Malaysia, Singapore, and Thailand. Industry representative, interview by USITC staff, June 13, 1996, Santa Monica, CA; and Sandy Lutz, "Ex-Chief of Tenet's Swiss Facility Missing," *Modern Healthcare*, June 17, 1996, p. 19.

[14] Malaysian and Singapore Government officials, interviews by USITC staff, Kuala Lumpur, Feb. 26 and Singapore, Feb. 27, 1997.

the Australian hospital chain, Ramsey Group, which increased their already significant U.S. market share. Except for Ramsey, there has been negligible international investment by health care service companies in the Asia/Pacific region until recently. However, in the Asia/Pacific region, private health care service firms are projected to grow rapidly, which may leave them in a position to invest in U.S. healthcare facilities.[15] For example, Parkway Group Healthcare Pte. Ltd.,[16] the largest private health care group in Asia, is quickly becoming a significant international provider of health care services.[17] With the recent purchase of a hospital in Indonesia, it now owns 10 hospitals in Asia and 1 in Britain.[18] Parkway also recently acquired a 60-percent share in a group of dental surgery chains operating throughout Southeast Asia. Major Korean conglomerates, Hyundai and Samsung, also reportedly have entered the health care service market, with both recently having opened the two largest hospitals in Korea.[19] None of these emerging Asia/Pacific health care enterprises has established affiliates in the United States.

The U.S. deficit in affiliate transactions in health care services totalled over $1.2 billion in 1994. Much of the imbalance is attributed to fairly extensive U.S. networks of hospitals owned by the Ramsey Group and Paracelsus. Although a number of U.S. health care companies maintain affiliate operations overseas, their operations are not nearly as extensive as those of the Australian and German systems in the United States.

Examination of Commitments on Health Care Services

As indicated in the previous section, trade in health care services principally transpires through commercial presences.[20] The principal barriers to trade in health care services are limitations on the establishment of a commercial presence and the presence of natural persons that are applied either on an industry-specific or a cross-industry basis.[21] Consequently, this section will focus on examining foreign commitments pertaining to these modes of supply.

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[15] Malaysian and Singapore Government and industry officials, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18 and 26 and Singapore, Feb. 27, 1997; and "Control Healthcare Standard and Fees, Government Urged," *New Straits Times*, Kuala Lumpur, Malaysia, Feb. 18, 1997.

[16] Although based in Singapore, Parkway Group Healthcare Pte. Ltd., is owned 70 percent by Malaysian and Indonesian interests while 25 percent has been sold to the general public. Singapore hospital industry representatives, interview by USITC staff, Feb. 27, 1997.

[17] "Asia's Healthcare Parkway in Indonesia," *Indonesia Times*, June 26, 1996, p. 1.

[18] Ibid., and Economic Development Board of Singapore, "Singapore: The Hub for Healthcare Investments," *Singapore Investment News*, 1996, pp. 1-2.

[19] Korean Government and industry officials, interviews by USITC staff, Seoul, Korea, Jan. 28, 1997.

[20] Although some trading partners placed limitations on the cross-border supply of health care services, U.S. industry officials indicate that barriers in that mode are minimal and are not expected to significantly affect U.S. global competitiveness in the health care sector. U.S. industry analysts and officials, telephone interviews by USITC staff, and interviews by USITC staff, Washington, DC, July-Dec. 1996.

[21] See appendix E for a detailed presentation of cross-industry commitments.

All of the Asia/Pacific countries covered in this report maintain measures that make it difficult for U.S. health care companies to establish a commercial presence in their markets.[22] Hong Kong,[23] Indonesia, Korea, the Philippines, and Thailand did not schedule GATS commitments on any health care services and therefore have reserved the right to change or add trade restrictions in the future. Among the countries that did schedule commitments, only Australia and Malaysia scheduled commitments in more than one area of the health care service industry (table 8-1).

Australia

Australia's commitments accord full market access and national treatment to foreign dental and veterinary services provided through cross-border supply, consumption abroad, and commercial presence. Australia also scheduled commitments with respect to podiatry and chiropody services carried out in health clinics and in patients' homes but prohibits foreigners from providing such services in hospitals. Australia did not schedule any binding commitments with respect to the presence of natural persons for any of the above services except for measures permitting the entry and temporary stay of senior managers and specialists for periods up to 4 years. Australia also did not schedule commitments with respect to any other health care service sectors, including physician services, hospital services, or outpatient, nursing, or rehabilitation care.

India

India scheduled commitments for hospital services provided through a commercial presence only, according market access but limiting foreign firms to a maximum of 51-percent equity. India did not schedule binding commitments regarding the presence of natural persons for hospital services except for measures permitting the temporary entry and stay of executives, senior managers, and specialists for periods up to 5 years, and of professionals for periods up to 15 months. India scheduled no commitments with respect to hospital services delivered through other modes of supply and made no commitments at all for physician or dental services, veterinary services, or other medical services such as outpatient, nursing care, or rehabilitation services. Indian Government officials stated that India scheduled limited commitments in the health care services sector because the provision of such services in India is socially sensitive.[24]

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[22] Industry analysts and representatives, interviews by USITC staff, Washington, DC, Oct. 14-17, 1996, and Jan. 13-15, 1997; and Nashville, TN, July 15-16, 1996.

[23] Hong Kong Government health care officials asserted that no GATS commitments were made for health care or other professional services because of potential conflicts with measures that provide preferential treatment to the United Kingdom and the other Commonwealth members. However, they stated that such preferential treatment had been abolished when Hong Kong joined the WTO. They also asserted that no foreign investment restrictions impede registration of foreign health care operations in Hong Kong. Hong Kong Government officials, interview by USITC staff, Jan. 29, 1997.

[24] Indian Government officials, interviews by USITC staff, New Delhi, India, Feb. 3-5, 1997.

Table 8-1
Highlights of industry-specific restrictions on health care services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**DENTAL AND VETERINARY SERVICES:** **Market Access:** None **National Treatment:** None	**DENTAL AND VETERINARY SERVICES:** **Market Access:** None **National Treatment:** None	**DENTAL AND VETERINARY SERVICES:** **Market Access:** None **National Treatment:** None	**DENTAL AND VETERINARY SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 93123 - Dental services. • CPC 932 - Veterinary services.
	SERVICES PROVIDED BY MEDICAL PROFESSIONALS OTHER THAN DOCTORS: **Market Access:** Unbound **National Treatment:** Unbound	**SERVICES PROVIDED BY MEDICAL PROFESSIONALS OTHER THAN DOCTORS:** **Market Access:** None **National Treatment:** None	**SERVICES PROVIDED BY MEDICAL PROFESSIONALS OTHER THAN DOCTORS:** **Market Access:** None **National Treatment:** None	**SERVICES PROVIDED BY MEDICAL PROFESSIONALS OTHER THAN DOCTORS:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. • Permanent residency requirement for chiropodists in South Australia. • Permanent residency requirement for podiatrists in Western Australia.	These commitments cover: • CPC 93199 - Podiatry and chiropody services carried out in health clinics, residential health facilities other than hospitals, as well as in own consulting rooms, patients homes or elsewhere. Australia's commitments exclude: • CPC 9311 - Hospital services. • CPC 93121 - General medical services. • CPC 93122 - Specialized medical services. • CPC 93191 - Deliveries and related services, nursing services, physiotherapeutic and para-medical services. • CPC 93192 - Ambulance services. • CPC 93193 - Residential health facilities services other than hospital services. • CPC 93199 - Other human health services, other than podiatry and chiropody services.

Table 8-1, *continued*
Highlights of industry-specific restrictions on health care services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
India	**HOSPITAL SERVICES** **Market Access:** Unbound **National Treatment:** Unbound	**HOSPITAL SERVICES** **Market Access:** Unbound **National Treatment:** Unbound	**HOSPITAL SERVICES** **Market Access:** • Access is limited to incorporation with a foreign equity ceiling of 51 percent. **National Treatment:** None	**HOSPITAL SERVICES** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 9311 - Hospital services. These commitments exclude: • CPC 9312 - Medical and dental services. • CPC 9319 - Other human health services. • CPC 932 - Veterinary services.
Malaysia	**MEDICAL SERVICES:** **Market Access:** None **National Treatment:** None	**MEDICAL SERVICES** **Market Access:** None **National Treatment:** None	**MEDICAL SERVICES:** **Market Access:** • Services may be supplied only by a natural person. **National Treatment:** None	**MEDICAL SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound other than: • Practice only in private hospitals of at least 100 beds; • Practice to be only at a specified location; • A change of location requires approval; • The setting up of individual or joint group practices is not permitted.	These commitments cover: • CPC 93122 - Medical specialty services. • Qualifying examinations to determine the competence and ability to supply medical specialty services to be conducted in the English language.
Malaysia (continued)	**HOSPITAL SERVICES** **Market Access:** None **National Treatment:** None	**HOSPITAL SERVICES** **Market Access:** None **National Treatment:** None	**HOSPITAL SERVICES** **Market Access:** • Establishment of private hospital services is permitted, subject to following requirements: - satisfying an economic needs test; - formation of a locally incorporated joint-venture corporation with Malaysian individuals or corporations or both with aggregate foreign shareholding not in excess of 30 percent; - joint ventures may not operate a hospital with less than 100 beds. **National Treatment:** • Establishment of feeder clinics is not permitted.	**HOSPITAL SERVICES** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except for the categories of natural persons referred to under market access.	These commitments cover: • CPC 93110 - Hospital services. Malaysia's commitments exclude: • CPC 93121 - General medical services. • CPC 93123 - Dental services. • CPC 9319 - Other human health services. • CPC 932 - Veterinary services.

Table 8-1, *continued*
Highlights of industry-specific restrictions on health care services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
New Zealand	**VETERINARY SERVICES:** • **Market Access:** Unbound • **National Treatment:** Unbound	**VETERINARY SERVICES:** **Market Access:** None **National Treatment:** None	**VETERINARY SERVICES:** **Market Access:** None **National Treatment:** None	**VETERINARY SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments**.** **National Treatment:** • Unbound except as indicated in the cross-industry commitments**.**	These commitments cover: • CPC 932 - Veterinary services. These commitments exclude: • CPC 9311 - Hospital services. • CPC 9312 - Medical and dental services. • CPC 9319 - Other human health services.

Table 8-1, *continued*
Highlights of industry-specific restrictions on health care services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Singapore	**MEDICAL, DENTAL, AND VETERINARY SERVICES:** **Market Access:** • None, except for medical services limitations, which are unbound. **National Treatment:** None	**MEDICAL, DENTAL, AND VETERINARY SERVICES:** **Market Access:** None **National Treatment:** None	**MEDICAL, DENTAL, AND VETERINARY SERVICES:** **Market Access:** • None, other than with respect to medical services, in which the number of new foreign doctors registered each year may be limited depending on the total supply of doctors. **National Treatment:** None	**MEDICAL, DENTAL, AND VETERINARY SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound	These commitments cover: • CPC 9312 - Medical and dental services. • CPC 932 - Veterinary services. These commitments exclude: • CPC 9311 - Hospital services. • CPC 9319 - Other human health services.

[1]Hong Kong, Indonesia, Korea, the Philippines, and Thailand did not schedule commitments on health care services.

Malaysia

Malaysia scheduled commitments with respect to certain medical specialty services and hospital services. Malaysia accords full market access and national treatment for cross-border supply or consumption abroad of certain specialty medical services, such as geriatrics, neurosurgery, plastic surgery, and anaesthesiology. Malaysia scheduled partial commitments with respect to commercial presence and the presence of natural persons. In tandem, these commitments appear to limit the provision of specialty services to a tested and qualified individual operating out of a specified and fixed location. Further, this location has to be within the confines of a private hospital of at least 100 beds.

Malaysia imposes no market access or national treatment limitations on cross-border supply or consumption abroad of private hospital services, but does impose foreign investment restrictions and economic-needs requirements on foreign providers of these services in commercial presences. Foreign investors may provide private hospital services in Malaysia only through a locally incorporated joint-venture corporation controlled by Malaysian nationals with maximum foreign participation of 30 percent. Such a joint venture is subject to an economic needs test and may only operate hospitals with a minimum of 100 beds. In addition, establishment of feeder outpatient clinics by private hospitals, a growing practice in the United States, is not permitted by such joint ventures, thus placing a national treatment limitation on foreign joint-venture partners. Finally, Malaysia's commitments do not cover general medical services, dental, veterinary, or hospital outpatient services.

Malaysian Government officials assert that they are looking at the possibility of liberalizing their health care services market.[25] GATS commitments in this area were reportedly limited due to political sensitivity at the time of the negotiations. Malaysian officials state that they now intend to make Malaysia a center of health care excellence, and that they require outside expertise to accomplish this objective. According to these Malaysian officials, there will be better opportunities for U.S. health care service providers in Malaysia in the future.[26]

New Zealand

New Zealand scheduled commitments only on veterinary services. New Zealand accords full market access and national treatment to foreign providers of veterinary services through consumption abroad or commercial presence, while leaving cross-border measures unbound due to technical infeasibility. However, market access and national treatment limitations for veterinarians themselves remain unbound, except as modified by cross-industry commitments that permit specialists stays of up to 3 years. New Zealand offered no commitments with respect to other health care services, such as medical, dental, and hospital services.

[25] Malaysian Government officials, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.
[26] Ibid.

Singapore

Singapore scheduled commitments covering medical, dental, and veterinary services. For services provided through cross-border supply or consumption abroad, Singapore accords full market access and national treatment except for the medical services sector, limitations on which were left unbound due to technical infeasibility. The only restriction on commercial presence is that the number of new foreign medical doctors registered each year may be limited depending on the total supply of doctors. Singapore did not schedule commitments with respect to any other health care services, including hospital services and the services of health care professionals other than medical doctors and dentists.[27]

Industry Opinion

According to U.S. industry representatives, the Asia/Pacific region represents a potentially large market for health care services. Many of its rapidly growing economies are just reaching the stage of development where significant public and private expenditures can be made on the provision of modern health care services. Accordingly, U.S. industry representatives were generally pleased that the GATS provides a means of improving market access conditions and satisfied by commitments scheduled by a number of countries.[28] However, industry sources also indicated that there is room for improvement in even the best of the Asia/Pacific schedules.

For example, New Zealand and Australia both provided fairly liberal commitments with respect to veterinary services; however, neither country made commitments on hospital services, the area of greatest interest to U.S. industry.[29] Per capita expenditures on health care in Australia and New Zealand are among the highest in the world and thus they offer significant potential opportunities for U.S. and other foreign health care firms.

By contrast, India scheduled relatively liberal commitments in an area of greatest U.S. strength, hospital services. In addition, though foreign equity is limited to 51 percent, that ceiling is higher than those set by many other GATS signatories, and would provide potential U.S. investors with an acceptable level of control over their operations.[30] However, India left all other measures applying to medical and veterinary services unbound.

With respect to Hong Kong, which made no health care service commitments, government officials stated that there are no market access or foreign investment restrictions on the provision of health care services. Furthermore, the professional standards which are enforced by agencies such as the Hong Kong Department of Health are applied universally to foreign and domestic health care providers alike, and are made in the interest of public health and safety.[31] Government officials noted that the lack of commitments was due in part to difficulties with binding the licensing, registration, and

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[27] Singapore Government officials, interview by USITC staff, Singapore, Feb. 25, 1997.
[28] Industry representatives, telephone interviews by USITC staff, Jan. 21-23, 1997.
[29] Industry representatives, telephone interviews by USITC staff, Jan. 27-29, 1997.
[30] Ibid.
[31] Hong Kong Government official, interview by USITC staff, Hong Kong, Jan. 29, 1997.

admission requirements imposed by the relevant professional societies. Hong Kong is currently working to adopt international standards and to establish international accreditation and reciprocity agreements.[32]

Malaysia's commitments with respect to specialty medical and hospital services could be strengthened considerably by removing restrictions imposed on national treatment of specialty medical practitioners, and by lifting limitations on both market access and national treatment for foreign hospital service companies. For example, establishment of feeder clinics, an important part of the commercial strategy of large hospital companies in the United States, is forbidden to foreign investors in the Malaysian market. This restriction could limit the U.S. industry’s share of one of the world's fastest growing markets for health care services.[33]

Singapore made commitments with respect to medical, dental, and veterinary services, but left limitations on hospital services unbound. Nevertheless, in practice Singapore has maintained a relatively liberal environment for foreign investment in this sector, which reflects its aspirations of becoming the health-care hub of Asia.[34] However, given the recent rise of a Singapore-owned hospital chain as a major force in the Asia/Pacific region, foreign investors would feel much more secure if the country had scheduled commitments in this sector, too, and thereby assured continued market access.[35]

Summary

Cross-border exports to the Asia/Pacific region will likely represent a growing portion of total health care service trade as incomes rise and travel to the United States increases.[36] Australia, India, Malaysia, New Zealand, and Singapore all made commitments in at least one segment of the health care sector, which, though falling well short of full liberalization, offer at least some degree of transparency to foreign health care service providers. Such commitments will also serve as benchmarks on which to base future trade liberalizing efforts. U.S. industry representatives were generally satisfied by these commitments, though they would like to see the schedules of each of these countries improved in future negotiations by including a greater number of health care services and by removing restrictions on market access and national treatment in the modes of commercial presence and presence of natural persons.

By contrast, because Hong Kong, Indonesia, Korea, the Philippines, and Thailand did not schedule any commitments for health care services, their schedules provide no effective benchmarks and no improvements in terms of regulatory transparency. While countries such as the Philippines reportedly do not impose restrictions on foreign firms wishing to

[32] Ibid.

[33] Industry representatives, interviews by USITC staff, Nashville, TN, July 15-16, 1996, and telephone interviews by USITC staff, Jan. 21-23, 1997.

[34] Industry and Singapore Government representatives, interviews by USITC staff, Singapore, Feb. 24 and Feb. 27, 1997.

[35] Industry representatives, telephone interviews by USITC staff, Jan. 21-23 and Mar. 8, 1997.

[36] Industry representatives, telephone interviews and in-person interviews by USITC staff, Washington, DC, Jan. 27-29, 1997, and July 15-16, 1996.

establish hospitals, these existing market access conditions were not guaranteed.[37] Accordingly, U.S. industry representatives were disappointed that such important markets made no progress toward improving conditions for foreign participation in the health care services industry. Therefore, they suggest that future negotiations on the health care services industry should focus considerable energy on obtaining commitments from these countries.[38]

[37] Philippine Government representative, letter dated Mar. 25, 1997.
[38] Industry representatives, telephone interviews by USITC staff, Jan. 21-23, 1997.

CHAPTER 9
Accounting Services[1]

Introduction

Accounting firms often provide accounting services in conjunction with other business services. These services typically include auditing and bookkeeping, but may also include tax consultation and tax representation, management consulting, and legal services. The following analysis principally focuses on accounting services, with some coverage of auditing and bookkeeping services, but excludes taxation, management consulting, and legal services.[2]

International Trade in Accounting and Related Services

International trade in accounting services principally transpires as sales through foreign-based affiliates. Due to the close relationship between accounting and other business services, trade data on sales by affiliates reflect revenues generated by accounting, bookkeeping, auditing, research, management, and other related services. By contrast, trade data on cross-border transactions reflect accounting, auditing, and bookkeeping services only.

U.S. accounting firms began to establish operations in foreign markets after the Second World War in order to continue business relationships that had originated in the United States.[3] Foreign operations are established through wholly owned branches or subsidiaries abroad, or through the creation of partnerships or other affiliations with local firms in foreign markets. In a partnership arrangement, the foreign firm generally is wholly owned by the foreign partners, not by the multinational firm with which it is affiliated.[4]

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[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following companies and organizations: Arthur Andersen and Company, Ernst & Young Inc., the International Federation of Accountants, and Price Waterhouse EC Services, SA.

[2] Accounting services are captured under U.N. Central Product Classification (CPC) code 862, accounting, auditing, and bookkeeping services.

[3] Industry representatives, interviews by USITC staff, Washington, DC, May 25, 1995.

[4] In a partnership arrangement where an affiliate of the national firm is owned by the local partners and not by the U.S. multinational, sales by the firm are not recorded in U.S. trade statistics as sales by U.S. affiliates. As a result, available trade data may understate U.S. involvement overseas. Industry representatives, interviews by USITC staff, Washington, DC, May 25, 1995.

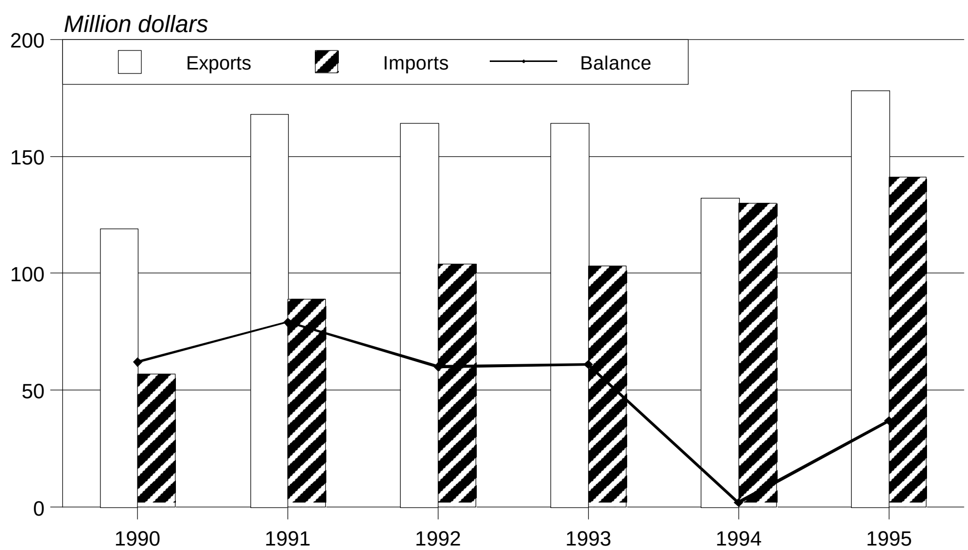
Cross-Border Transactions[5]

Cross-border trade data pertaining to accounting services reflect all services delivered by mail or through information networks, or by the temporary entry of personnel to provide accounting services to foreign clients. U.S. cross-border exports of accounting, auditing, and bookkeeping services totaled $178 million in 1995, and U.S. cross-border imports totaled $141 million, resulting in a $37-million surplus (figure 9-1).[6] During 1990-95, the average annual rate of growth in U.S. imports, measuring 20 percent, exceeded that of exports, measuring 8 percent.

Sales by Majority-Owned Affiliates

In 1994, sales by foreign affiliates of U.S. accounting firms totaled $5.7 billion, while purchases totaled only $1.6 billion (figure 9-2). European affiliates of U.S. accounting firms generate by far the greatest share of total sales by foreign-based accounting affiliates. In 1994, European-based affiliates of U.S. firms captured 70 percent of total sales, surpassing affiliates in Canada, with 12 percent; and Japan and Australia, each with 4 percent (figure 9-3).

Figure 9-1
Cross-border trade in accounting and related services: U.S. exports, imports, and trade balance, 1990-95

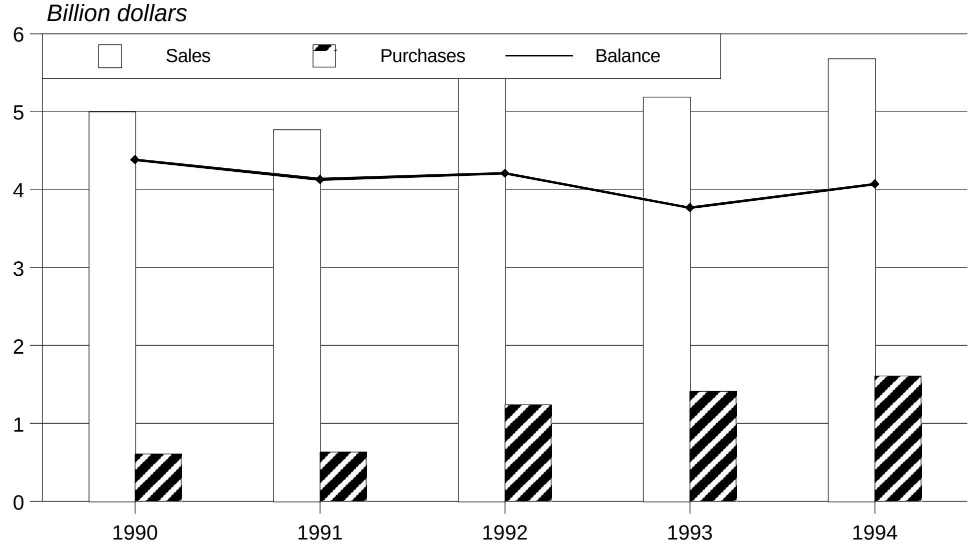


Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

[5] Data on cross-border transactions pertaining to accounting and related services are not available on a regional basis.

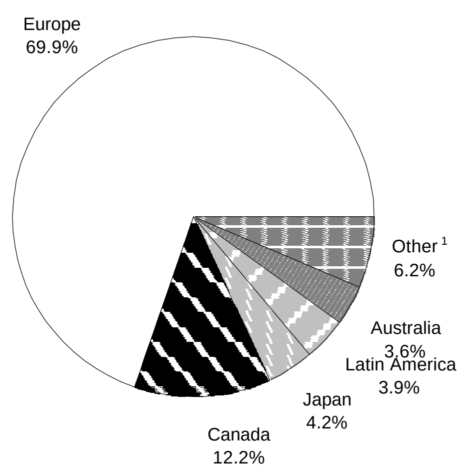
[6] U.S. Department of Commerce (USDOC), Bureau of Economic Analysis (BEA), *Survey of Current Business*, Sept. 1995, p. 76.

Figure 9-2
Accounting and related services transactions by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Figure 9-3
Accounting and related services: Sales by majority-owned affiliates of U.S. firms, by principal markets, 1994



Total = $5.7 billion

[1] Includes Asia/Pacific, Africa, and the Middle East.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Examination of Commitments on Accounting Services

Since most international sales of accounting services are transacted by foreign-based affiliates of U.S. firms, commitments on commercial presence and on the presence of natural persons have the greatest relevance for accounting firms. Some of the more significant policies that affect affiliate sales of accounting services include limitations on international payments and capital movements; restrictions on the movement of personnel such as nationality requirements and limits on the stay of accounting professionals; programs designed to promote the transfer of technology and information; requirements for professional certification; and limitations on the form of intracorporate relationships and on the use of international firm names.[7] These measures may be applied either on an industry-specific or a cross-industry basis.[8]

Seven of the subject Asia/Pacific countries scheduled commitments on accounting services. These seven accord at least partial market access and national treatment to foreign firms that wish to operate through a commercial presence (table 9-1).[9]

Australia

Australia accords full market access and national treatment to foreign accounting firms providing services through cross-border supply and consumption abroad. Australia's commitments on commercial presence appear to permit foreign firms to establish and operate effectively, although they may not be registered as auditors and liquidators[10] and at least one equity partner of the firm must be a permanent resident. With respect to the presence of natural persons, Australia's limitations remain unbound, although cross-industry commitments permit the entry and temporary stay of executives, senior managers, and specialists for periods up to 4 years, and business persons for periods up to 6 months. However, specialists' entry may be subject to labor market testing, which could adversely affect the entry of foreign accountants.

Hong Kong

Hong Kong accords market access and national treatment to foreign firms wishing to establish a commercial presence. However, only citizens of Hong Kong may be licensed to provide auditing services. With respect to the presence of natural persons, Hong Kong's limitations remain unbound except for measures permitting the intracorporate transfer and stay of general managers, senior managers, and specialists for periods up to

[7] John Hegarty, "The Accountancy Profession," *Workshop on Professional Services*, Sept. 26-27, 1994, pp. 15-18.

[8] See Appendix E for a detailed presentation of cross-industry commitments.

[9] These measures may be applied either on an industry-specific or a cross-industry basis.

[10] Under Australian law, only natural persons may be registered as auditors and liquidators.

5 years. Hong Kong's schedule indicates that limitations on cross-border supply and consumption abroad remain unbound with respect to market access and/or national treatment.

Table 9-1
Highlights of industry-specific restrictions on accounting services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Only natural persons may be registered as auditors and liquidators. **National Treatment:** • At least one equity partner in a firm must be a permanent resident.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 862 - Accounting services.
Hong Kong	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** • None, other than that the provision of statutory auditing services is limited to natural persons licensed as certified public accountants, either as sole proprietors or in partnership. **National Treatment:** None	**Market Access:** • Unbound, except for intra-corporate transfer of general managers, senior managers, and specialists. **National Treatment:** Unbound	These commitments cover: • CPC 862 - Accounting services, limited to auditing and advisory services on matters such as financial management consultancy, company formation and restructuring, raising of capital, debt rescheduling, receivership, and liquidation.
Korea	**Market Access:** • None, except for auditing services, for which limitations are unbound. **National Treatment:** None	**Market Access:** • None, except for auditing services, for which limitations are unbound. **National Treatment:** None	**Market Access:** • Only sole proprietorships, auditing task forces, joint accounting offices, and Hapmyung Hoesa (incorporated partnerships) by CPAs licensed under the Certified Public Accountant Law are permitted to supply accounting, auditing, and bookkeeping services. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. In addition, in order to practice as a CPA, a candidate must have 2 years of experience in Korea after passing the examination.	These commitments cover: • CPC 862 - Accounting services.
Malaysia	**Market Access:** None **National Treatment:** • Auditing services must be authenticated by a licensed auditor in Malaysia.	**Market Access:** None **National Treatment:** • Auditing services must be authenticated by a licensed auditor in Malaysia.	**Market Access:** • Only through a locally registered partnership with Malaysian accountants or Malaysian accounting firms and aggregate foreign interests shall not exceed 30 percent. **National Treatment:** None.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. With respect to accountants, residency is required for registration. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. With respect to accountants, residency is required for registration.	These commitments cover: • CPC 862 - Accounting services.
New Zealand	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • CPC 862 - Accounting services.

Table 9-1, *continued*
Highlights of industry-specific restrictions on accounting services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Singapore	**Market Access:** • None, other than public accountants must be effectively resident in Singapore or at least one of the partners of the firm must be effectively resident in Singapore. **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • None, other than public accountants must be effectively resident in Singapore or at least one of the partners of the firm must be effectively resident in Singapore. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • CPC 862 - Accounting services.
Thailand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • No limitations as long as foreign equity participation does not exceed 49 percent.	**Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • CPC 862 - Accounting services.

[1]India, Indonesia, and the Philippines did not schedule commitments on accounting services.

9-7

Korea

Korea's commitments accord market access and national treatment to foreign firms wishing to provide accounting and bookkeeping services through cross-border supply and consumption abroad, but leave unbound restrictions on the provision of auditing services through these modes. Korea permits the supply of accounting, bookkeeping, and auditing services through commercial presences provided they are established as sole proprietorships, auditing task forces, joint accounting offices, or incorporated partnerships run by Certified Public Accountants (CPAs) licensed under the Certified Public Accounting Law. In order to receive such a license, foreign accountants must have 2 years of experience in Korea after passing the CPA examination. Korea's limitations on the presence of natural persons are left unbound, although cross-industry commitments provide for the entry and temporary stay of executives, senior managers, and specialists for periods up to 3 years.

Malaysia

Malaysia scheduled no limitations on cross-border supply and consumption abroad of accounting services, except for a measure requiring auditing services to be authenticated by a Malaysian-licensed auditor. The establishment of a commercial presence in Malaysia can only take place through a locally registered partnership with Malaysian accountants or Malaysian accounting firms, and foreign financial interests may not exceed 30 percent of equity. With respect to the presence of natural persons, Malaysia permits the entry and temporary stay of senior managers and specialists for periods up to 5 years and notes that residency is required for registration as an accountant.

New Zealand

In what appears to be the least restrictive schedule for accounting services, New Zealand accords full market access and national treatment to foreign firms wishing to provide accounting services through cross-border supply, consumption abroad, and commercial presence. New Zealand's limitations on the presence of natural persons remain unbound except for measures permitting the entry and temporary stay of executives, senior managers, and specialists for periods up to 3 years.

Singapore

Singapore essentially proscribes the provision of accounting services across borders, noting that public accountants or at least one partner of a foreign firm must be resident in Singapore. However, Singapore accords market access and national treatment to foreign firms wishing to provide accounting services through consumption abroad and commercial presence, although the residency requirement applies to the latter. With respect to the presence of natural persons, Singapore permits the entry and temporary stay of senior managers and specialists for periods up to 3 years, but does not accord these individuals national treatment.

Thailand

Thailand accords full market access and national treatment only for accounting services delivered through consumption abroad. With respect to commercial presence, Thailand accords market access subject to a 49-percent foreign equity limitation and a restriction on the number of foreign shareholders. National treatment is accorded subject to the same proportional equity limitation. Thailand's limitations on cross-border supply and the presence of natural persons remain unbound.

Industry Opinion

In the view of accounting executives operating in the Asia/Pacific region, the business climate for accounting firms has improved significantly during the past decade as economies have liberalized in order to attract foreign capital. According to industry sources, Hong Kong, Singapore, Australia, and New Zealand are regarded as the least restrictive of the Asia/Pacific markets.[11] All four trading partners permit full foreign equity ownership of local firms and allow foreign CPAs to be licensed with relatively few restrictions.[12] In fact, Singapore allows foreigners to operate under the title of "accountant" without registration or licensing.[13] Similarly, Hong Kong is described as an extremely lucrative and important market for the major U.S. accounting firms[14] where a license is not required in order to provide accounting services other than statutory auditing. Foreign firms that wish to provide statutory auditing may register with the Hong Kong Society of Accountants (HKSA) provided that the firm is run by a certified public accountant licensed by the HKSA.[15] Furthermore, foreigners are able to qualify for membership in the HKSA through membership in their local professional associations.[16]

Countries that are perceived to be more restrictive include Korea, India, Indonesia, Malaysia, the Philippines, and Thailand. Among these, only Korea, Malaysia, and Thailand scheduled commitments. Certain U.S. industry representatives indicate that the Korean market shows some signs of liberalization as the country no longer imposes restrictions on foreign equity ownership of Korean accounting firms or on the use of the firm name, and even offers a special CPA examination to foreign nationals in the English language.[17] However, some industry sources still describe the Korean accounting services industry as being essentially closed to foreign firms, and others report that language and

[11] Industry representatives, facsimile responses to inquiries from USITC staff, Feb. 24 and Feb. 26, 1997; interviews by USITC staff, Hong Kong, Jan. 29-30, 1997, and Seoul, Korea, Jan. 27, 1997.

[12] Industry representatives, interviews by USITC staff, Hong Kong, Jan. 28, 1997, and Singapore, Feb. 26, 1997.

[13] Industry representative, interview by USITC staff, Singapore, Feb. 26, 1997.

[14] Industry representative, interview by USITC staff, Hong Kong, Jan. 29, 1997.

[15] Hong Kong Government official, interview by USITC staff, Hong Kong, Jan. 29, 1997.

[16] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[17] Industry representatives, facsimile responses to inquiries from USITC staff, Feb. 24, 1997, and interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

cultural differences make it difficult for foreign companies to provide accounting services without an affiliation with a Korean accounting firm.[18]

Despite the shortage of accountants in Malaysia,[19] industry representatives report that it is exceedingly difficult for foreign individuals to practice as accountants. Malaysia accepts only the credentials of other Commonwealth members, requiring all other accountants to undergo a local examination.[20] Foreign firms are permitted to establish a commercial presence through a joint venture with Malaysian firms and to use the foreign firms' names, but Malaysia's broad limitation on foreign equity restricts U.S. firms to minority partner status and advertisement of the firms' services is not permitted. Although Malaysia has eased restrictions on the movement of natural persons in recent years, the government still has an official policy for transferring technology and training the Malaysian population. Under these policies, entry visas for foreign nationals are contingent upon the employment of Malaysian understudies.[21]

According to U.S. industry representatives, foreign individuals cannot become accountants in Thailand because they cannot be licensed as CPAs.[22] Consequently, the rendering of accounting services is essentially reserved to Thai nationals with foreign accountants serving only as "business consultants." Foreign firms also may not hold more than 49 percent equity in a Thai accounting firm. In addition, while foreign nationals may work as employees of Thai firms, they reportedly find it difficult to comply with work permit procedures.

Market conditions are similarly restrictive in India, Indonesia, and the Philippines; countries that did not schedule any commitments on accounting services. In India, financial auditing services may only be provided by firms established as a partnership, but foreign accountants may not be equity partners.[23] India also forbids the use of a firm's name, a limitation that applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule (Arthur Andersen and Price Waterhouse).[24] Reportedly, this measure does not have a substantial effect because there is broad awareness of relevant foreign affiliations. With respect to the movement of personnel, U.S. industry representatives indicate that they do not encounter difficulties obtaining appropriate visas.

In Indonesia, the market for accounting services has been expanding due to increased privatization and government policies requiring companies to undergo public audits in

[18] Industry representatives, interview by USITC staff, Seoul, Korea, Jan. 27, 1997, and facsimile responses to inquiries from USITC staff, Feb. 24 and Feb. 26, 1997.

[19] Malaysian Institute of Accountants representatives, USITC staff interview, Kuala Lumpur, Malaysia, Feb. 19, 1997.

[20] Industry representative, facsimile response to inquiries from USITC staff, Feb. 26, 1997, and USITC staff interview, Kuala Lumpur, Malaysia, Feb. 18, 1997.

[21] Industry representative, USITC staff interview, Kuala Lumpur, Malaysia, Feb. 18, 1997.

[22] Industry representative, facsimile response to inquiries from USITC staff, Feb. 24, 1997, and industry representative, USITC staff interview, Singapore, Feb. 26, 1997.

[23] Industry representative, USITC staff interview, New Delhi, India, Feb. 3, 1997, and industry representative, facsimile response to inquiries from USITC staff, Feb. 24, 1997.

[24] Ibid.

order to be registered.[25] However, the national accounting association has successfully opposed initiatives to open the market fully to foreign participation by arguing that there remain problems with mutual recognition of credentials and accounting standards.[26] As a result, foreign nationals can not practice under the title of accountant in Indonesia or become equity partners.[27] Instead, foreign accountants function as "advisors" and auditing reports must be signed by Indonesian nationals.[28] The use of foreign firms' names is also limited, in that the name of a local firm must be used in conjunction with the international name.[29] U.S. representatives indicate that this creates some confusion among international clients. One of the greatest difficulties encountered by U.S. accounting firms operating in Indonesia is obtaining work permits for expatriate personnel. Indonesia reportedly requires foreign firms to justify the need to bring foreign nationals into the country and tries to keep the number of foreign workers, particularly those from other developing countries, to a minimum.[30] According to industry sources, this policy presents a barrier to their effective operations and is somewhat counterproductive. U.S. accounting firms suggest that if foreign staff could move more freely, the firms would be able to develop more quickly and subsequently hire and train more local staff. In addition, U.S. firms observe that since expatriate staff are very expensive, companies have an incentive to develop a highly competent local staff as soon as possible.[31]

The Philippines also imposes limitations on commercial presence that hinder the efforts of foreign accounting firms. Reportedly, foreign individuals are not permitted to be partners in a Philippine accounting firm or, in most instances, to engage in accounting in the Philippines.[32] As a result, foreign accounting firms usually must affiliate with a local partnership in which they hold no equity. In addition, such firms are limited in their ability to use the international name of the firm. Foreign accountants are permitted to practice in the Philippines, however, provided that they have been resident for 3 years, have passed the licensure examination, and have come from home countries that afford reciprocity.[33]

Despite the remaining barriers to international trade in accounting services, industry representatives believe that the GATS is a useful step toward full liberalization of trade

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[25] Indonesian Government representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[26] Ibid. and industry representatives, USITC staff interview, Jakarta, Indonesia, Feb. 20, 1997, and industry representatives, facsimile response to inquiries from USITC staff, Feb. 24, 1997.

[27] Reportedly, as of January 1997, Indonesia revised the rules such that foreigners can practice as accountants if they are resident, have 3 years of experience, pass an examination, and join the Indonesian Accounting Institute. Indonesian Government representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[28] Industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[29] Industry and Indonesian Government representatives, Jakarta, Indonesia, Feb. 19-20, 1997.

[30] Ibid.

[31] Ibid.

[32] U.S. accounting industry representatives, facsimile response to inquiries from USITC staff, Feb. 24, 1997.

[33] Philippine Government representative, letter dated Mar. 25, 1997.

in accounting services. The GATS does this by providing a vehicle for the global harmonization of regulations.[34] The GATS also helps to promote trade liberalization by broadening the definition of "trade" to include movement of capital and people, critical issues for accounting firms.[35] Finally, the GATS provides a forum in which to address persistent obstacles such as the mutual recognition of accounting credentials, limitations on foreign equity participation, limitations on the use of the firm name, and restrictions on the entry and temporary stay of essential professional, technical, and managerial personnel.[36]

Some of these persistent barriers are being addressed through the WTO Working Party on Professional Services (WPPS). The WPPS was established in April 1994 with the objective of coordinating domestic regulations on licensing credentials, recognition, and other professional standards.[37] Since 1994, the Working Party on accounting services has held a series of meetings, with additional meetings scheduled for later in 1997. A considerable amount of time has been devoted to the collection of data and analysis of regulation in the accounting sector. In the January 1996 meeting of the Working Party, a non-exhaustive list was compiled of priority issues for further consideration in later meetings.[38] Such issues included qualification requirements, licensing requirements, regulations on the establishment of commercial presence, nationality and residency requirements, professional liability and ethics, the temporary entry of natural persons, guidelines for the recognition of qualifications, and international accounting standards. In its May 1997 meeting, the working party agreed to a set of nonbinding guidelines for mutual recognition agreements pertaining to professional qualifications in the accountancy sector.[39] These guidelines were adopted on May 29, 1997, by the WTO's Council for Trade in Services.[40] Discussions continue in the Working Party concerning ways to approach the development of disciplines for the regulation of professional services, again focusing on accountancy and aiming toward complation of a work program by the end of 1997.[41] Meanwhile, the International Federation of Accountants and the International Organization of Securities Commissions are developing international accounting

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[34] John F. Gay, Andersen Worldwide Inc., testimony before the USITC, July 18, 1996.

[35] Charles Heeter, Andersen Worldwide Inc., testimony before the USITC, Mar. 27, 1997.

[36] John Hegarty, "GATS: A Chance to Take the Lead," *Accountancy*, Feb. 1994, pp. 72-73, and representatives of European accounting industry, FEE, telephone interview by USITC staff, Washington, DC, Mar. 25, 1995.

[37] Organization for Economic Cooperation and Development representative, interview by USITC staff, Paris, July 19, 1995, and industry representative, interview by USITC staff, Washington, DC, Mar. 25, 1995.

[38] Leonora de Sola Saurel, "The WTO Working Party on Professional Services: Tackling Domestic Regulatory Barriers to Trade," *CSI Reports: Occasional Paper* (Coalition of Service Industries), Mar. 1996.

[39] U.S. Department of State telegram, "Working Party on Professional Services--May 15, 1997," message reference No. 003140, prepared by U.S. Mission, Geneva, May 20, 1997.

[40] WTO, "WTO adopts Guidelines for Recognition of Qualifications in the Accountancy Sector," World Wide Web, retrieved June 12, 1997, http://www.wto.org/wto/whats.new/press73.htm. In adopting these guidelines, the WTO has conducted part of the work program mandated in the GATS.

[41] U.S. Department of State telegram, "Working Party on Professional Services--May 15, 1997," message reference No. 003140, prepared by U.S. Mission, Geneva, May 20, 1997.

standards, which they expect to complete by 1998. U.S. industry representatives believe that these efforts to harmonize accounting rules will eventually promote significant growth in the global accounting profession.[42]

Summary

The commitments negotiated under the GATS generally provide effective benchmarks and improve regulatory transparency by scheduling most existing limitations on accounting services.[43] However, in the view of some members of the U.S. accounting industry, some Asia/Pacific trading partners did not go far enough in terms of liberalizing conditions of entry for foreign firms and individuals.[44] U.S. firms also expressed disappointment because few of the subject Asia/Pacific trading partners offered commitments on auditing, taxation, computer-related services, and management consulting services, areas of increasing activity for major integrated accounting firms.

Nevertheless, industry members still viewed the adoption of the accounting commitments positively given the rapid economic development that has occurred within many of these economies in recent years and the efforts of the accounting industry in Asia to accommodate itself to these changes. Industry representatives expect progress to continue through the efforts of the Working Party on Professional Services and hope that Asia/Pacific markets will eventually adopt the model of trade liberalization included in the North American Free-Trade Agreement, which provides for substantially full market access and national treatment.[45] Industry representatives also believe that international trade in accounting services should continue to grow as firms operating internationally increasingly require the services of professionals with expertise in accounting and other related fields.[46] Since U.S. multinational accounting firms are among the largest and most competitive in the global market for these services, these firms are likely to be among the principal beneficiaries of increasing trade with Asia/Pacific nations.[47]

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[42] Charles Heeter, Andersen Worldwide Inc., testimony before the USITC, Mar. 27, 1997.

[43] Representative of U.S. accounting industry, telephone interview by USITC staff, May 12, 1996.

[44] Charles Heeter, Andersen Worldwide Inc., testimony before the USITC, Mar. 27, 1997.

[45] Ibid.

[46] David L. McKee and Don E. Garner, *Accounting Services, the International Economy and Third World Development* (Westport, CT: Praegar Pub., 1992), p. 107.

[47] Richard Greene and Katherine Barrett, "Auditing the Accounting Firms," *Financial World*, Sept. 27, 1994, p. 31.

CHAPTER 10
Advertising Services[1]

Introduction

The advertising services covered in this report include the creation of advertising materials and their placement in various media. Creative advertising services include activities such as writing copy, developing artwork, and designing graphics. Placement of advertising materials involves the negotiation and purchase of space or time in periodicals, newspapers, radio, television, or other advertising media for clients on a contract or fee basis.[2] U.S. firms are considered to be among the most competitive participants in the international advertising market based on share of worldwide advertising expenditures, media relations expertise, extensive experience with various forms of media, and overall flexibility in tailoring advertising campaigns to targeted audiences.

International Trade in Advertising Services

Trade in this sector includes cross-border transactions and sales by foreign affiliates. Sales by foreign affiliates predominate because firms that establish a foreign commercial presence tend to better understand the local media, consumer tastes, language, and culture of the host country, thereby gaining a competitive advantage over firms that rely on the export of advertising services from U.S. offices. In 1994, sales by U.S. majority-owned advertising affiliates amounted to an estimated $4.3 billion, compared to $489 million earned through cross-border exports of advertising services.[3]

Cross-Border Transactions

U.S. cross-border exports of advertising services increased by an average annual rate of 31 percent during the years 1990-95, from $130 million in 1990 to $510 million in 1995 (figure 10-1).[4] U.S. cross-border imports rose at a rate of 23 percent per year on average during the same period, from $243 million in 1990 to $686 million in 1995. The value of cross-border imports surpassed exports every year, resulting in a cross-border trade

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[1] Among the individuals contacted by the USITC staff in preparation of this report were those affiliated with the following organizations: American Association of Advertising Agencies, Association of National Advertisers, DMB&B, Grey Advertising, International Advertising Association, J. Walter Thompson, Leo Burnett, McCann-Erickson, McDonald's, Ogilvy and Mather, Omnicom (BBDO and DDB Needham), Proctor and Gamble, True North/FCB, Xerox, and Young and Rubicam.

[2] Advertising services are captured under the U.N. Central Product Classification (CPC) code 871.

[3] USITC estimates of U.S. majority-owned advertising affiliates sales revenues based on USDOC, BEA, *Survey of Current Business*, Nov. 1996, pp. 108-111, and Agency Report, "Top Ad Agencies by Country," *Advertising Age*, Apr. 15, 1996, pp. s18-s32.

[4] USDOC, BEA, *Survey of Current Business*, Nov. 1996, p. 82.

deficit that totaled $176 million in 1995. The growth in the cross-border deficit averaged 40 percent annually during 1990-93, before declining by 32 percent per year during 1993-95. Most cross-border trade in advertising services occurs with Europe, Canada, Latin America, and Japan. In 1995, the subject Asia/Pacific trading partners accounted for an estimated 5 percent of total cross-border exports of advertising services (figure 10-2), with Hong Kong, Korea, and Singapore constituting the largest markets.[5]

Sales by Majority-Owned Affiliates

Sales by foreign-based affiliates of U.S. advertising firms increased during 1990-94, from $4 billion to an estimated $4.3 billion (figure 10-3).[6] Sales by U.S.-based affiliates of foreign firms also slightly increased from $2.7 billion in 1990 to $3.1 billion in 1994. The resulting annual trade surplus generated by affiliate transactions of U.S. advertising agencies declined from a high of $1.8 billion in 1991 to $1.2 billion in 1994. The subject Asia/Pacific trading partners accounted for an estimated 11 percent of the total affiliate sales of advertising services in 1994 (figure 10-4). Among the subject trading partners, it is reported that sales by foreign-based, majority-owned affiliates of U.S. firms predominantly occur in Australia, Hong Kong, Thailand, Singapore, and New Zealand.[7]

Examination of Commitments on Advertising Services

The advertising industry tends to be organized by geography and by functions, such as direct marketing, creative, or media planning.[8] As noted, advertising is typically created in the market for which it is intended, with U.S. advertising firms providing advertising services to overseas clients through foreign-based affiliates.[9] U.S. advertising firms also rely heavily on the ability to move personnel around the world to establish new offices, manage affiliates, or provide client-specific services. The types of employees most commonly transferred include managers, account executives, and creative personnel. Consequently, barriers to the establishment of foreign affiliates or to the movement of natural persons have a significant impact on advertising service providers. Other trade barriers in advertising services may include local content requirements, caps on foreign ownership and investment, and sector-specific taxes.

The commitments scheduled by Asia/Pacific trading partners reveal some limitations on the most important modes of supplying advertising services (table 10-1). In cross-industry commitments, most subject trading partners left unbound restrictions on the

[5] Ibid., p. 109.

[6] USDOC, BEA, *Survey of Current Business*, Nov. 1996, pp. 111-112; Sept. 1995, pp. 105-106; Sept. 1994, pp. 135-138; and Sept. 1993, pp. 153-156; and Agency Report, "Top Ad Agencies," pp. s18-s32.

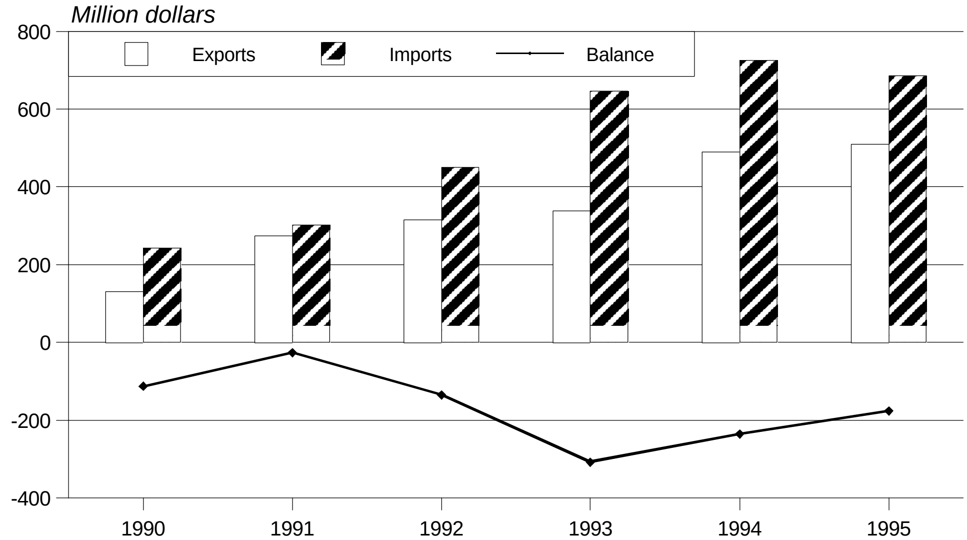
[7] Agency Report, "Top Ad Agencies," pp. s18-s32.

[8] Bill Britt, "Dateline Seoul: The IAA World Congress," *Advertising Age International*, June 11, 1996, World Wide Web, retrieved Dec 13, 1996, http://www.adage.com.

[9] P.W.A. Daniels, "The Internationalization of Advertising Services," *The Service Industries Journal*, vol. 15, No. 3 (London: Frank Cass, July 1995), p. 288.

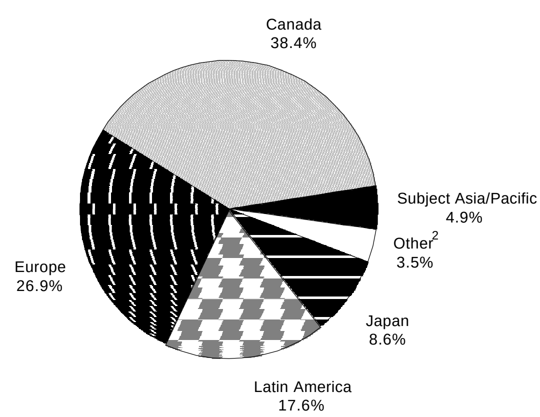
presence of

Figure 10-1
Cross-border trade in advertising services: U.S. exports, imports, and trade balance, 1990-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Nov. 1996.

Figure 10-2
Advertising services: U.S. cross-border exports, by principal markets, 1995[1]



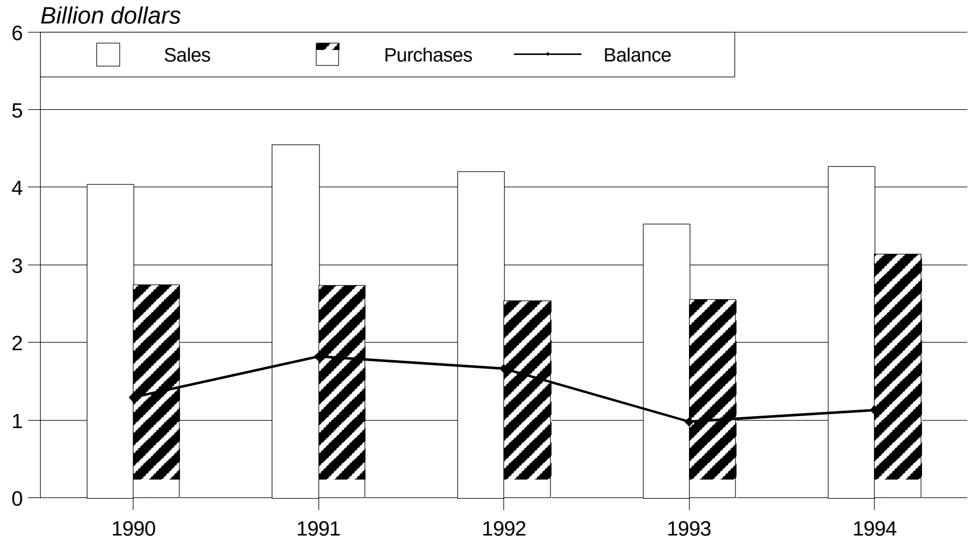
Total exports = $510 million

[1] Due to rounding, figures may not add to 100 percent.

[2] Includes Africa, the Middle East, and other Asia/Pacific trading partners.

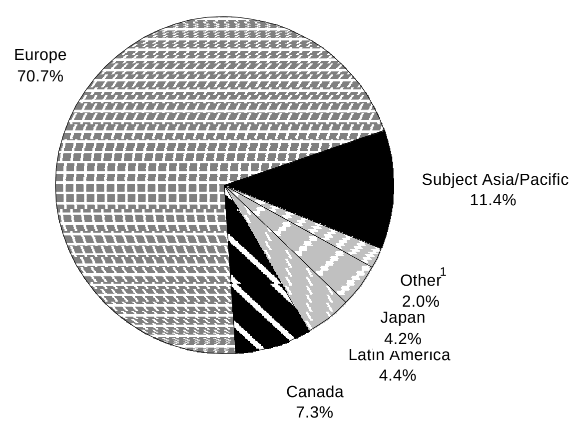
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Figure 10-3
Advertising service transactions by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996, Sept. 1993, 1994, and 1995.

Figure 10-4
Advertising services: Sales by majority-owned affiliates of U.S. firms, by principal markets, 1994



Total sales = $4.3 billion

[1] Includes Africa, the Middle East, and other Asia/Pacific trading partners.

Source: USITC estimates based on data provided in U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Businesss,* Nov. 1996, and *Advertising Age,* Apr. 15, 1996.

Table 10-1
Highlights of industry-specific restrictions on advertising services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 87110 - Soliciting advertising space or time. • CPC 87120 - Creating and placement services of advertisements. Australia excludes production or broadcast/screening of advertisements for radio, television, or cinema. • CPC 87190 - Other advertising services, including outdoor advertising services and delivery services of samples and other advertising material. Australia omits aerial advertising.
Hong Kong	**Market Access:** None **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for intra-corporate transfer of general managers, senior managers, and specialists. **National Treatment:** Unbound	These commitments cover: • CPC 87110 -Soliciting advertising space or time. • CPC 87120 - Creating and placement services of advertisements. • CPC 87190 - Other advertising services, including delivery of advertising material. Hong Kong omits outdoor and aerial advertising services.
Korea	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 871 - Advertising services.

Table 10-1, *continued*
Highlights of industry-specific restrictions on advertising services

Trading Partner[1]	Mode of Supply: Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments
Malaysia	**Market Access:** • Commercial presence is required. **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Only through a locally incorporated joint-venture corporation with Malaysian individuals and/or Malaysian-controlled corporations. The aggregate foreign shareholding in the joint-venture corporation may not exceed 30 percent. • Advertisements via electronic media must have at least 80 percent local content and be made in Malaysia. • ASEAN countries are excluded from local content limitations for advertising under an MFN exemption. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 871 - Advertising services. • MFN exemption waives the local content requirement for ASEAN countries of Brunei Darussalam, Indonesia, the Philippines, Singapore, and Thailand.
New Zealand	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 871 - Advertising services.
Singapore	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • Advertising consultancy services. Singapore does not specify a CPC for this category or a definition of advertising consultancy services.
Thailand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None, except as indicated in the cross-industry commitments. **National Treatment:** • No limitations, as long as foreign equity participation does not exceed 49 percent.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 871 - Advertising services.

[1] India, Indonesia, and the Philippines did not schedule commitments on advertising services.

natural persons except for various measures affecting managers, senior executives, and creative personnel.[10] With respect to advertising-specific commitments, Australia, New Zealand, and Korea scheduled commitments to accord full market access and national treatment except for limitations on the presence of natural persons. Hong Kong committed to accord full market access for all modes of supply except for the presence of natural persons. However, Hong Kong left unbound limitations on national treatment for all modes of supply except for commercial presence, which is not restricted. Malaysia and Thailand listed specific limitations on cross-border supply and establishing a commercial presence. India, Indonesia, and the Philippines did not schedule any commitments on advertising services.

Australia

Australia's industry-specific commitments on advertising services provide full market access and national treatment with respect to all modes of supply except for the presence of natural persons. Although market access and national treatment limitations for the presence of natural persons were left unbound, Australia made cross-industry exceptions to allow for the entry and temporary stay of executives, senior managers, independent executives, business visitors (service sellers), and specialists. Generally, natural persons are allowed an initial stay of 6 months to 4 years, with executives and senior managers permitted the most lengthy periods of stay. Notably, Australia excluded the production or broadcast/screening of advertisements for radio, television, or cinema in its definition of advertising services. In addition, Australia did not include aerial advertising in its schedule as all outdoor ads were banned in December 1995.[11]

Hong Kong

Hong Kong committed to accord full market access for advertising services provided through cross-border supply, consumption abroad, and commercial presence. Market access for the presence of natural persons remains unbound except for the intra-corporate transfer of general managers, senior managers, and specialists. Temporary stays for these individuals are limited to 1 year, initially, with extensions allowed for up to 5 years. With respect to national treatment, Hong Kong scheduled full commitments only on commercial presence. National treatment restrictions pertaining to other modes of supply -- cross-border supply, consumption abroad, and presence of natural persons -- were left unbound. Despite the restrictions discussed above, U.S. advertising agencies that conduct business in Hong Kong have stated that the market is comparatively open and that they encounter no significant restrictions.[12] In addition, a government official confirmed that Hong Kong has no laws or regulations that deny national treatment to foreign firms involved in the creation or placement of advertisements on radio and television.[13]

[10] See appendix E for a detailed presentation of cross-industry commitments.

[11] Rochelle Burbury, "Ad Regulations," *Advertising Age International*, Oct. 1996, p. i13.

[12] Industry representative, interview by USITC staff, Hong Kong, Jan. 31, 1997, and industry representative, telephone interview by USITC staff, Dec. 11, 1996.

[13] Hong Kong Trade Department official, written response to questions posed by USITC staff during interview, Hong Kong, Jan. 28, 1997.

Hong Kong's commitments on advertising services apply to creating and placing advertisements in periodicals, newspapers, radio, and television; selling time and space for periodicals, newspapers, radio, and television; and distributing and delivering advertising material. According to a government official, Hong Kong did not specifically consider outdoor and aerial services at the time commitments were made but could schedule commitments in these two areas in future negotiations.[14]

Korea

Korea's schedule includes commitments to accord full market access and national treatment for all advertising services provided through all modes of supply except the presence of natural persons. Although restrictions on the presence of natural persons are unbound, Korea's cross-industry commitments allow for the entry and stay of executives, senior managers, and specialists for up to 3 years and more, if necessary. Korea's cross-industry commitments also include certain provisions that may affect advertising agencies. For instance, restrictions on the acquisition of land by foreign nationals is left unbound, but leases are permitted subject to government approval. In addition, eligibility for subsidies, including tax benefits, may be limited to official residents of Korea.

Malaysia

Malaysia accords full market access and national treatment only for advertising services provided through consumption abroad. With respect to services provided through commercial presence, Malaysia indicates that it accords national treatment. However this would seem to be contradicted by its commitments on market access, which state that a foreign commercial presence is limited to joint-venture companies incorporated in Malaysia with Malaysian individuals and/or Malaysian-controlled corporations. In addition, the aggregate foreign shareholding in the joint venture is restricted to 30 percent.[15] Another significant market access limitation pertaining to commercial presences is that advertisements transmitted through electronic media such as television or radio must have a minimum of 80 percent local content and be produced in Malaysia.[16] This local content rule is waived for the ASEAN countries of Brunei Darussalam, Indonesia, the Philippines, Singapore, and Thailand via an MFN exemption intended to promote intra-ASEAN tourism.

For cross-border supply of advertising services, market access is contingent upon establishing a commercial presence while national treatment is left unbound. In other words, cross-border supply of advertising services is essentially prohibited. As with other Asia/Pacific trading partners, Malaysia places unbound restrictions on the presence of natural persons, but provides exceptions for senior managers, specialists, and professionals. The entry and stay of these individuals is limited to a total of 5 years. Further, the number of specialists allowed is limited to two persons per organization. Additional specialists may be granted entry and stay based on the results of a market test

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[14] Ibid.
[15] Malaysia Ministry of International Trade and Industry official, interview by USITC staff, Feb. 26, 1997.
[16] Ibid.

and the training of

Malaysians for relevant advertising skills. In addition, business visitors, essentially defined as persons negotiating the sale of services, are restricted to a total stay of 90 days.

New Zealand

New Zealand's commitments on advertising services provide for full market access and national treatment for all modes of supply except the presence of natural persons. Limitations on the presence of natural persons were left unbound, although cross-industry commitments provide exemptions for executives, senior managers, specialists, and service sellers. In general, stays of up to 3 years are allowed for executives, senior managers, and certain specialists while service sellers are limited to a total of 3 months in any calendar year.

Singapore

In relation to advertising services, Singapore accords full market access and national treatment for all modes of supply except for the presence of natural persons. Singapore's schedule leaves limitations on market access through the presence of natural persons unbound, although cross-industry commitments permit the temporary stay of executives, managers, and specialists for periods up to 5 years. For national treatment, restrictions on the presence of natural persons are unbound with no exceptions. Singapore's commitments apply only to advertising consultancy services. Reportedly, this definition covers all advertising services,[17] but this is not explicitly stated in the schedule and therefore may not be binding.

Thailand

Thailand scheduled commitments to accord full market access and national treatment only for consumption abroad. With respect to commercial presence, no sector-specific restrictions on market access were indicated, although cross-industry measures restrict commercial presence to entities that are registered as limited liability companies in Thailand. Cross-industry measures also specify that such commercial presences must restrict foreign equity participation to 49 percent of registered capital and limit the number of foreign shareholders to less than 50 percent of the total number of shareholders. For national treatment, no limitations on commercial presence were listed as long as foreign equity participation does not exceed 49 percent. Although Thailand scheduled a full commitment for national treatment of natural persons, limitations on market access for this mode of supply were left unbound. However, Thailand scheduled cross-industry commitments that allow stays of up to 3 years by managers, senior executives, specialists, and business visitors. Limitations on cross-border supply were left unbound.

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[17] Singapore Trade Development Board official, interview by USITC staff, Singapore, Feb. 25, 1997.

Industry Opinion

Industry representatives indicate that they do not experience any barriers to doing business in the Asia/Pacific region that significantly impede their activities, although some countries offer more favorable conditions than others. Among the subject trading partners, market conditions are reportedly highly favorable in Australia, New Zealand, Hong Kong, and Singapore.[18] In these markets, foreign advertising agencies can provide all relevant services and receive national treatment. Hong Kong is described as one of the top U.S. export markets for advertising services and a commercial presence in the market is considered to be mandatory for any international firm.[19] Industry representatives also believe that Hong Kong's advertising industry will not be substantially affected by the upcoming transfer of sovereignty.[20] Singapore's market, too, is said to be among the most open and most lucrative in the world, with virtually every major international firm represented.[21]

Countries that are perceived as presenting more difficult market access conditions include Malaysia, the Philippines, Indonesia, Thailand, India, and Korea. Malaysia reportedly maintains the most restrictive market in the region due to its efforts to protect the domestic industry and preserve local culture.[22] In addition to a 30-percent foreign equity limitation, Malaysia requires that advertising intended for electronic transmission must be produced locally and consist of at least 80-percent local content. Such requirements limit the ability of advertising agencies to use films produced abroad and to select talent freely.[23] The Philippines similarly restricts foreign investment in advertising activities to 30 percent.[24] In Indonesia, market conditions are reportedly improving, which reflects the government's interest in attracting foreign investment in the advertising sector.[25] As a result, foreign firms have established a significant presence and operate relatively freely despite restrictions on foreign investment and advertising content as well as nontransparent processes that permit local officials considerable flexibility in administering regulations.[26] Thailand and India similarly are described as becoming more attractive markets, although both countries limit the amount of equity foreign firms may

[18] Industry representatives, interviews by USITC staff, Singapore, Feb. 25, 1997, and Hong Kong, Jan. 31, 1997; and industry representative, telephone interview by USITC staff, Dec. 11, 1996.

[19] Industry representative, interview by USITC staff, Hong Kong, Jan. 31, 1997.

[20] Ibid.

[21] Industry representative, interview by USITC staff, Singapore, Feb. 25, 1997.

[22] Ibid.

[23] Industry representatives, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997, and Singapore, Feb. 25, 1997.

[24] Philippine Government representative, letter dated Mar. 25, 1997.

[25] Reportedly, Indonesia had planned to schedule commitments on advertising services, but withdrew them due to conflicts with existing legislation. Indonesian Government representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[26] Industry representative, interview by USITC staff, Singapore, Feb. 25, 1997, and Indonesian Government representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

hold.[27]

[27] Industry representative, interview by USITC staff, New Delhi, India, Feb. 4, 1997.

In Korea, while the market is legally open to foreign participation, it appears that large, domestic advertising contracts rarely reach the open market.[28] One reason for the lack of open contract reviews is that the top five advertising agencies in Korea are owned and operated by the top five Korean industrial conglomerates. As a result, U.S. affiliates in Korea primarily serve U.S. or non-Korean clients, who reportedly account for as much as 82 percent of their sales.[29] In addition to strong domestic competition, foreign advertisers must also contend with censorship procedures that lack transparency and consistency.[30] Nevertheless, U.S. advertisers have a strong, albeit costly, presence in Korea in order to serve their multinational clients and conditions seem to be improving. Consistent with the Korean Government's "Five Year Plan for Advanced Broadcasting" published in 1995, there have been some improvements in the broadcast media environment over the past year. For example, the Korea Broadcasting Advertising Corporation (KOBACO) has taken the initiative to establish a constructive and open dialogue with local and foreign advertisers to discuss measures that may create new opportunities for foreign participation in the Korean advertising market.[31] Progress is already apparent as the amount of Korean advertising originating from foreign firms has doubled over the last 4 years.[32]

Summary

An examination of the schedules of commitments offered by Asia/Pacific trading partners shows that four out of seven -- Australia, Korea, New Zealand, and Singapore -- scheduled commitments that accord full market access and national treatment for advertising services provided through the most significant modes of supply. Among these countries, New Zealand has scheduled the broadest commitments to market access and national treatment. Korea's market structure reportedly presents significant market access barriers, while the commitments scheduled by Australia and Singapore are weakened somewhat by the omission of certain advertising activities from the scope of coverage. Interviews with industry representatives indicate that market access conditions are improving across the region, with the major remaining barriers consisting of investment and content restrictions. Such restrictions were scheduled by Malaysia and Thailand, and are reportedly present in India, Indonesia, and the Philippines, the three countries that declined to schedule any commitments on advertising services. Information gathered from industry representatives also suggests that the schedules accurately reflect the current operating environment, thus providing transparency. However, benchmarking and transparency could be further enhanced by ensuring that all countries schedule commitments and that the commitments encompass the full range of advertising services.

[28] Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

[29] Korea Broadcasting Advertising Corporation (KOBACO) representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997. KOBACO, which was founded by the Government of Korea, serves as a liaison between advertisers and media outlets for the sale of television and radio time.

[30] Member of American Chamber of Commerce - Korea, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

[31] Ibid.

[32] Member of KOBACO, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

CHAPTER 11
Legal Services[1]

Introduction

In this study, legal services are defined as legal advice and representation in various fields of law (e.g., criminal and real estate law), advisory and representation services in statutory procedures of quasi-judicial bodies, legal documentation and certification services, and other legal advisory and information services.[2] Foreign demand for U.S. legal services continues to grow as a result of increased international activity in industries such as telecommunications and entertainment. Matters generating the most international legal business include cross-border mergers and acquisitions, intellectual property rights, multinational commercial transactions, and international project finance and investment.[3] By maintaining a high level of expertise in these types of complex international legal and financial transactions, the U.S. industry has reportedly achieved a competitive advantage in the worldwide provision of legal services. The U.S. industry has also benefited from the increasingly frequent use of New York State law as the standard international legal code. In the near future, as the judicial and legal infrastructures of emerging markets mature, there will likely be additional demand for the sophisticated services that U.S. attorneys are able to provide.[4]

International Trade in Legal Services

International trade in legal services predominantly entails the movement of attorneys, legal counsel or advice, and legal documents across national boundaries. Consequently, foreign commitments pertaining to cross-border supply and the presence of natural persons are most significant. Recently, cross-border supply of legal services has become more prevalent due to the use of inexpensive, sophisticated communications devices and rapid worldwide delivery services. The U.S. legal services industry has had mixed results with establishing a commercial presence in foreign markets. For example, many U.S. law firms operate successful offices in Hong Kong's reportedly accessible legal market. By contrast, U.S. law firms' speculative expansion into other markets has frequently resulted in low profits and hasty exits due to significant field office costs, complications imposed

[1] Individuals consulted by USITC staff in preparation of this discussion include those affiliated with the following organizations and law firms: American Bar Association; Korean Bar Association; American Society of International Law; The Law Society of Hong Kong; Australian Legal Information Institute; New Zealand Law Society; Kim & Chang; Baker & McKenzie; Vaish Associates; Fox Mandal & Co.; Vinson & Elkins; and the Bureau of Economic Analysis, U.S. Department of Commerce.

[2] Legal services are captured under the U.N. Central Product Classification (CPC) code 861.

[3] See, USITC, *U.S. Trade Shifts in Selected Industries: Services*, USITC publication 2969, 1996.

[4] Industry representative, correspondence received by USITC staff, Jan. 12, 1997.

by the host governments or industry associations, and difficulties adapting to local customs and business practices.[5] Overall, commercial presence accounts for only a small portion of the total volume of international legal trade.[6] However, the number of foreign affiliates and branches of U.S. law firms is expected to increase as escalating international commercial activity creates a worldwide need for U.S. legal expertise.[7]

In many jurisdictions around the world, foreign providers of legal services may acquire the accreditation necessary to appear in local courts and provide advice on local law. However, most expatriate lawyers operate as foreign legal consultants, finding the costs and effort required to pass the local bar unjustified. The portfolio of services that may be offered by a foreign legal consultant is limited. For example, a U.S. lawyer practicing as a foreign legal consultant may provide counsel on U.S. law, international law, and third-country law. But foreign legal consultants are rarely allowed to appear in local courts or give independent advice on local law, unless such advice is provided in conjunction with advice from a member of the local bar.

Cross-Border Transactions

In 1995, U.S. exports of legal services totaled $1.6 billion (figure 11-1), reflecting a decrease of 2.9 percent from the previous year. Europe remained the largest export market for U.S. legal services, accounting for 54 percent ($850 million) of the worldwide total. The Asia/Pacific region[8] was the next largest market, receiving 29 percent ($453 million), primarily reflecting substantial exports to Japan (figure 11-2). The 10 trading partners examined in this study accounted for 7.1 percent of U.S. legal services exports and 9.9 percent of imports, worth $112 million and $40 million, respectively. Among these countries, Hong Kong, Australia, and Korea were the largest export markets for U.S. legal services in 1995. As a group, these three purchased 83 percent of the U.S. legal services exported to the subject trading partners.

During 1991-95, U.S. cross-border imports of legal services increased at an average annual rate of 14 percent, outpacing the growth of exports, which averaged an annual growth of 5 percent. However, the value of exports has consistently been far greater than that of imports, resulting in a substantial surplus. In 1995, the U.S. trade surplus in cross-border legal services measured approximately $1.2 billion.

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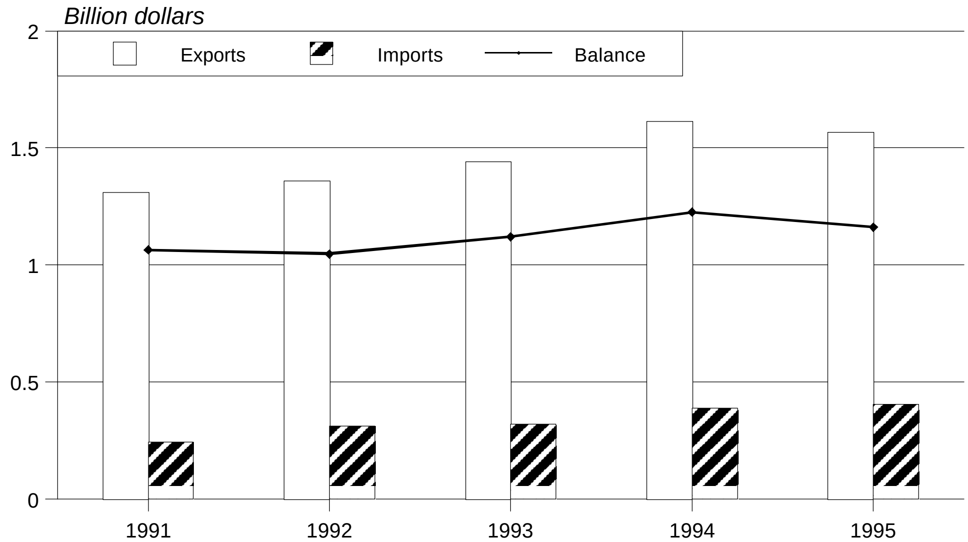
[5] U.S. Government officials and industry representatives, interviews by USITC staff, New Delhi, India, Feb. 4, 1997.

[6] Bureau of Economic Analysis (BEA) estimate. For example, in 1993, the dollar value of U.S. cross-border exports of legal services exceeded the value of affiliate exports by approximately a factor of ten. Interview with BEA official by USITC staff, Jan. 14, 1997.

[7] Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

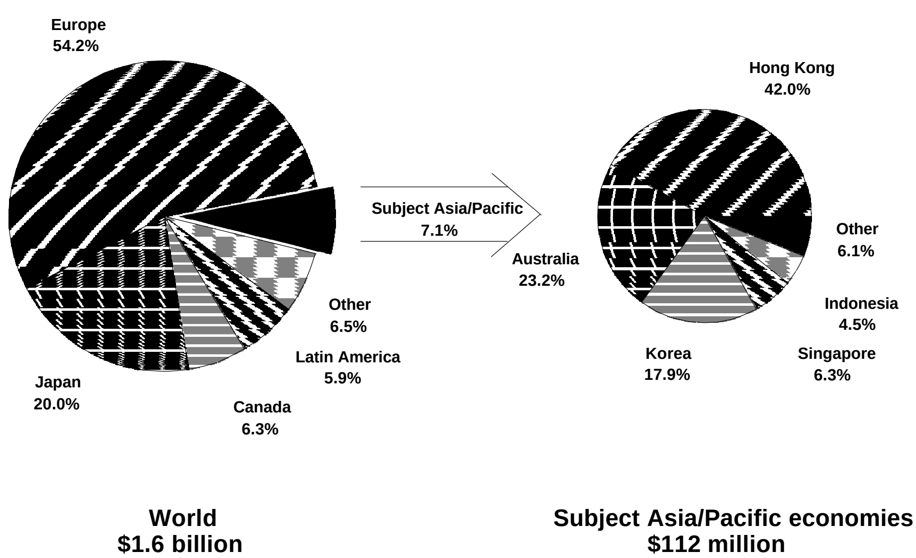
[8] This region includes the ten subject trading partners and China, Japan, and Taiwan.

Figure 11-1
Cross-border trade in legal services: U.S. exports, imports, and trade balance, 1991-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Figure 11-2
Legal services: U.S. cross-border exports, by principal markets, 1995



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Affiliate Transactions

Trade data are not available for affiliate transactions in legal services. Relatively few American Bar Association (ABA) members are involved in affiliate sales of legal services, as operations abroad are often expensive, unnecessary, and problematic.[9] Many market access barriers encountered by U.S. providers of legal services are not rooted in discriminatory treatment, but rather in general economic conditions. Furthermore, the U.S. legal industry does not consider the majority of impediments to cross-border trade sufficiently burdensome to justify the cost of establishing a commercial presence.[10] Consequently, U.S. affiliate trade is typically confined to the largest law firms serving the largest international legal markets.

Examination of Commitments on Legal Services

Only 4 of the 10 subject trading partners scheduled commitments on legal services (table 11-1). Commitments scheduled by Australia, Malaysia, New Zealand, and Thailand, covering consumption abroad generally insure unimpeded trade. The same holds for commitments by Australia, Malaysia, and New Zealand with regard to cross-border supply. By comparison, the commitments addressing commercial presence may be rather restrictive. Limitations regarding the presence of natural persons were generally left unbound[11] except for cross-industry measures[12] permitting the entry and temporary stay of senior managers and specialists. In practice, few restrictions present severe impediments to international trade in legal services, other than meeting the requirements of local jurisdictions. Furthermore, advances in computer technology and telecommunications have simplified seeking legal advice internationally, and for practical purposes it is nearly impossible for governments to limit the purchase of such services.[13]

Australia

Australia accords full market access and national treatment for cross-border delivery of legal services, the most important mode of supply for the U.S. industry. Australia also scheduled full commitments for consumption abroad, guaranteeing unlimited market access and national treatment for legal services delivered in this manner. Australia's commitments on commercial presence indicate that market access is limited by measures that prohibit partnership with or employment of local lawyers and that require foreign lawyers to join local firms only as employees or consultants. With respect to national

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[9] There is a disagreement within the legal community as to the exact size of affiliate trade. However, cross-border trade appears to be much larger. Peter D. Ehrenhaft, Esquire, testimony before the USITC, June 7, 1995, and industry representative, USITC staff interview, Washington, DC, Feb. 23, 1995.

[10] Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

[11] An unbound commitment allows a country to impose measures, without penalty, that are inconsistent with market access and national treatment.

[12] See appendix E for a detailed presentation of cross-industry commitments.

[13] Peter D. Ehrenhaft, Esquire, testimony before the USITC, Feb. 4, 1997.

treatment, foreign firms providing legal services through a commercial presence in New South Wales, Victoria, and Queensland are permitted to establish joint offices involving revenue sharing

Table 11-1
Highlights of industry-specific restrictions on legal services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Foreign lawyers may only join a local firm as an employee or consultant. Partnership with or employment of local lawyers is prohibited. **National Treatment:** • New South Wales and Victoria require residency of at least one equity partner in a firm providing advice on foreign law. Queensland requires residency of at least one equity partner of a foreign law firm for a minimum of 180 days per year. • Joint offices involving revenue sharing between foreign and Australian local law firms are permitted in New South Wales, Victoria, Queensland, and Tasmania, subject to satisfying requirements concerning liability, standards of conduct, and professional ethics.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 861 - Home country law and public international law.
Malaysia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Limited to the Federal Territory of Labuan; incorporation is required and legal services may only be provided to offshore corporations. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 8619 - Home country law, international law, and offshore corporation laws of Malaysia.
New Zealand	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 861 - New Zealand law and international law.
Thailand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • None provided that foreign equity participation does not exceed 49 percent.	**Market Access:** • Unbound. **National Treatment:** • Unbound.	These commitments cover: • CPC 861 - Legal services.

[1] Hong Kong, India, Indonesia, Korea, Singapore, and the Philippines did not schedule commitments on legal services.

after satisfying requirements concerning liability, standards of conduct, and professional ethics. Foreign firms that establish wholly owned affiliates in these jurisdictions must have at least one equity partner who resides in the region. Australia's limitations on the presence of natural persons were left unbound, except for cross-industry measures permitting the entry and temporary stay of senior managers, independent executives, services sellers, and specialists for periods ranging from 6 months to 4 years. Australia limits foreign attorneys' scope of services to advice concerning home country and international law.

Malaysia

Malaysia guarantees national treatment for all modes of supply except the presence of natural persons. Market access is also guaranteed for cross-border supply and consumption abroad, but with respect to commercial presence, market access is limited to the Federal Territory of Labuan, a small island in the Malaysian archipelago. In Labuan, legal services may only be provided by a locally incorporated firm to offshore corporations that also are locally established. As a consequence of this restriction, foreign providers of legal services rely on cross-border supply, or provide legal services only in conjunction with other services, such as management consulting.[14] With respect to the presence of natural persons, Malaysia's limitations are unbound except for measures permitting the entry and temporary stay of senior managers and specialists, who are permitted stays of up to 5 years, and business visitors, who may stay for no more than 90 days. Like Australia, Malaysia limits foreign attorneys' scope of services to advice concerning home country and international law.

New Zealand

Of the subject economies, New Zealand accords the greatest level of market access and national treatment. New Zealand's schedule guarantees that legal services may be provided through cross-border supply, consumption abroad, or commercial presence without any limitations on market access or national treatment. These commitments appear to apply to all types of legal service, including the practice of New Zealand law. With respect to the presence of natural persons, New Zealand permits the entry and temporary stay of senior managers, specialists, and other selected types of employees for periods ranging from 3 months to 3 years.

Thailand

Thailand scheduled commitments that accord full market access and national treatment only to foreign firms wishing to provide legal services through consumption abroad. The schedule includes no binding commitments with respect to cross-border supply and the presence of natural persons. With respect to commercial presence, Thailand appears to permit foreign lawyers to practice freely, as long as the foreign equity participation in any

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[14] Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997, and Malaysian Government official, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.

commercial operation does not exceed 49 percent. Like New Zealand, Thailand's commitments appear to apply to all types of legal services.

Industry Opinion

Industry representatives report that market conditions are generally favorable in the four countries that scheduled commitments, but that the GATS has had a limited effect, in part because most countries scheduled standstill commitments. For example, attorneys at U.S. firms located in Australia have not noticed a perceptible change in regulatory treatment since implementation of the GATS. The Australian market remains relatively open to foreign lawyers, although U.S. firms reportedly provide only niche services such as those connected with U.S. law and regulation, capital formation, project finance, and U.S. securities laws.[15] With respect to Malaysia and New Zealand, the ABA reportedly has not received any complaints from U.S. attorneys concerning market access conditions.[16] In Thailand, however, despite liberal GATS commitments, U.S. lawyers indicate that delivery of legal services is not free from difficulty. In particular, the number of persons admitted to Thailand for the purpose of practicing law is limited and requirements for local association are strictly enforced.[17]

A number of subject economies that did not schedule legal services commitments are key centers of international commerce. Of the 10 Asia/Pacific trading partners examined, Hong Kong is the most important market for U.S. legal service providers, accounting for 42 percent of U.S. exports delivered to the subject region. The absence of legal services commitments has gone largely unnoticed by Hong Kong's legal community, as few limitations on market access and national treatment have historically impeded the delivery of legal services.[18] However, the absence of any binding GATS commitments leaves no assurance that China will not depart from the currently hospitable market conditions. Even so, the Hong Kong Legal Association and members of Hong Kong branches of U.S. law firms expect little variation in business operations after the transfer. Furthermore, many U.S. legal practitioners in Hong Kong are already well acquainted with Chinese business practices through extensive cross-border negotiations and/or commercial presence, and view the resumption of Chinese sovereignty as a potential means of accelerating their expansion into mainland China.[19]

In Korea, U.S. law firms have not vigorously sought to establish commercial presences as these firms have concluded that business opportunities would not support such ventures.[20] Foreign investment is also deterred by the monopolistic legal environment, high operating expenses, and the nonlitigious nature of Korean society.[21] Reportedly,

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[15] Industry representative, correspondence with USITC staff, Sydney, Australia, Feb. 28, 1997.

[16] Donald H. Rivkin, Esq. and Peter D. Ehrenhaft, Esq., pre-hearing letter from the ABA to the USITC, Mar. 13, 1997.

[17] Ibid.

[18] Hong Kong Government official, interview by USITC staff, Hong Kong, Jan. 29, 1997.

[19] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[20] U.S. Government official, interview by USITC staff, Seoul, Korea, Jan. 28, 1997.

[21] Admission to the Korean Bar is highly selective, with approximately 400 lawyers admitted each year. Until fairly recently, this number was 200. The Korean bar exam is

disputes are usually settled informally due to the expense and limited availability of lawyers. Although few U.S. firms have established commercial presences in Korea, many U.S. lawyers are employed by Korean firms as foreign legal consultants. Others, especially members of large international firms, operate from home or regional offices, visiting Korea as needed. U.S. law firms servicing Korean clients also hire Korean attorneys to perform tasks that must be done, or that could be done more easily, by a fully accredited, locally based lawyer.[22] Most Korean/U.S. legal transactions focus on U.S. firms conducting business in Korea, Korean businesses engaged outside Korea in international transactions, and multinationals that are investing in Korea. Legal assistance is most necessary in matters relating to import/export negotiations, regulatory issues, international payment enforcement, trade complaints, and international property rights.

Market access and national treatment restrictions reportedly limit foreign participation in Singapore's legal market. Foreign attorneys must first apply for a general work permit and then must petition the Attorney General for permission to establish operations. Approval criteria are highly subjective and selective, with the review board showing a preference for large, well known firms.[23] To maintain the work permit, foreign lawyers must adhere to government regulations not applicable to local practitioners. Once licensed, foreign legal professionals may practice only the law of their home country and international law.[24] However, in an effort to provide clients with a full range of domestic and international services, a local firm recently entered into an operating agreement with one of the largest U.S. law firms. While formally maintaining unique identities, the firms essentially operate as a single business entity.[25] Singapore's failure to schedule specific commitments combined with its scheduling of an exemption to most-favored-nation treatment was not viewed as cause for significant concern by U.S. industry since this approach appears to be directed at countries other than the United States.[26] However, such a position leaves the government with full discretion to impose additional restrictions on legal services, and leaves all foreign firms with little certainty regarding the future regulatory environment.

The Indonesian legal market is generally considered more restrictive than that of Singapore. Foreign firms must affiliate with local firms and, in addition to restrictions on the use of company name, expatriates may not account for more than 25 percent of the firms' lawyers.[27] An Indonesian Government official noted that the country was not ready

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open to all foreign applicants; however, the required fluency in Korean serves as an effective barrier. Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

[22] Ibid.

[23] Foreign lawyers are the only profession subject to special immigration procedures. The process is long and arduous, but usually successful. Supposedly, Singapore is concerned with the number of foreign attorneys (particularly personal injury lawyers) entering the country. Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.

[24] The restrictions on the practice of domestic law are not considered unreasonable, being just slightly more restrictive than comparable measures imposed on foreign law firms operating in the United States. Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.

[25] Ibid.

[26] Peter D. Ehrenhaft, Esq., testimony before the USITC, June 7, 1995.

[27] Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.

to open the legal services sector.[28] He added that Indonesia accommodates, sometimes reluctantly, a U.S. legal presence because of the large amount of international investment flowing into Indonesia, particularly from the United States and Japan.[29] Legal industry representatives from developed countries, including the United States, believe that the Indonesian market is potentially lucrative and therefore are actively advocating that the government and professional regulatory bodies permit greater market access.

Finally, U.S. legal firms have expressed disappointment with respect to market access conditions in India. U.S. legal service firms initially entered the market to participate in massive infrastructure projects that required their expertise. Over time, as local attorneys acquired comparable skills with respect to infrastructure projects, U.S. lawyers attempted to diversify into other legal sectors. However, the Indian Bar Council, which is dominated by local attorneys, reportedly imposed restrictions on the activities of foreign law firms that sharply curtailed U.S. participation in the Indian legal market.[30]

Summary

The commitments scheduled by the subject trading partners are of limited benefit to U.S. providers of legal services. Since only four countries made commitments, few benchmarks were established and improvements in transparency were negligible. In part, this relatively weak result may be explained by reports that the U.S. industry was preoccupied with the legal service offers tabled by the European Union and Japan throughout much of the GATS negotiations.[31] Regardless of the cause, the GATS schedules leave unresolved a number of major obstacles to international trade in legal services. The U.S. legal services industry is particularly concerned with the lack of harmonization of professional standards across national borders. The ABA formally welcomes foreign lawyers to the United States and seeks the same treatment for U.S. lawyers abroad. Furthermore, the ABA underscores that its advocacy of harmonized foreign legal consultant rules is driven not only by U.S. lawyers' interest in working in other countries, but by their clients' need to engage the services of competent lawyers in all jurisdictions.[32]

[28] Indonesian Government official, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[29] Ibid.

[30] Industry representative, interview by USITC staff, New Delhi, India, Feb. 5, 1997.

[31] Peter D. Ehrenhaft, Esq., testimony before the USITC, June 7, 1995. Also USITC staff telephone conversations with former USTR trade negotiators, May 3, 1996.

[32] Ibid.

CHAPTER 12
Architectural, Engineering, and Construction Services[1]

Introduction

Architectural, engineering, and construction (AEC) services[2] are distinct, yet interrelated service industries. Architectural firms provide blueprint designs for buildings and public works and may oversee the construction of projects. Architectural services include preliminary site study, schematic design, design development, final design, contract administration, and post construction services.

Engineering firms provide planning, design, construction, and management services. Included in engineering services are the undertaking of preparatory, technical, feasibility studies and project impact studies; preliminary and final plans, specifications, and cost estimates; and services provided during the construction and installation phase. These firms also provide engineering design services for industrial processes and production, and advisory and technical assistance during construction to ensure conformity with final design specifications. Integrated engineering services[3] include services related to various turnkey projects, which may include the assignment and coordination of work performed by consultants, contractors, and subcontractors from inception to completion of projects.

Construction services include new construction and repair, alteration, restoration, and maintenance work. In addition to pre-erection services such as site investigation and preparation work, construction firms may provide installation work, special trade construction work, and building completion and finishing services. Such services may be carried out by general contractors who complete all applicable construction work for the owner of the project, or by specialty subcontractors who perform discrete parts of the construction work.

[1] Among the individuals contacted by the USITC staff in preparation of this report were those affiliated with the following organizations: the United States Council for International Engineering Practice (representing the National Council of Examiners for Engineering and Surveying, the Accreditation Board for Engineering and Technology, and the National Society of Professional Engineers), the American Institute of Architects, and the American Consulting Engineers Council.

[2] AEC services are included in the U.N. Central Product Classification (CPC) codes 8671, architectural services; 8672, engineering services; 8673, integrated engineering services; 512, general construction work for buildings; 513, general construction work for civil engineering; 514 and 516, installation and assembly work; 517, building completion and finishing work; and 511, 515, and 518, other construction and related engineering services.

[3] Data specific to integrated engineering services are not available, but rather are reflected in aggregate data for the entire engineering profession. For the purposes of this discussion, therefore, integrated engineering services will not be discussed separately.

International Trade in Architectural, Engineering, and Construction Services

International trade in AEC services primarily occurs through sales by foreign-based affiliates. AEC firms generally establish a subsidiary, joint venture, or branch office, as local presence often plays a decisive role in contract procurement. Firms located in foreign markets may also benefit from regional expertise and professional networks of foreign employees.[4] At the same time, advanced communications systems have made cross-border supply an increasingly viable and accessible mode of supply for certain AEC services. Cross-border trade generally involves the transportation of blueprints and designs via mail, facsimile, electronic media, or other means.

Cross-Border Transactions

Rapid growth in U.S. cross-border exports of AEC services, combined with comparatively slower growth in imports, has resulted in a growing U.S. trade surplus in these services.[5] During 1990-95, cross-border exports grew at an average annual rate of 25 percent, to reach $2.6 billion in 1995 (figure 12-1). Imports increased by one-half the rate of exports, or 12 percent annually, from $170 million in 1990 to $305 million in 1995. The surplus on cross-border trade in AEC services grew at an average yearly rate of over 27 percent, from $697 million in 1990 to $2.3 billion in 1995.

In 1995, the Asia/Pacific region absorbed 48 percent of all U.S. cross-border exports of AEC services, with over 31 percent of U.S. exports going to the 10 Asia/Pacific trading partners examined in this study (figure 12-2). Of these, Korea and Indonesia accounted for the bulk of AEC service exports, with consumption of $225 million and $177 million, respectively. Overall, the volume of trade between the United States and the subject countries increased by an average of 30 percent annually during 1990-95. Aside from the Asia/Pacific region, large markets for U.S. exports of AEC services in 1995 included Latin America, which captured nearly 19 percent of cross-border exports, and the Mid-East and Africa, with 17 percent of total U.S. exports.

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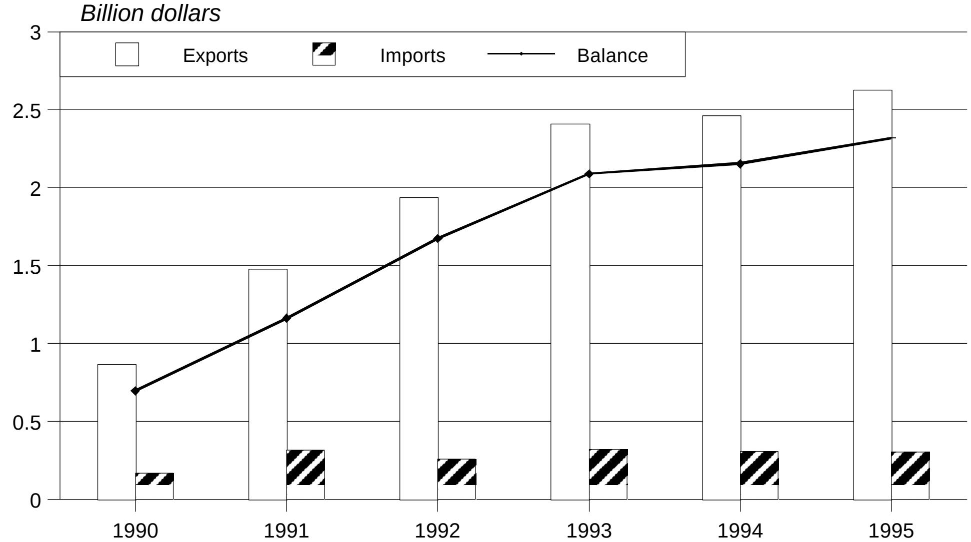
[4] Industry representative, interview by USITC staff, Washington, DC, Oct. 23, 1996.

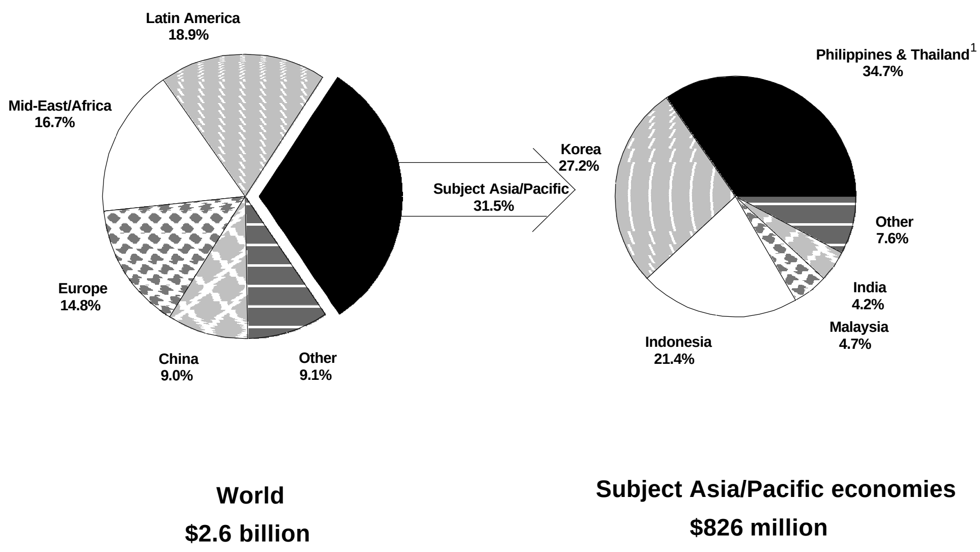
[5] Receipts for cross-border exports of AEC services are published net of exports of goods, and net of outlays abroad for wages, services, materials, and other expenses. Payments for cross-border imports of AEC services are not published net of imports of goods and outlays for wages and other expenses. Data are not collected for imports of goods and for wages and other expenses. Consequently, AEC data overstate imports, and understate the balance on trade in AEC services. See U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Nov. 1996, p. 109.

Figure 12-1
Cross-border trade in AEC services: U.S. exports, imports, and trade balance, 1990-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Figure 12-2
AEC services: U.S. cross-border exports, by principal markets, 1995



[1] Data were not available on an individual country basis to avoid disclosing information concerning the operations of specific firms.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov . 1995.

Sales by Majority-Owned Affiliates

International transactions in AEC services through foreign affiliates experienced reasonably strong growth during 1990-94 (figure 12-3).[6] Sales of such services by foreign affiliates of U.S. firms increased at an average annual rate of 9 percent, from nearly $4.9 billion in 1990 to $6.9 billion in 1994, while purchases from U.S. affiliates of foreign firms grew at a lesser rate of 4 percent per year during the period, to $5.6 billion. U.S. sales of AEC services have consistently exceeded purchases, such that in 1994 the United States recorded a surplus of $1.4 billion.

Most affiliate transactions in AEC services take place between the United States and Europe, reflecting the size and strength of these markets and the longstanding presence of foreign affiliates. In 1994, Europe accounted for two-thirds of U.S. sales of AEC services (figure 12-4). The Asia/Pacific region represents the second-largest market for U.S. firms, as sales through foreign affiliates of U.S. firms amounted to $1.1 billion, or 16 percent of total affiliate sales of AEC services in 1994. Within the Asia/Pacific region, country-specific data is available only for Australia, which accounted for sales of $349 million in 1994. However, industry representatives identify Indonesia as one of the most prominent sources of contracts and revenue for U.S. firms.[7] Other major markets include Thailand and the Philippines, where U.S. firms are active in basic infrastructure, power, petroleum, and chemical projects.[8]

Due to strong local participation in smaller projects and stiff competition among the world's leading firms, the bulk of U.S. participation in the Asia/Pacific region centers on large scale projects won by affiliates of prominent U.S. design and construction firms.[9] In Australia, mining, metals, and petrochemical projects account for a significant portion of U.S. billings. In Hong Kong and Korea, U.S. firms are similarly engaged in major transportation projects including airports, railways, and shipping ports. In Singapore,

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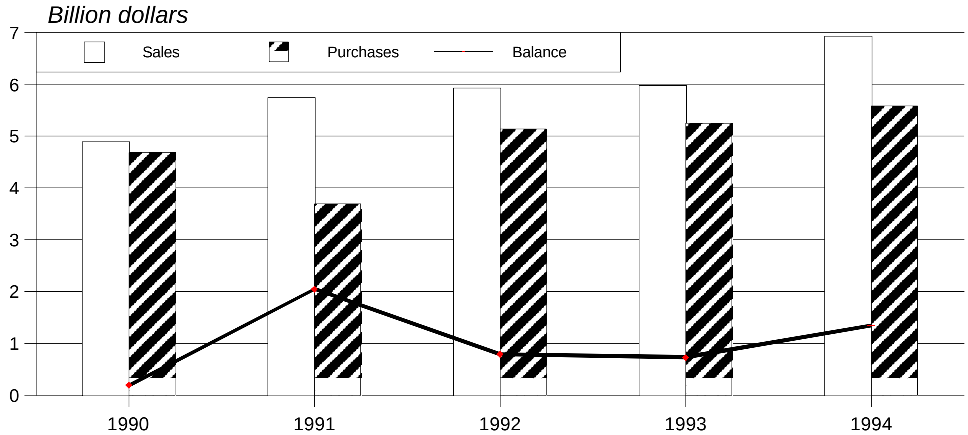
[6] BEA data pertaining to affiliate sales of AEC services principally reflect architectural, engineering, and surveying services provided by AEC firms. Service sales by construction companies include only engineering or design-related services. Other sales by construction companies, such as for the provision of labor and materials, are recorded as goods rather than services because the output is largely tangible and a services component can not be effectively isolated. In 1994, U.S. construction goods sales through majority-owned foreign affiliates amounted to $6.4 billion and construction service sales amounted to $248 million, whereas purchases amounted to $14.4 billion and $1.9 billion, respectively. USDOC, BEA, Guide to Industry and Foreign Trade Classifications for International Surveys, *U.S. Direct Investment Abroad 1994 Benchmark Survey, Preliminary Results*, Tables III.F 16-18, Jan. 1997; *Foreign Direct Investment in the United States, Operation of U.S. Affiliates of Foreign Companies*, Tables E12-15, July 1996; and BEA official, telephone interview by USITC staff, Apr. 22, 1997.

[7] Industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 21, 1997.

[8] Industry representatives, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 19, 1997, and Singapore, Feb. 24, 1997.

[9] "Design's Rollercoaster Ride in 1996 Provided Thrills, Chills, and Risks," *Engineering News Record*, Apr. 14, 1997, p. 50-51; "Asia Poised to Become Major Player in Global Construction Market," *Journal of Commerce*, Oct. 22, 1996, Knight-Ridder/Tribune Business News; and industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

Figure 12-3
AEC service transactions by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94[1]

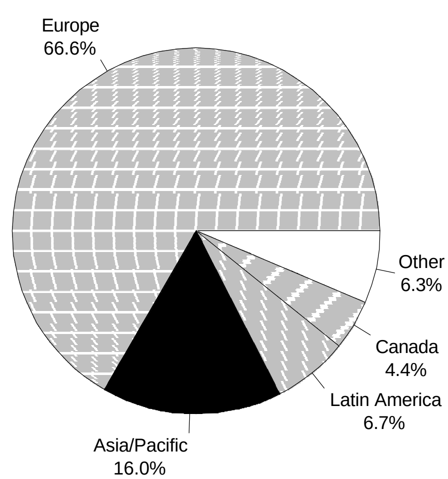


[1] Data on U.S. purchases of architectural and engineering services are suppressed in 1992, thus, the balance is likely overstated in that year. In addition, construction transactions reflect sales of engineering design services but exclude related sales of labor and materials, which are classified as sales of goods.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1993-95 and Nov. 1996.

continuous renovation, combined with industrial works and long-term government projects have created new opportunities for foreign firms. In addition, the developing economies of Southeast Asia

Figure 12-4
AEC service sales by majority-owned foreign affiliates of U.S. firms, by region, 1994[1]



Total = $6.9 billion

[1] Construction transactions reflect sales of engineering design services but exclude related sales of labor and materials, which are classified as sales of goods.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *U.S. Direct Investment Abroad, 1994 Benchmark Survey, Preliminary Results,* Jan. 1997, Table III.F 22.

presently need foreign expertise in power, water, and infrastructure projects. Already, U.S. firms are involved in high profile projects such as the Malaysian Petronas Towers and Light Rapid Transport (LRT) system, and petroleum works worth $1 billion each in Indonesia and Thailand. Further, India represents one of the largest emerging markets, particularly with respect to power and transportation projects.[10]

Examination of Commitments on AEC Services

Commitments on AEC services are difficult to examine as a group due to the large number of industry activities encompassed and the varied nature of specific commitments. To simplify the analysis and presentation, commitments on architectural and engineering services are examined separately from commitments on construction services in the following sections.

Commitments on Architectural and Engineering Services

As noted, while architectural and engineering services are sometimes provided on a cross-border basis, the majority of trade occurs through sales by affiliates located in foreign markets. Consequently, restrictions on the establishment and operation of a commercial presence, such as investment constraints and limitations on corporate structure greatly affect the ability of U.S. firms to provide architectural and engineering services to overseas consumers. Moreover, residency, nationality, and registration or licensing requirements may discriminate against certain U.S. service providers operating in foreign markets. Barriers to trade in architectural and engineering services may be administered through government regulators and/or private professional associations, and may be industry-specific, or apply across industries,[11] such as foreign equity participation limits.[12] In particular, restrictions on commercial presence, the presence of natural persons, and cross-border modes of supply are the most significant.[13]

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[10] "The Top 225 International Contractors," *Engineering News Record*, Aug. 26, 1997, p. 41, and industry representatives, interviews by USITC staff, Washington DC, Oct. 23, 1996, and Jakarta, Indonesia, Feb. 21, 1997.

[11] See appendix E for a detailed presentation of cross-industry commitments.

[12] "Issues Paper (Note by the Secretariat)," OECD Workshop on Professional Services, Paris, Sept. 26-27, 1995, pp. 8-9.

[13] Specific barriers to trade in architectural and engineering services may also include national prohibitions on competition; lack of transparency; problems associated with recognition of diplomas, professional licensing, and admission into national registers; competition from government and parastatal entities; subsidies and other discriminatory financial arrangements; lack of adherence to a qualifications-based selection process; and discriminatory guarantees, liability, and insurance requirements. "Engineering Consultancy and Related Professions," OECD Workshop on Professional Services, Paris, Sept. 26-27, 1994, pp. 9-13.

With respect to the Asia/Pacific nations under consideration, only Hong Kong[14] and the Philippines[15] declined to schedule commitments on architectural and engineering services. The majority of those remaining addressed all, or most, of the sectors included in this services industry (table 12-1). While some countries chose to maintain significant limitations, the schedules of these nations generally enhance the clarity of restrictions and regulations that apply to architectural and engineering services.

Australia

Of the subject trading partners, Australia's schedule guarantees the greatest level of market access. Australia's industry-specific commitments accord full market access and national treatment for services provided through a commercial presence, cross-border supply, and consumption abroad. These commitments apply to the full range of sectors including architectural, engineering, and integrated engineering services. With respect to the presence of natural persons, Australia's limitations remain unbound except for cross-industry measures permitting the entry and temporary stay of senior managers and specialists. These measures denote 4-year periods of stay for executives and senior managers, and 2-year periods of stay for independent executives. Service sellers may remain in Australia for 6 months, while specialists are allowed entry and stay for 2 years[16] with the possibility of extension.

India

India scheduled fewer commitments on architectural and engineering services than any of the other Asia/Pacific trading partners that made bindings in this sector. India's schedule addresses engineering services, but excludes architectural services and integrated engineering services, indicating that restrictions may be introduced in these sectors without penalty. Industry-specific commitments pertaining to a commercial presence require that foreign firms establish a joint venture, in which the foreign partner may maintain majority ownership of no more than 51 percent. Industry-specific measures also indicate that trade restrictions remain unbound with respect to all other modes of supplying engineering services.

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[14] According to government officials, Hong Kong did not schedule commitments on professional services due to the preferential treatment accorded to firms from the United Kingdom and the Commonwealth. At present, government officials state that no restrictions prevent foreign architectural or engineering consultant firms from establishing a presence in Hong Kong, and the government currently has no plans to introduce restrictions. Hong Kong Government official, written response to questions posed by USITC staff, Hong Kong, Jan. 28, 1997.

[15] Reportedly, the Philippines did not schedule commitments because of a conflict with the Constitution, which states that the practice of all professions shall be limited to Filipino citizens, save in cases prescribed by law. Philippine Government representative, letter dated Mar. 25, 1997.

[16] Specialists are subject to individual compliance with labor market testing.

Table 12-1
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 8671 - Architectural services. • CPC 8672 - Engineering services. • CPC 8673 - Integrated engineering services.
India	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Incorporation required with a foreign equity ceiling of 51 percent. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 8672 - Engineering services. These commitments exclude: • CPC 8671 - Architectural services. • CPC 8673 - Integrated engineering services.
Indonesia	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** • Joint operation may be formed by the establishment of a representative office. • Joint venture may be established by fulfilling the requirements specified in the cross-industry commitments and the Foreign Capital Investment Law. **National Treatment:** • Joint operations are subject to a registration fee. The license for a representative office is valid for 3 years and can be extended. The registered foreign company must form the joint operation with local partners who are members of the Indonesian Consultant Association and have qualification A.	**Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • CPC 8671 - Architectural services.

Table 12-1, *continued*
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Indonesia (continued)			• Local partners in a joint venture must be members of the Indonesian Consultant Association and have qualification A.		

Table 12-1, *continued*
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
	Market Access: Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** • Joint operation may be formed by the establishment of a representative office. • Joint venture may be established by fulfilling the requirements specified in the cross-industry commitments and the Foreign Capital Investment Law. **National Treatment:** • Joint operations are subject to a registration fee. The license for a representative office is valid for 3 years and can be extended. The registered foreign company must form the joint operation with local partners who are members of the Indonesian Consultant Association and have qualification A. • Local partners in a joint venture must be members of the Indonesian Consultant Association and have qualification A.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 86722 - Engineering design services for the construction of foundations and building structures. • CPC 86723 - Engineering design services for mechanical and electrical installation for buildings. • CPC 86724 - Engineering design services for the construction of civil engineering works. • CPC 86727 - Other engineering services during the construction and installation phase. • CPC 86729 - Other engineering services. • CPC 8673 - Integrated engineering services.
	Market Access: • Unbound for government funded projects. **National Treatment:** Unbound	**Market Access:** • Unbound for government funded projects. **National Treatment:** Unbound	**Market Access:** • Joint operation may be formed by the establishment of a representative office. **National Treatment:** • Indonesian participant in the joint operation must be a member of the Indonesian Consultant Association.	**Market Access:** • Unbound except for directors and technical experts. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 86721 - Advisory and consultative engineering services. • CPC 86725 - Engineering design services for industrial processes and production.

Table 12-1, *continued*
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Indonesia (continued)					Indonesia's commitments exclude: • CPC 86726 - Engineering design services, not elsewhere classified.
Korea	**Market Access:** • Joint contracts with architects licensed under Korean law required. **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 8671 - Architectural Services. • Foreign architects licensed under their home country's law may acquire a Korean architect license by passing a simplified examination which covers only two of the regular test's six subjects: architectural laws and regulations, and architectural design.
	Market Access: None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 8672 - Engineering services. • CPC 8673 - Integrated engineering services.
Malaysia	**Market Access:** None **National Treatment:** • Architectural and engineering services must be authenticated, respectively, by a registered architect or professional engineer in Malaysia.	**Market Access:** None **National Treatment:** • Architectural and engineering services must be authenticated, respectively, by a registered architect or professional engineer in Malaysia.	**Market Access:** • Services may be supplied only by a natural person. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments and, with respect to the cross-industry commitments affecting the entry and temporary stay of natural persons: an architect who is a consultant to a project wholly financed by a foreign government or implemented under a bilateral arrangement between governments is subject to temporary registration for a period of one year per temporary registration; for engineering services, professionals are subject to temporary registration for a period of one year per temporary registration.	These commitments cover: • CPC 8671 - Architectural services. • CPC 8672 - Engineering services. • The qualifying examination to determine the competence and ability to supply the service for the purpose of registration with the professional bodies will be conducted in the English language.

Table 12-1, *continued*
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Malaysia (continued)				**National Treatment:** • Unbound except as indicated under presence of natural persons, market access.	
	Market Access: None **National Treatment:** • Integrated engineering services must be authenticated by the relevant registered professionals in Malaysia.	**Market Access:** None **National Treatment:** • Integrated engineering services must be authenticated by the relevant registered professionals in Malaysia.	**Market Access:** • Services may be supplied only through a representative office, regional office, or locally incorporated joint venture with Malaysian individuals or Malaysian controlled corporations, or both, for the purpose of services contracts awarded in Malaysia. • In the case of a joint venture, aggregate foreign shareholding shall not exceed 30 percent, and the duration of the joint venture shall not exceed the time necessary to complete the services contract. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments, and with respect to 2 b) of the cross-industry commitments affecting the entry and temporary stay of natural persons: professionals may remain for a period of up to one year or the duration necessary to complete the services contract. **National Treatment:** • Unbound except as indicated under presence of natural persons, market access.	These commitments cover: • CPC 8673 - Integrated engineering services. • The qualifying examination to determine the competence and ability to supply the service for the purpose of registration with the professional bodies will be conducted in the English language.
New Zealand	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 8671 - Architectural services.
	Market Access: None **National Treatment:** • Certification of certain works involving health and safety is limited to registered engineers. To become registered, one must ordinarily reside in New Zealand.	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Certification of certain works involving health and safety is limited to registered engineers. To become registered, one must ordinarily reside in New Zealand.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. • Certification of certain works involving health and safety is limited to registered engineers. To become registered, one must ordinarily reside in New Zealand.	These commitments cover: • CPC 8672 - Engineering services. New Zealand's commitments exclude: • CPC 8673 - Integrated engineering services.

Table 12-1, *continued*
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Singapore	**Market Access:** None **National Treatment:** • None, except that engineers and architects[2] should effectively reside in Singapore.	**Market Access:** None **National Treatment:** None	**Market Access:** • Regarding limited corporations: director of the corporation must be a registered architect, professional engineer, or allied professional (land surveyors); no less than two-thirds, or a lower proportion when specified by the Minister for National Development, of each class of shares of the corporation shall be beneficially owned by and registered in the names of registered architects or allied professionals who are either directors, managers, or employees of the corporation (architectural services), or registered professional engineers or allied professionals (engineering services); architectural work must be under the control and management of a director of the corporation who is a registered architect ordinarily resident in Singapore, has a valid practicing certificate, and is a registered owner of at least one share of the corporation.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • CPC 8671 - Architectural services. • CPC 8672 - Engineering services. • CPC 8673 - Integrated engineering services.

Table 12-1, *continued*
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Singapore (continued)			• Regarding unlimited corporations: director of the corporation must be a registered architect, professional engineer, or allied professional; any person who is not a registered architect, professional engineer, allied professional, or the nominee of such, or is not a director, manager, or employee of the corporation shall not be registered as a member of that corporation; the business of the corporation, as it relates to the supply of architectural services or professional engineering work, will be under the control and management of a director of the corporation who is a registered architect or professional engineer ordinarily resident in Singapore, has a valid practicing certificate, and is a member, or a registered owner of at least one share, of the corporation. • Regarding partnerships: the partnership must consist only of registered architects or professional engineers with valid practicing certificates, and allied professionals; the supply of architectural services or engineering work will be under the control and management of a partner who is a registered architect or professional engineer ordinarily resident in Singapore, and has a valid practicing certificate. **National Treatment:** None		

Table 12-1, *continued*
Highlights of industry-specific restrictions on architectural and engineering services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Thailand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • None as long as foreign equity participation does not exceed 49 percent.	**Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • CPC 8671 - Architectural services.
	Market Access: Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • None as long as foreign equity participation does not exceed 49 percent.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. • Unbound for civil engineers. **National Treatment:** None	These commitments cover: • CPC 8672 - Engineering services. Thailand's commitments exclude: • CPC 8673 - Integrated engineering services.

[1] Hong Kong and the Philippines did not schedule commitments in architectural and engineering services.
[2] The requirement that architects should effectively reside in Singapore was inadvertently omitted from Singapore's schedule of commitments. Singapore Government official, interview by USITC staff, Singapore, Feb. 25, 1997.

Cross-industry measures may further affect the ability of foreign engineering firms to supply services in the Indian market. Commitments on national treatment for services provided through a commercial presence indicate that, in the case of joint ventures involving public entities, preferential access will be given to partners offering the most generous terms for technology transfer. In this respect, India may discriminate against foreign participation by limiting certain operations on the basis of technology transfer potential. In addition, India's cross-industry commitments establish limitations on the entry and temporary stay of personnel. Managers, executives, and specialists who have been employed by the parent company for a minimum of 1 year prior to entry, may remain in India for a total of 5 years, while business visitors involved in negotiations or initial preparations are granted entry and stay for a period of 90 days. Professionals, with the proper qualifications, may remain for 1 year, although certain professionals, including engineers, are required to have at least 3 years of experience in their respective fields prior to entry.

Indonesia

Except for auxiliary subsectors related to engineering design work,[17] Indonesia's industry-specific commitments cover all architectural and engineering services. With respect to cross-border supply, Indonesia declined to schedule commitments for the majority of these services, indicating that further restrictions may be imposed without penalty. With respect to the cross-border supply of advisory and consultative engineering services (CPC 86721) and engineering design services for industrial processes and production (CPC 86725), Indonesia indicated that market access remains unbound in the case of projects funded by the Indonesian government.

Indonesia's industry-specific commitments also outline limitations imposed on the establishment of a commercial presence. With respect to architectural services and engineering services, foreign service providers may establish a commercial presence by forming either a joint venture or joint operation with local partners.[18] Joint operations, which may consist of a representative office, are subject to registration fees and may operate under a 3-year renewable license. Local partners of both forms of enterprise must be members of the Indonesian Consultant Association and satisfy certain qualification requirements. Only joint operations are permitted to provide advisory and consultative engineering services and engineering design services for industrial processes and production.

Indonesia's cross-industry commitments outline additional conditions affecting commercial presence. Joint ventures should be in the form of a Limited Liability Enterprise, with foreign equity participation of 49 percent or less. In addition, fees derived from Indonesian sources by non-resident taxpayers, including compensation for

[17] Indonesia scheduled no commitments on engineering design services not elsewhere classified (CPC 86726).

[18] Indonesia's schedule defines a joint operation as a temporary undertaking between several foreign and Indonesian enterprises that does not constitute a statutory body as designated by Indonesian law. By contrast, a joint venture is a legal body, organized under Indonesian law and operating from an Indonesian domicile, that incorporates both foreign and Indonesian capital.

services performed in Indonesia, are subject to a 20-percent withholding tax under the Income Tax Law of Indonesia.[19] Indonesian Government officials indicate that in future schedules of commitments, this 20-percent rate is deleted and an across-the-board rate will apply to all providers.[20] National regulations also prevent foreigners from owning land, though joint ventures may rent, lease, and hold rights to land and building use. Indonesia's schedule also notes that foreign natural persons who wish to supply services through a commercial presence in Indonesia must meet the relevant professional qualifications.

Concerning the presence of natural persons, Indonesia's schedule omitted any mention of this mode of supply with respect to architectural services, which means that limitations are unbound for architects.[21] Such limitations on engineers are unbound except for measures permitting the entry and temporary stay of senior managers and specialists. Specifically, directors, managers, and technical experts or advisors may remain in Indonesia for 2 years, with a 1-year extension possible. Managers and technical experts who wish to enter through intra-corporate transfer are granted admission based on an economic needs test. Foreign personnel must meet Indonesian immigration requirements and procedures for entry, must hold a valid working permit issued by the Ministry of Manpower, and may be subject to expatriate charges levied by national and local governments.[22] All expatriates are also required to make a monetary contribution to the Ministry of Labor for the purpose of training Indonesian citizens.[23] Finally, with respect to advisory and consultative engineering services and engineering design services for industrial processes and production, industry-specific commitments indicate that market access limitations remain unbound except for directors and technical experts.

Korea

Korea's commitments on architectural and engineering services apply to all sectors of the industry. According to Korea's schedule, architectural services, engineering services, and integrated engineering services may be supplied through a commercial presence without limitation. With the exception of architectural services, for which a joint operation with an existing licensed architecture firm is required,[24] Korea scheduled commitments to accord full market access and national treatment for cross-border supply.

Korea scheduled several cross-industry commitments that may also affect foreign firms' operations. Specifically, market access limitations with respect to the establishment of a commercial presence indicate that branches must be approved under the country's

[19] At present, a bilateral tax treaty with the United States ensures a 10-percent rate for U.S. companies. Indonesian Government official, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[20] Ibid.

[21] Reportedly, this omission was unintentional. Ibid.

[22] A minimal fee of approximately 10,000 rupiah per expatriate is required. Ibid.

[23] A charge (approximately US$100 per expatriate) is levied once per term, which varies according to the employee's work permit. Ibid.

[24] Korean Government officials indicate that architects registered with the Korean Institute of Registered Architects may practice without limitation. Korean Government official, interview by USITC staff, Seoul, Korea, Jan. 28, 1997.

Foreign Exchange Management Act. Additional commitments outline permissible portfolio investment options for both individual and aggregate foreign interests. Foreign investment in domestic companies is limited to stocks listed on the Korean Stock Exchange, and quotas bind the amount a foreign individual or aggregate interest may invest in any one company. Further commitments concerning national treatment for commercial presence specify a 50-million won foreign investment minimum and indicate that foreign land acquisition for legitimate business operations shall be permitted with prior approval or notification. Korea's schedule also notes that subsidies and tax benefits may be limited to legally established companies in Korea.

Korea's limitations on the presence of natural persons remain unbound except for cross-industry measures designating permissible lengths of stay for foreign employees of branches, joint ventures, or wholly owned service firms established in Korea. Executives, senior managers, and specialists with at least 1 year of prior experience with the foreign parent company are granted 3-year extendable terms of stay. Additional personnel engaged in sales negotiations or arrangements pertaining to the initial establishment of a commercial entity are permitted entry and stay for a maximum period of 90 days. In addition, all personnel admitted under the above circumstances are subject to Korean immigration and labor laws.

Malaysia

Like several of the Asia/Pacific trading partners under consideration, Malaysia scheduled commitments on all applicable sectors of the architectural and engineering services industry. Industry-specific measures pertaining to architectural, engineering, and integrated engineering services guarantee full market access for services rendered on a cross-border basis. However, national treatment for this mode of supply stipulates that designs must be authenticated by an architect, engineer, or other relevant professional, registered in Malaysia.[25]

Additional commitments specific to architectural and engineering services affect the establishment and operation of a commercial presence, and vary according to the services provided. With respect to market access limitations, architectural and engineering services must be provided by a natural person. Foreign parties who wish to supply integrated engineering services may do so only through a representative office, regional office, or joint venture with Malaysian interests (individuals or corporations). In the case of a joint venture, foreign shareholding may not exceed 30 percent and the term of the joint venture must not exceed the duration of time required to complete the particular services contract. Malaysia made full commitments to national treatment for this mode of supply for all of the aforementioned sectors of the architectural and engineering services industry, which would seem to be contradicted by the presence of discriminatory market access limitations.

In addition, Malaysia scheduled commitments specific to architectural, engineering, and

[25] Since GATS negotiations concluded in December 1993, changes in the registration process have occurred in accordance with the Engineers Act and the Architects Act. Malaysian Government official, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.

integrated engineering services that outline permissible lengths of stay for professionals in these service areas. Professionals involved in the provision of engineering services, and architects engaged in consulting work for projects wholly financed by foreign governments, or involving a bilateral agreement between governments, are subject to temporary registration for 1-year periods. Personnel who supply integrated engineering services may remain in Malaysia for up to 1 year, or for the duration necessary to complete the services contract. Cross-industry commitments on the temporary entry and stay of natural persons further define authorized terms of stay for intra-corporate transferees. Senior managers and specialists or experts,[26] with at least 1 year of experience with the foreign parent company prior to entry, may remain for 5 years. Business professionals engaged in negotiations or arrangements relevant to the sale of services are granted entry and temporary stay for a period of 90 days.

Additional cross-industry commitments pertaining to the establishment of a commercial presence may also affect foreign firms' provision of architectural and engineering services. Certain mergers, take-overs, and the acquisition of assets or controlling interest in Malaysian companies and businesses are subject to prior approval,[27] which may be withheld if the Government of Malaysia determines that such activities conflict with state interests. On the same grounds, and when acquisitions or dealings involving land, property, and real estate are deemed speculative or nonproductive, approval for the control or ownership of these assets may be denied.

New Zealand

New Zealand scheduled commitments on architectural services and engineering services, but declined to address integrated engineering services, indicating that limitations on this sector remain unbound. Industry-specific commitments accord full market access and national treatment to architectural services provided through cross-border supply and commercial presence. Concerning engineering services, New Zealand imposes no restrictions on market access for services supplied across national boundaries or through a commercial presence, but national treatment limitations stipulate that only registered engineers may certify works involving health and safety. To fulfill the registration requirement, one must normally reside in New Zealand.

Cross-industry commitments outline further conditions and limitations applicable to all service industries. Overseas Investment Commission approval is required for the foundation or acquisition of any business, by an individual or company not normally established in New Zealand, that involves financial transactions in excess of NZ$10 million. Consent is also necessary when acquired voting power or shares in a company exceed 25 percent. In addition, certain land acquisitions are subject to prior approval, and limitations remain unbound with regard to transactions involving state-owned enterprises. Commitments on the entry and temporary stay of natural persons indicate that executives,

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[26] Two specialists or experts per organization are allowed. Others are permitted access based upon sufficient proof of inability to secure local employees. Malaysian Government official, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.

[27] The Foreign Investment Committee is responsible for granting approval and normally responds within 30 days. Malaysian Government official, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.

senior managers, and specialist personnel,[28] who are transferred to New Zealand, may remain for a maximum period of 3 years. Specialists and senior personnel dispatched to assume short-term tasks may stay for 1 year, while installers, servicers, and service sellers are authorized to remain in New Zealand for up to 3 months during any 1-year period.

Singapore

All relevant architectural, engineering, and integrated engineering services appear to fall under the range of services covered by Singapore's industry-specific commitments. While Singapore grants full market access for cross-border supply, national treatment restrictions indicate that engineers or architects[29] should normally reside in Singapore. To effectively reside, professionals must have an address in Singapore to which documents may be served, if necessary.[30]

With respect to commercial presence, Singapore's schedule lists detailed market access specifications and requirements regarding registration, management, and shareholding. However, since the signing of the GATS, further liberalization has taken place with respect to these barriers. Singapore no longer restricts shareholding and has liberalized the requirement that all directors be registered.[31] Currently, the chairman of a firm and two-thirds of the firm's managers must be registered in Singapore.[32]

Singapore's industry-specific commitments list no restrictions on national treatment for services provided through a commercial presence, but cross-industry commitments state that at least one company director, one local manager, and two agents must be citizens of Singapore, permanent residents, or holders of a Singapore Employment pass. With respect to the presence of natural persons, Singapore offered partial commitments on market access and left limitations on national treatment unbound. Singapore's cross-industry commitments indicate that market access is guaranteed only for managers, executives, and specialists with at least 1 year of experience with the foreign parent company prior to entry. These individuals may remain in Singapore for 3 years, with an additional 2-year extension possible.

Thailand

With respect to the primary modes of supply under consideration for the architectural and engineering services industry, Thailand scheduled commitments only on commercial presence, thus reserving the right to impose restrictions on cross-border supply and the presence of natural persons. These measures, which encompass architectural and engineering services, but exclude integrated engineering services, stipulate that foreign

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[28] Specialist personnel, defined as persons with trade, technical, or professional skills, are subject to labor market testing.
[29] The requirement that architects should effectively reside in Singapore was inadvertently omitted from Singapore's GATS schedule. Singapore Government official, interview by USITC staff, Singapore, Feb. 25, 1997.
[30] Ibid.
[31] Ibid.
[32] Ibid., and U.S. Department of Commerce official, interview by USITC staff, Singapore, Feb. 24, 1997.

equity participation in a commercial presence in Thailand must not exceed 49 percent. With respect to the presence of natural persons, measures specific to the engineering services sector accord national treatment, but indicate that market access limitations remain unbound for civil engineers, meaning that Thailand may impose restrictions on these professionals without penalty. In addition, while Thailand references its cross-industry commitments for restrictions on the presence of natural persons for most service industries, limitations on market access and national treatment are listed as unbound in the case of architectural services.

Cross-industry commitments further affect foreign commercial presence, as well as the movement of personnel. Thailand's schedule indicates that foreign service providers must establish a registered, limited liability company in which foreign shareholders retain minority interest.[33] In addition, the acquisition of land by foreign interests is prohibited. However, foreign individuals or companies may lease land and own certain structures. With respect to the entry and temporary stay of natural persons, managers, executives, and specialists, with at least 1 year of experience with the foreign parent company prior to relocation, may remain in Thailand for 1 year, with the possibility of extension for 2 additional years.

Commitments on Construction Services

Construction services are primarily supplied through sales by foreign-based affiliates of U.S. construction firms. Consequently, limitations on the establishment and operation of a commercial presence, such as investment restrictions, nationality requirements, and caps on foreign ownership and staffing, greatly affect the extent of U.S. firms' participation in foreign markets. In addition, residency requirements, limits on the entry and stay of personnel, and problems associated with the recognition of credentials and licenses also inhibit trade in these services. Given the nature of trade in construction services, most of the subject Asia/Pacific economies recognized the technical constraints of cross-border supply and therefore scheduled no binding commitments. Many countries also scheduled full commitments pertaining to consumption abroad, but these are of limited value.[34] Consequently, the following analysis focuses on commitments pertaining to commercial presence and the presence of natural persons.

With respect to these modes of supply, nearly all of the Asia/Pacific economies under examination made some commitments on construction services. The schedules of Australia, New Zealand, and Singapore are broad in scope and provide substantial benchmarks for the construction services industry. Other nations' schedules outline partial commitments that often apply to narrow segments of the industry. The Philippines did not offer commitments on these services, retaining the ability to impose market access and national treatment limitations in the future without penalty. Table 12-2 highlights industry-specific commitments on construction services by country and mode of supply.

[33] In other words, foreign equity participation must not exceed 49 percent, as indicated in the industry-specific commitments, and the number of foreign shareholders must be less than half of the total number of shareholders in any company.

[34] With the exception of Indonesia and Hong Kong, countries made full commitments to market access and national treatment for consumption abroad.

Table 12-2
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 512 - General construction work for buildings. • CPC 513 - General construction work for civil engineering. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work. These commitments exclude: • CPC 511 - Pre-erection work at construction sites. • CPC 515 - Special trade construction work. • CPC 518 - Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Hong Kong	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • Interior design services (limited to specialized consulting services related to the post-construction design and fitting out of interior living and working spaces). • Project management services (limited to the supervision and coordination of construction projects; does not cover architectural or engineering services). These commitments exclude: • CPC 511 - Pre-erection work at construction sites. • CPC 512 - Construction work for buildings. • CPC 513 - Construction work for civil engineering. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 515 - Special trade construction work. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work. • CPC 518 - Renting services related to equipment for construction or demolition.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
India	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Only through incorporation. • Foreign service suppliers must not hold more than 51 percent equity in the company. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 513 - Construction for civil engineering. These commitments exclude: • CPC 511 - Pre-erection work at construction sites. • CPC 512 - Construction work for buildings. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 515 - Special trade construction work. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work. • CPC 518 - Renting services related to equipment for construction or demolition.

Table 12-2, *continued*

Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Indonesia	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** Unbound	**Market Access:** • Joint operation may be formed by the establishment of a representative office. • Joint venture may be established by fulfilling the requirements specified in the cross-industry commitments and the Foreign Capital Investment Law. **National Treatment:** • Joint operations are subject to a registration fee. The license for a representative office is valid for 3 years and can be extended. The registered foreign company must form the joint operation with local partners who are members of the Indonesian Contractors Association and have qualification A. • Local partners in a joint venture must be members of the Indonesian Contractors Association and have qualification A.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 51120 - Demolition work. • CPC 51140 - Excavating and earthmoving work. • CPC 51150 - Site preparation work for mining. • CPC 51160 - Scaffolding work. • CPC 51220 - Construction work for multi-dwelling buildings. • CPC 51230 - Construction work for warehouses and industrial buildings. • CPC 51240 - Construction work for commercial buildings. • CPC 51250 - Construction work for public entertainment buildings. • CPC 51260 - Construction work for hotel, restaurant and similar buildings. • CPC 51270 - Construction work for educational buildings. • CPC 51280 - Construction work for health buildings. • CPC 51290 - Construction work for other buildings. • CPC 513 - Construction work for civil engineering. • CPC 514 - Assembly and erection of prefabricated construction. • CPC 5155 - Special trade construction work -- steel bending and erection including welding.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Indonesia (continued)					• CPC 518 - Renting services related to equipment for construction or demolition of building or civil engineering work, with operator. • MFN exemption gives preferential treatment to nationals of Brunei Darussalam, Malaysia, the Philippines, Singapore, and Thailand, for government fundded projects. Thesecommitments exclude: • CPC 51110 - Site investigation work. • CPC 51130 - Site formation and clearance work. • CPC 51210 - Construction for one- and two-dwelling buildings. • CPC 5151 - Foundation work, including pile driving. • CPC 5152 - Water well drilling. • CPC 5153 - Roofing and water proofing. • CPC 5154 - Concrete work. • CPC 5156 - Masonry work. • CPC 5159 - Other special trade construction work. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Korea	**Market Access:** • Unbound except for CPC 5111, for which there are no limitations. **National Treatment:** • Unbound except for CPC 5111, for which there are no limitations.	**Market Access:** None **National Treatment:** None	**Market Access:** • New licenses are issued during a specific period every year. • Limits on contract amount per contract are applied. • Compulsory subcontract system is applied. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 5111 - Site investigation work. • CPC 5112 - Demolition work. • CPC 5113 - Site formation and clearance work. • CPC 5115 - Site preparation work for mining. • CPC 5116 - Scaffolding work. • CPC 512 - Construction work for buildings. • CPC - 5131 - Construction work for highways, streets, roads, railways, and airfield runways. • CPC 5132 - Construction work for bridges, elevated highways, tunnels, and subways. • CPC 5133 - Construction work for waterways, harbors, dams, and other waterworks. • CPC 5136 - Construction work for mining and manufacturing, excluding power plants. • CPC 5137 - Construction work for sport and recreation. • CPC 5139 - Construction work for engineering works not elsewhere classified.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Korea (continued)	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Only joint ventures with licensed local companies are permitted. • One hundred percent foreign ownership permitted from January 1, 1996. • Branches permitted from January 1, 1998. • New licenses are issued during a specific period every year. • Limits on contract amount per contract are applied. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 5134 - Construction work for long distance pipelines, communication and power lines. • CPC 5135 - Construction work for local pipelines and cables; ancillary works. • CPC 5136 - Construction work for constructions for mining and manufacturing, for power plants only. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 515 - Special trade construction work. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work. Korea's commitments exclude: • CPC 5114 - Excavating and earthmoving work. • CPC 518 - Renting services related to equipment for construction or demolition of building or civil engineering works, with operator.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Malaysia	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Services may be provided only through a representative office, regional office, or locally incorporated joint venture with Malaysian individuals or Malaysian controlled corporations, or both. • In the case of a joint venture, aggregate foreign shareholding shall not exceed 30 percent. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 511 - Pre-erection work at construction site. • CPC 512 - Construction work for buildings. • CPC 513 - Construction work for civil engineering. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 515 - Special trade construction work. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work. These commitments exclude: • CPC 518 - Renting services related to equipment for construction or demolition of building or civil engineering works, with operators. • MFN exemption reserves Malaysia's right to waive foreign equity limits in a discriminatory manner.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
New Zealand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 511 (part) - Pre-erection work at construction site, other than pipelines. • CPC 512 - Construction work for buildings. • CPC 513 - Construction work for civil engineering. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 515 - Special trade construction work. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work. • Maintenance and repair of fixed structures. These commitments exclude: • CPC 511 Pre-erection work at construction site, pipelines only. • CPC 518 - Renting services related to equipment for construction or demolition of building or civil engineering works, with operator.
Singapore	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • CPC 511 - Pre-erection work at construction site. • CPC 512 - Construction work for buildings. • CPC 513 - Construction work for civil engineering. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 515 - Special trade construction work. • CPC 516 - Installation work. • CPC 517 - Building completion and finishing work. • CPC 518 - Renting services related to equipment for construction or demolition of building or civil engineering work, with operator.

Table 12-2, *continued*
Highlights of industry-specific restrictions on construction services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Thailand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • None as long as foreign equity participation does not exceed 49 percent.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. • Unbound for civil engineers. **National Treatment:** None	These commitments cover: • CPC 512 - Construction work for buildings. • CPC 513 - Construction work for civil engineering. • CPC 516 - Installation work. These commitments exclude: • CPC 511 - Pre-erection work at construction sites. • CPC 514 - Assembly and erection of prefabricated constructions. • CPC 515 - Special trade construction work. • CPC 517 - Building completion and finishing work. • CPC 518 - Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator.

[1]The Philippines did not schedule commitments in construction services.

Australia

Australia's schedule covers significant sectors of the construction industry, although Australia did not offer commitments pertaining to pre-erection work, special trade construction work, and renting services. Australia may impose restrictions on excluded sectors without penalty. Australia guarantees full market access and national treatment for most construction service providers who wish to establish a commercial presence. However, cross-industry commitments on this mode of supply stipulate that foreign-controlled affiliates, once established, are subject to Australia's foreign investment policy guidelines. Further, at least two of the company's directors must ordinarily reside in Australia, and the Australian government maintains the right to accord preference to indigenous persons. Australia's cross-industry commitments relating to the presence of natural persons affect executives and senior managers, who may stay up to 4 years, and independent executives, service sellers, and specialists, whose permissible lengths of stay vary and may be subject to labor market tests.

Hong Kong

Hong Kong's commitments on the construction services industry focus on a narrow group of services. Those covered comprise interior design and project management services, which appear to fall outside the construction and related engineering services delineated in the Central Product Classification System. Thus, while Hong Kong guarantees full market access and national treatment for services provided through a commercial presence, limitations on prominent sectors such as construction for buildings and civil engineering works remain unbound. In addition, Hong Kong scheduled no industry-specific commitments with respect to the presence of natural persons.

India

India's schedule addresses construction work for civil engineering only. Regarding the establishment of a commercial presence, market access restrictions stipulate that construction service providers may operate only through incorporation with an Indian firm, and that foreign equity holding in the company may not exceed 51 percent. Cross-industry measures stipulate that preferential access will be given to foreign service suppliers offering the best opportunities for technology transfer. In this respect, India may discriminate against foreign firms by limiting certain joint operations or through selective procurement based on subjective and non-transparent determinations of technology transfer potential.

India's cross-industry commitments relating to the entry and temporary stay of certain persons permit business visitors stays of 90 days, and intracorporate transferees, defined as managers, executives, and specialists with at least 1 year prior service with the parent company, stays of up to 5 years. In addition, certain professionals, including engineers, are permitted entry and stay for a period of 1 year.

Indonesia

Indonesia made commitments on a comparatively broad range of construction services, scheduling partial limitations on market access and national treatment with respect to commercial presence and the presence of natural persons. Services excluded from Indonesia's schedule and, consequently, subject to further restrictions, include site investigation work, site formation and clearance work, and construction work for one- and two-dwelling buildings. Special trade construction services falling outside the scope of Indonesia's commitments include foundation, concrete, and masonry work, as well as roofing and well drilling. All installation and finishing work remain outside the scope of Indonesia's commitments, too.

Industry-specific commitments pertaining to the establishment of a commercial presence require that foreign service providers form a joint operation or joint venture.[35] Joint operations, which are subject to registration fees, may operate under a 3-year renewable license. In addition, local partners of both joint operations and joint ventures must be members of the Indonesian Contractors Association and possess certain qualifications particular to that organization. Cross-industry commitments on this mode of supply further stipulate that joint ventures should be in the form of a limited liability enterprise with foreign ownership of 49 percent or less. Further, fees derived from services performed in Indonesia by non-resident taxpayers are subject to a 20-percent withholding tax. However, government officials note that this provision will be deleted in future schedules submitted by Indonesia.[36] National law also precludes foreigners from owning land, but a joint venture may rent, lease, and hold rights to land and building use. Finally, natural persons who wish to supply services in Indonesia must meet the relevant professional qualification requirements.

Indonesia also made partial commitments on market access and national treatment for the presence of natural persons. Cross-industry restrictions on this mode of supply outline limitations on the entry and temporary stay of certain personnel. Directors, managers, and technical experts and advisors are admitted for an initial 2-year period, which may be extended for an additional year. Managers and technical experts who wish to enter as intracorporate transferees are allowed access based on an economic needs test. In addition, such personnel must meet Indonesian immigration requirements and procedures for entry, must hold a valid working permit from the Ministry of Manpower, and may encounter expatriate charges levied by national and local governments.

In addition to restrictions stated in the national schedule, Indonesia listed a most-favored-nation exemption specific to construction services. This exemption applies to government funded projects and indicates that preferential treatment will be given to contractors from

[35] Indonesia's schedule defines a joint operation as a temporary undertaking between several foreign and Indonesian enterprises that does not constitute a statutory body as designated by Indonesian law. By contrast, a joint venture is a legal body, organized under Indonesian law and operating from an Indonesian domicile, that incorporates both foreign and Indonesian capital.

[36] In addition, a bilateral tax treaty between the United States and Indonesia guarantees U.S. firms a tax rate of 10 percent. Indonesian Government official, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

Brunei Darussalam, Malaysia, the Philippines, Singapore, and Thailand. The stated purpose of the preferences is to foster civil works, industrial construction, and economic development in the ASEAN region. The duration of this exemption corresponds with the length and validity of the ASEAN treaties.

Korea

Korea addresses nearly all sectors of the construction industry in its schedule. Excluding renting services, and excavating and earthmoving work,[37] Korea's commitments provide transparency and establish benchmarks for a significant portion of the construction services sector.

With respect to industry-specific measures, Korea scheduled partial commitments on market access for construction services delivered through a commercial presence. Foreign service providers wishing to engage in most pre-erection work, construction work for buildings, and most construction work for civil engineering, may establish a branch in Korea, but are subject to a compulsory subcontracting system. Subcontractor participation of at least 30 percent is mandatory for all contracts awarded in Korea.[38] By comparison, certain services may be supplied only through joint ventures with licensed local companies, or wholly owned foreign enterprises. These include assembly and erection of prefabricated constructions, special trade construction work, installation work, building completion and finishing work, and construction work for certain engineering projects. Branches are not permitted until 1998. In addition, for all scheduled sectors, Korea reserves the right to moderate foreign participation through limits on individual contract amounts. However, Korea intends to abolish contract limitations by July 1, 1997, and move toward a competitive contract awarding system based on ability, cost, and past experience.[39] Regarding national treatment, Korea scheduled no industry-specific restrictions for this mode of supply.

Cross-industry commitments may further restrict foreign firms' ability to provide services in the Korean market. Korea's commitments on commercial presence specify certain foreign portfolio investment ceilings and restrictions. Foreigners may invest only in Korean stocks listed on the Korean Stock Exchange, and must observe ceilings on individual and aggregate foreign investment in the stock of any one company. In addition, branches require prior approval in accordance with the Foreign Exchange Management Act. Cross-industry restrictions on national treatment for this mode of supply specify a 50-million won minimum for foreign investment and stipulate that land may be acquired by foreign companies only with prior approval or notification, and only when used for legitimate business purposes. Also, certain subsidies and tax benefits may be withheld from foreign service suppliers operating in Korea.

Cross-industry commitments on the temporary entry and stay of natural persons specify 3-year extendable terms of stay for executives, senior managers, and specialists. Personnel who arrange the sale of services or negotiate the commercial establishment of

[37] CPC codes 518 and 5114, respectively.

[38] Korean Government official, interview by USITC staff, Seoul, Korea, Jan. 28, 1997.

[39] Ibid.

foreign service providers are granted entry and stay for a period of 90 days. In addition, all foreign personnel are subject to Korean immigration and labor laws.

Malaysia

Like several of the Asia/Pacific economies under examination, Malaysia scheduled commitments on a wide range of construction services. These commitments guarantee national treatment for foreign service providers that establish a commercial presence. At the same time, however, Malaysia scheduled partial limitations on market access for this mode of supply. Industry-specific commitments require that construction firms establish a representative agency, regional office, or joint venture. Joint ventures must include Malaysian individuals or corporations and aggregate foreign shareholding may not exceed 30 percent. Services excluded from these commitments fall under renting services related to equipment for the construction or demolition of buildings or civil engineering works (CPC 518).

Cross-industry commitments on commercial presence may impede foreign firms' ability to provide services in the Malaysian market. Certain mergers, take-overs, and acquisitions of assets or interests are subject to prior approval, which may be withheld if the Government of Malaysia determines that such activities compromise state interests. Similarly, when acquisitions or dealings are deemed speculative, nonproductive, or contrary to state interests, approval for the control of land, property, or real estate may be denied. Beyond this, Malaysia lists an MFN exemption which allows it to waive foreign equity limits in a discriminatory manner in order to promote economic benefits.

Cross-industry commitments on the entry and temporary stay of personnel define permissible lengths of stay for intra-corporate transferees. Senior managers, specialists or experts,[40] and professionals who have at least 1 year of experience with the foreign parent company, may remain for 5 years. Entry and temporary stay of 90 days are granted to business professionals engaged in negotiations or arrangements pertaining to the sale of services.

New Zealand

New Zealand's schedule covers all construction service sectors except renting services related to the operation of construction equipment, and pre-erection work pertaining to pipelines. With respect to industry-specific measures, New Zealand guarantees full market access and national treatment to contractors who wish to establish a commercial presence. Under New Zealand's cross-industry commitments, however, certain commercial operations and land purchases are subject to prior approval in accordance with national laws affecting investment and land acquisition. With respect to the movement of personnel, cross-industry measures authorize 3-year periods of stay for executives, senior managers, and specialist personnel[41] relocated to New Zealand. Specialists and senior personnel, defined as persons transferred to assume specific senior level duties, may stay for 1 year, while installers, servicers, and service sellers may remain in New Zealand for up to 3 months during any 1-year period.

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[40] Two specialists or experts per organization are allowed. Others are permitted access subject to certain requirements.

[41] Specialists, defined as persons with trade, technical, or professional skills, are also subject to labor market testing.

Singapore

Of the Asia/Pacific countries examined in this report, Singapore was the only nation to schedule commitments on all applicable construction service sectors. Singapore's commitments on these sectors ensure full market access and national treatment for service providers who wish to establish a commercial presence. Cross-industry measures affecting national treatment, however, stipulate certain staffing requirements. At least one company director, one local manager,[42] and two agents must be citizens of Singapore, permanent residents, or holders of a Singapore Employment Pass. With respect to the presence of natural persons, Singapore offered partial commitments on market access, and left limitations on national treatment unbound. Singapore's schedule notes that managers, executives, and specialists transferred from a foreign parent company may remain in Singapore for an initial 3-year period, which may be extended for an additional 2 years.

Thailand

The scope of Thailand's commitments on construction services is narrow, but key sectors of the industry are addressed, including construction work for buildings, construction work for civil engineering, and installation work. With respect to services supplied through a commercial presence, Thailand's cross-industry commitments require that foreign service providers establish a limited liability company, registered in Thailand, and represent no more than 49-percent equity participation and less than half the total number of shareholders. In addition, cross-industry measures indicate that foreign land ownership is prohibited according to the Land Code of Thailand, but foreign nationals are able to lease property, and may acquire certain structures.[43]

Thailand's cross-industry commitments on the presence of natural persons delineate market access limitations for foreign service personnel. The temporary stay of natural persons is permitted for 90 days in the case of entry associated with meetings, company visits, contract negotiations, and similarly brief business activities. In addition, managers, executives, and specialists may be transferred to Thailand for 1 year, with two 1-year extensions possible. With respect to civil engineers, however, market access restrictions are unbound, meaning that Thailand reserves the right to maintain or impose restrictions on these service providers.

Industry Opinion

Industry sources have indicated that multilateral agreements such as the GATS are of fundamental importance to AEC service industries to the extent that they provide guarantees of full market access and national treatment. Given the current size and future growth potential of Asia/Pacific markets, binding commitments from several countries in the region would offer significant value to the U.S. industry. While some countries did offer broad, binding commitments, the schedules submitted by most of the subject

[42] Foreigners with permanent residency status or the necessary employment pass need not appoint a local manager.

[43] Thailand's schedule specifies buildings and parts of condominium units.

countries did

not effectively resolve many of the remaining market access issues pertinent to these services.

Industry representatives indicate that market conditions vary widely across the region. Australia and New Zealand, offering transparent bidding processes and open investment regimes, maintain few barriers to U.S. participation in AEC services. Korea also is considered to have a comparatively open market with a high level of demand for foreign design and construction expertise prompted by safety concerns and the perceived inefficiency of domestic firms.[44] With respect to Hong Kong and Singapore, market access conditions are actually more liberal than the GATS schedules suggest.[45] For example, although Hong Kong declined to schedule commitments on architectural and engineering services, thus reserving the right to implement broad restrictions, the market is reportedly open to full foreign participation in both private and public projects.[46] On the basis of its schedule, Singapore similarly appears quite restrictive with respect to policies governing the registration of foreign employees, yet industry representatives rank Singapore as one of the region's most open markets.

The more open markets also tend to be those that are already highly developed and therefore offer less in terms of future opportunities than the other Asia/Pacific nations under examination. Singapore's active construction market is ultimately bound by land area and a saturation of design and construction firms.[47] In Hong Kong, U.S. firms have a relatively small presence due to the historical reliance on British construction standards and the desire of U.S. firms to concentrate on Southeast Asian nations, such as the Philippines, that have stronger links to the United States.[48] Industry representatives also foresee a decline in work after the resumption of Chinese sovereignty, and one U.S. company has already made plans to close its Hong Kong office after July 1, 1997.[49]

In the markets with stronger growth prospects, U.S. firms face numerous challenges. In competition with other international firms, U.S. industry representatives indicate that, in some of the subject countries, business practices favor companies that are not subject to

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[44] "South Korea Boosts Safety," *Engineering News Record*, Nov. 18, 1996, and industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

[45] These nations also reportedly encourage openness and transparency in public sector projects. Singapore is a signatory to the Government Procurement Agreement (GPA) of the World Trade Organization and has indicated that it will bring all government tender in line with GPA rules by September 1997. Hong Kong formally ratified the GPA on May 21, 1997, and provisions of the agreement will enter into force on June 19, 1997. Industry and government representatives, interviews by USITC staff, Hong Kong, Jan. 30, 1997, and Singapore, Feb. 25, 1997.

[46] Industry and government representatives, interviews by USITC staff, Hong Kong, Jan. 29-30, 1997.

[47] Industry and U.S. Government representatives, interviews by USITC staff, Singapore, Feb. 24, 1997.

[48] Industry representative, interview by USITC staff, Hong Kong, Jan. 30, 1997.

[49] "The Top 225 International Contractors," *Engineering News Record*, Aug. 26, 1996, p. 38, and industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 21, 1997.

the Foreign Corrupt Practices Act.[50] Other challenges include a greater degree of local participation combined with a desire to protect and develop the local industry. For example, Malaysia has dedicated vast resources to the education of engineers and other construction service professionals while adopting policies aimed at protecting the interests of Malaysian citizens. As a result, U.S. firms indicate that they often cannot compete against local firms, particularly Bumiputra-incorporated companies.[51] In Indonesia as well, a great deal of preferential treatment and local influence is reportedly exerted, particularly in projects valued at more than $100 million, and certain contracts are not subject to a competitive bidding process, but rather are subject to direct assignment.[52]

Foreign AEC firms are significantly affected by preferences accorded to locally incorporated firms and regulations requiring joint ventures. While industry sources laud the various benefits of affiliation with well-connected indigenous partners, they add that mandatory requirements to join with local firms force them to form partnerships based on factors other than commercial capabilities, especially with respect to government procurement.[53] In many cases, minority equity participation is required, leaving foreign interests with little control over the company's operations. Loss of reputation or liability problems could result, as representatives have reported instances where local partners have made unknown arrangements with project owners to alter plans or compromise safety devices.[54]

Natural persons limitations pose an additional challenge to U.S. and other foreign AEC firms operating in the subject economies. While industry representatives have indicated that they are generally able to bring foreign service personnel into these countries, procedures governing the movement of natural persons are characterized as time-consuming, costly, and onerous, particularly in Malaysia and Thailand where a shortage of skilled local professionals has forced U.S. firms to rely heavily on expatriate personnel.[55] Thailand, for example, requires a 30-page application for the entry of foreign expatriates and reserves certain positions for Thai nationals, including those for architects and engineers.[56] Malaysian policy demands less paperwork but entails long delays, employment quotas, and a training program whereby the renewal of foreign work permits

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[50] Industry representatives, interviews by USITC staff, Kuala Lumpur, Malaysia; Jakarta, Indonesia; and Singapore, Feb. 19-24, 1997.

[51] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 19, 1997.

[52] Family and friends of the President of Indonesia are active in, among other areas, the architecture, engineering, and construction services industry. Certain outside firms report that, in some instances, they are either excluded from selected projects or do not prepare bids due to the extensive cost and expected outcome. Industry and U.S. Government representatives, interviews with USITC staff, Jakarta, Indonesia, Feb. 20-21, 1997. See also: U.S. Department of State telegram, "The Economy According to Bob--Part I," message reference No. 001602, prepared by U.S. Embassy, Jakarta, Mar. 1997.

[53] Ibid.

[54] Industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 21, 1997.

[55] Industry representatives, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18-19, 1997, and Singapore, Feb. 24, 1997.

[56] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 19, 1997, and U.S. Department of State telegram, "Investment Climate Statement for Thailand," message reference No. 025611, prepared by U.S. Embassy, Bangkok, July 1996.

requires adequate proof of the apprenticeship of local workers.[57] In Indonesia, U.S. firms are required to submit manpower tables outlining the number of expatriates required, as well as the firm's justification for not using local employees, with each new project.[58]

Finally, licensing requirements pose a challenge to U.S. firms' participation in certain projects, particularly when licenses are accorded exclusively to nationals or joint ventures with local majority ownership, as is reportedly the case in the Philippines.[59] Likewise, U.S. construction firms are often required to obtain separate licenses, as in Indonesia where contractors must maintain multiple licenses depending on the project at hand, or special licenses for certain projects such as road work.[60] Although industry sources have not encountered serious problems or denials with respect to licensing and registration in most of the Asia/Pacific countries under review, issues such as the recognition of credentials, licensing procedures, and the mobility of professionals remain of great interest to the industry. U.S. professional societies are actively pursuing bilateral arrangements or mutual recognition agreements to further clarify registration and licensure systems worldwide.[61]

Despite the ongoing concerns of U.S. companies in the region, industry sources feel that they are able to operate successfully in nearly all the Asia/Pacific countries under consideration and that market access conditions are generally improving. Aggressive privatization programs have swept through Asia, subjecting numerous construction projects to more transparent and cost-based private-sector bidding processes.[62] Malaysia has privatized the development of all but hospitals and schools, while in India, the construction of roads, airports, bridges, and property and port facilities has all been extended to the private sector.[63] In addition, the magnitude of infrastructure needs in many Asia/Pacific countries has resulted in a relaxation of investment restrictions.

[57] The Government of Malaysia encourages employee ratios of 55 percent Bumiputra, 30 percent Chinese, and 15 percent Indian, though industry sources report difficulty in maintaining such percentages due to a shortage of skilled Bumiputra employees. With respect to apprenticeship, except for key positions in manufacturing, expatriate personnel are required to have understudies. The Malaysian Government monitors this training process at the point when expatriates seek renewal of work permits. Industry representatives, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18-19, 1997.

[58] Industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[59] Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.

[60] Industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[61] The United States Council for International Engineering Practice has held bilateral discussions with engineering societies in Hong Kong, Australia, and New Zealand, and is in the process of completing an analytical survey for the APEC Human Resources Development Working Group to determine the facility of engineering accreditation, recognition, and development among participating member economies. Andrew B. Liston, PE & PLS, post-hearing submission by the United States Council for International Engineering Practice to the USITC, Mar. 31, 1997.

[62] "High-rise-office and Infrastructure Projects Fuel Building Boom," *Architectural Record*, July 1996, Pacific Rim Section, p. 15; "Privatizing for the Future," *Engineering News Record*, July 22, 1996, p. 27; and industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997.

[63] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 19, 1997, and USDOC, International Trade Administration, "India-Construction Equipment and Services," *Market Research Report*, Aug. 1, 1996.

Indonesia, for instance, opened the engineering and construction services sector to 100-percent foreign ownership in 1995, while earlier this year the Indian Government designated the construction sector as one of several industries wherein joint ventures with up to 78-percent foreign equity would automatically be approved.[64] In the Philippines, reportedly one of the least restrictive of the Asian markets, wholly owned foreign firms are permitted, whereas in Thailand, local presence may take the form of a representative office, joint venture, wholly owned subsidiary, or foreign-held Thai company.[65] In Malaysia, though a general 30-percent equity limit exists for most service industries, in practice, foreign equity participation in design firms is as high as 49 percent.[66] Otherwise, Malaysian regulations are extensive but transparent and U.S. engineering licenses are honored.[67]

Industry sources note that the magnitude of expansion opportunities in the Asia/Pacific region has somewhat offset the difficulties of complying with the rules and restrictions encompassing the architecture, engineering, and construction services industry. Asian nations often rely on foreign design expertise,[68] and the operational limitations imposed in many of these markets have not kept U.S. design and construction firms from winning significant contracts in petrochemical, industrial, mining, power generation, and other infrastructure sectors.

Summary

With estimates of over $1 trillion in basic development needs, the Asia/Pacific region may become one of the largest markets and sources of revenue for U.S. AEC firms. With respect to architectural and engineering services, nearly all of the countries under review scheduled commitments, thereby improving transparency and establishing benchmarks that may facilitate liberalization in the future. Among the subject countries, Australia, Korea, New Zealand, and Singapore scheduled fairly broad commitments to accord market access and national treatment to foreign providers of architectural and engineering services. The schedules of India, Indonesia, Malaysia, and Thailand, on the other hand, are narrower in scope. Reportedly, these Asia/Pacific countries scheduled fewer commitments due to the complexity of the agreement, the lack of national policies concerning services, and their view that liberalization, while necessary, should take place in stages.[69]

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[64] Industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 20, 1997, and "Indian Government Plans to Deepen Economic Reforms," Comtex Scientific Corporation, received through NewsEDGE/LAN, Jan. 15, 1997.

[65] Industry representative, interview by USITC staff, Singapore, Feb. 24, 1997.

[66] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 19, 1997.

[67] While industry sources note that architectural degrees are not recognized, Malaysian Government officials explain that natural persons may enter and operate under the title of architect or engineer for the duration of a particular project. Malaysian Government official, interview with USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.

[68] Ibid.

[69] Indonesian and Malaysian Government officials, interviews by USITC staff, Jakarta, Indonesia, Feb. 21, 1997, and Kuala Lumpur, Malaysia, Feb. 26, 1997.

With respect to construction services, once again most of the subject countries scheduled at least some commitments, providing greater transparency and benchmarking. While Australia, New Zealand, and Singapore made full commitments on many applicable sectors of the construction services industry, the commitments scheduled by several other countries are narrowly defined and in some cases appear more restrictive than current practices. For example, Hong Kong made commitments only on obscure sectors, effectively leaving the entire industry open to further restrictions. In Malaysia, up to 49-percent foreign equity participation is allowed in the construction services sector in practice, yet Malaysia's GATS commitments bind foreign participation at 30 percent, and certain U.S. firms holding higher equity shares report that they are receiving pressure to divest.[70] Such commitments leave several countries with considerable discretion to impose additional restrictions on market access and national treatment. As a result, for certain subject countries, effective benchmarks have not been achieved for a considerable portion of construction services and transparency has been only moderately enhanced.

[70] Industry representatives, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 18-19, 1997.

CHAPTER 13
Land Transportation Services

Introduction[1]

For the purpose of this study, land transportation services are defined as: railroad transportation (both passenger and freight); road transportation (both passenger and freight); other transportation, such as pipeline transportation; auxiliary freight services, such as warehousing and the arrangement of transportation of freight and cargo; and other auxiliary services.[2] This report does not address air or maritime transportation services as these sectors were not included in the study request.[3]

International Trade in Land Transportation Services

International trade in land transportation services comprises both cross-border transactions and sales by affiliates. The nature of the transportation service to be provided usually determines the mode of delivery that is used. For some types of transportation services, geographic proximity (to the United States) determines whether or not a permanent commercial presence is required to provide the services. For example, a U.S. trucking firm would find it difficult to provide transportation in Korea without a commercial presence there. However, a U.S. trucker could provide transportation to Canada with or without a commercial presence in that country. For other transportation

[1] Among the individuals consulted by USITC staff in the preparation of this report were those affiliated with the following organizations: the American Trucking Associations; the Association of American Railroads; the Railway Progress Institute; the American Association of Port Authorities; the Federal Railroad Administration; the Federal Highway Administration; and the Census Bureau and the Bureau of Economic Analysis (BEA), U.S. Department of Commerce (USDOC).

[2] Land transportation services are included in the U.N. Central Product Classification (CPC) codes 7111, rail passenger transport; 7112, rail freight transport; 7113, rail pushing and towing; 8868, maintenance and repair of rail transport equipment; 743, supporting services for rail transport; 7121 and 7122, road passenger transport; 7123, road freight transport; 7124, rental of commercial vehicles with operator; 6112 and 8867, maintenance and repair of road transport equipment; 744, supporting services for road transport; 7131 and 7139, pipeline transportation of fuels and other goods; 741, cargo-handling services; 742, storage and warehouse services; 748, freight transport agency services; and 749, other services auxiliary to all modes of transport.

[3] With respect to air transport services, measures affecting traffic rights or services directly related to traffic rights were excluded from the scope of the GATS agreement. The GATS addresses only aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system services. With respect to maritime services, negotiations carried over from the Uruguay Round failed to conclude in agreement. Thus, measures affecting maritime services remain outside the GATS.

services, such as freight forwarding, a commercial presence is not necessary. These services involve only the arrangement of freight transportation. Because the modes of supply vary depending on
both the type of service provided and the geographic location of the countries involved, it is not possible to determine the relative importance of cross-border transactions and sales by affiliates.

Cross-Border Transactions

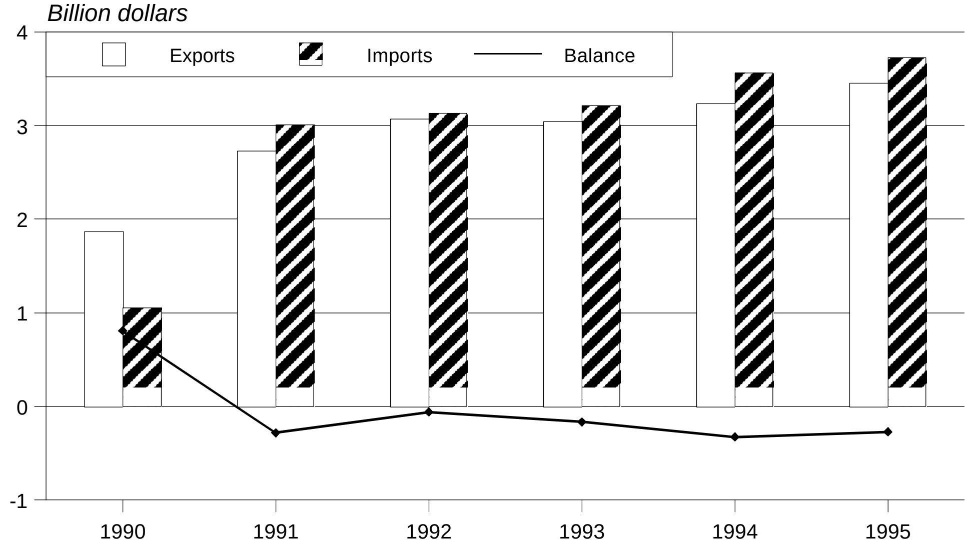
The largest components of U.S. trade in land transportation services covered by this report include freight transportation by truck and rail, port services other than maritime, and auxiliary transportation services. In 1995, U.S. exports of these transportation services totaled $3.5 billion, whereas imports totaled $3.7 billion (figure 13-1).[4] During 1991-95, cross-border exports increased by an average annual rate of 15 percent, but import growth generally kept pace, resulting in a persistent U.S. trade deficit during 1991-95. Canada represents the largest market for U.S. exports of land transportation services, accounting for approximately 58 percent of total exports in 1995 (figure 13-2). The Asia/Pacific region as a whole is the second-largest export market, with approximately 16 percent of total exports. The trading partners covered in this study accounted for less than 4 percent of U.S. cross-border exports of all land transportation services.

Sales by Majority-Owned Affiliates

Data for sales by majority-owned affiliates are available only in highly aggregated form, and country or regional breakouts are not available because certain data have been suppressed to avoid disclosing confidential information. Sales of all transportation services to foreign persons by majority-owned foreign affiliates of U.S. companies totaled $8.7 billion in 1994.[5] This includes receipts for land, air, and maritime transportation. Purchases of all transportation services (including air and maritime) through majority-owned U.S. affiliates of foreign companies totaled approximately $9.6 billion in 1994. The trade deficit in affiliate sales of all transportation services amounted to $811 million in 1994, down from $2.3 billion in 1993.

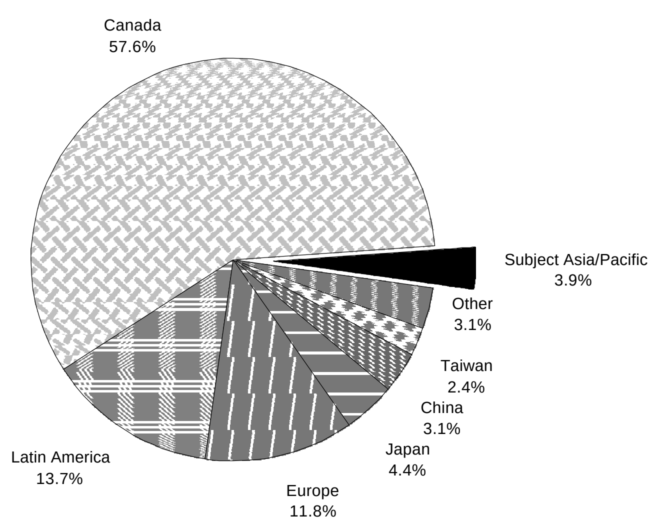
[4] USDOC, BEA, *Survey of Current Business*, Nov. 1996, p. 89.
[5] USDOC, BEA, *Survey of Current Business*, Nov. 1996, p. 111.

Figure 13-1
Cross-border trade in land transportation services: U.S. exports, imports, and trade balance, 1990-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Figure 13-2
Land transportation services: U.S. cross-border exports, by principal markets, 1995



Total = $3.5 billion

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Nov. 1996.

Examination of Commitments on Land Transportation Services

Land transportation services are provided to foreign consumers through both cross-border trade and sales by overseas affiliates. The types of trade barriers common in this industry vary according to the type of transport service. For example, freight forwarders and customs brokers are subject to restrictive licensing requirements, customs brokers often are subject to nationality restrictions, and cabotage (i.e., domestic point-to-point service) is usually reserved for domestic providers. Limitations to commercial presence, such as investment barriers, and other establishment restrictions affect the ability of most U.S. transportation service providers to enter foreign markets. In addition, land transportation service providers are affected by the lack of standardization of operational rules and regulations, which was not addressed under the GATS.

Among the 10 country schedules examined, only Australia, Korea, New Zealand, the Philippines, and Thailand offered commitments on land transportation services. In some cases, the scope of commitments scheduled is fairly narrow. Limitations on foreign service providers are most prevalent in the areas of cross-border supply, commercial presence, and presence of natural persons (table 13-1). However, cross-industry commitments regarding entry and temporary stay of natural persons sometimes soften restrictions placed on the movement of persons by extending business visas to senior managers and specialists.[6]

The GATS commitments do not necessarily reflect the existing regulatory climate in each country, particularly when the scope of commitments is narrowly defined. For example, although Korea scheduled a number of commitments, they are limited to certain geographic areas and transportation subsectors, leaving restrictions on large segments of the sector unbound. Other countries are more open to foreign providers of land transportation services than indicated by their schedules. For instance, Hong Kong chose not to schedule any commitments in this sector, yet in practice, Hong Kong does not maintain extensive restrictions on freight transportation services provided through a commercial presence.[7]

[6] See appendix E for a detailed presentation of cross-industry commitments.
[7] Hong Kong Government official, interview by USITC staff, Hong Kong, Jan. 29, 1997.

Table 13-1
Highlights of industry-specific restrictions on land transportation services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 71213, 71214, 7122 - Road passenger transportation, principally excluding scheduled urban bus services. • CPC 71231, 71232, 71233, 71234 - Road freight transportation, principally excluding mail transportation. • CPC 742 - Storage and warehouse services, except maritime.
	Market Access: None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 713 - Pipeline transportation of fuel and other goods. • CPC 748 - Freight forwarding, except maritime. • CPC 749 - Preshipment inspection, except maritime.
Korea	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Licenses are granted only to international shipping companies. **National Treatment:** • Cargoes are limited to containerized cargo to be imported or exported.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 71233 - Road transport, limited to containerized freight, excluding cabotage.
	Market Access: Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 742 - Storage and warehouse services, except maritime, and excluding services for agricultural, fishery, and livestock products.

Table 13-1, *continued*
Highlights of industry-specific restrictions on land transportation services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Korea (continued)	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Licenses are granted only to international shipping companies, subject to an economic needs test. Business areas are restricted to Pusan and Pukok. **National Treatment:** • Cargo is limited to containerized cargo to be imported or exported. In Pusan, activity is restricted to freight handling and ancillary transportation. In Pukok, activity is restricted to freight handling.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 748 - Freight forwarding for rail transport only. Refers to auxiliary services at the ends of railway transport, and includes collecting cargoes, contracting with the Korean National Railroad for train transport, loading/unloading, and delivery of freight.
New Zealand	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 711 - Rail transport services, both passenger and freight. • CPC 712 - Commercial road transport services, including passengers, goods, rental and vehicle recovery, but excluding CPC 71235 (mail transportation). • CPC 713 - Pipeline transport services.
Philippines	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • As indicated in the cross-industry commitments. In addition, no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least 60 percent of whose capital is owned by such citizens. **National Treatment:** None	**Market Access:** • As indicated in the cross-industry commitments. In addition, only aliens qualified to hold technical positions may be employed within the first 5 years of operation, and their stay may not exceed 5 years. Each employed alien should have at least 2 Filipino understudies. **National Treatment:** None	These commitments cover: • CPC 711 - Rail transport services, both passenger and freight. • CPC 741 - Cargo handling services. • CPC 742 - Storage and warehousing services. • CPC 743 - Container yard and depot services. • CPC 748 - Freight forwarding services. • CPC 8868 - Maintenance and repair of rail transport equipment. • CPC 8867 - Maintenance and repair of road vehicles.

Table 13-1, *continued*
Highlights of industry-specific restrictions on land transportation services

	Mode of Supply				
Trading Partner[1]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Philippines (continued)	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** As above, and • Provisional authority/certificate of public convenience must be secured from the Land Transportation Franchising and Regulatory Board (LTFRB). • Additionally, new entrants are subject to economic needs tests, which consider: a) the need to provide protection to investments of operators in unserved areas/developmental routes; and b) the route measured capacity test for number of vehicles. **National Treatment:** None	**Market Access:** • As above **National Treatment:** None	These commitments cover: • CPC 712 - Road transport services, both passenger and freight.
Thailand	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • No limitations as long as foreign equity participation does not exceed 49 percent.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. • Unbound for civil engineers with respect to CPC 8868. **National Treatment:** None	These commitments cover: • CPC 8868 - Maintenance and repair of rail transport equipment. • CPC 742 - Storage and warehousing services. • CPC 743 - Supporting services for rail transport, including passenger and freight car cleaning services and security services at railway stations.
	Market Access: Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • None except as indicated in the cross-industry commitments. • Not less than half of the board of directors of the company must be Thai nationals. **National Treatment:** • No limitations as long as foreign equity participation does not exceed 49 percent.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 71222 - Rental services of passenger cars with operator. • CPC 71223 - Rental services of buses and coaches with operator. • CPC 71231 - 71233 - Road transportation of frozen or refrigerated goods, bulk liquids, or gases and containerized freight.

[1]Hong Kong, India, Indonesia, Malaysia, and Singapore did not schedule commitments on land transportation services.

Australia

Australia's commitments on road passenger transportation,[8] road freight transportation, and storage and warehouse services guarantee full market access and national treatment for services provided through consumption abroad and commercial presence. Limitations on land transportation services provided through cross-border supply remain unbound. With respect to pipeline transportation of fuel and other goods, freight forwarding, and preshipment inspection services, Australia accords full market access and national treatment regarding cross-border supply, consumption abroad, and commercial presence. With respect to the presence of natural persons, limitations remain unbound, although cross-industry measures provide for the entry and stay of senior managers, specialists, executives, and service sellers for periods of 6 months to 4 years. Australia did not schedule commitments in the areas of cargo handling or railroad transportation.

Korea

Korea's commitments are limited to road transport of containerized freight, certain storage and warehousing, and freight forwarding for domestic rail shipments in certain geographic areas. Other road transport, rail transport, and other auxiliary services are not addressed, thereby leaving trade restrictions unbound in these areas. For road transport of containerized freight, excluding cabotage, Korea accords partial market access and national treatment for services provided through a commercial presence. Market access is restricted, as Korea issues licenses only to international shipping companies, and national treatment is granted only to firms transporting containerized cargo that will be imported or exported.
For storage and warehouse services,[9] and freight forwarding for rail transport,[10] Korea imposes no limitations on consumption abroad, but restrictions on cross-border supply remain unbound. With regard to the commercial presence of foreign providers of storage and warehouse services, Korea accords full market access and national treatment. However, for the commercial presence of foreign freight forwarders, market access is restricted to the Pusan and Pukok regions and licensing is subject to an economic needs test. In addition, Pusan extends national treatment only to foreign firms that provide freight handling and ancillary transportation services for containerized cargo, and Pukok extends national treatment only to firms providing freight handling services for such cargo. With respect to all land transport services, restrictions on the presence of natural persons remain unbound, although cross-industry commitments permit 3-year extendable stays for executives, senior managers, and specialists. In addition, personnel who arrange the sales of services are granted stays of 90 days.

Despite the gaps in coverage found in Korea's commitments, industry sources indicate that in practice, there are currently few market access problems, legal constraints, or

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[8] Other than regular urban bus services.

[9] Maritime services, and services for agricultural, fishery, and livestock products are excluded.

[10] This applies to freight forwarding for rail transport only; refers to auxiliary services at the ends of railways transport, and includes collecting cargoes, contracting with the Korean National Railroad for train transport, loading/unloading, and delivery of freight.

national treatment issues that restrict foreign participation in Korea's land transportation sector.

However, many U.S. investors have declined to enter the Korean transportation market due to labor disputes, structural inefficiencies, and high costs.[11]

New Zealand

New Zealand accords full market access and national treatment to foreign providers of road transport services (including passenger, goods, rental and vehicle recovery, but not including mail transportation); rail transport services; and pipeline transport services. These commitments apply to services provided through all modes of supply except the presence of natural persons. Limitations on the provision of services through the presence of natural persons remain unbound except for cross-industry measures permitting 3-year stays for executives, senior managers, and specialist personnel; 1-year stays for senior personnel; and 3-month stays (during any 1-year period) for servicers, installers, and service sellers.

The Philippines

With respect to passenger and freight rail transport services, maintenance and repair of rail transport equipment, maintenance and repair of road vehicles, cargo handling, storage and warehousing, and container yard services, the Philippines accords full market access and national treatment only for services delivered through consumption abroad. Restrictions on cross-border supply remain unbound. Services provided through a commercial presence are restricted by a market access limitation stating that no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted to foreign citizens or to firms in which foreign persons hold more than 40 percent of capital. Further, the Philippines requires that all executives and managing officers of commercial presences be citizens of the Philippines. For services delivered through the presence of natural persons, cross-industry commitments provide for the entry and temporary stay of senior managers and specialists, although industry-specific commitments specify that only aliens qualified to hold technical positions may be employed within the first 5 years of the operation of the enterprise. Foreign workers' stays may not exceed 5 years, and each foreign worker should have at least two Filipino understudies.

With respect to freight forwarding services, the Philippines accords full market access and national treatment for services delivered through cross-border supply and consumption abroad. However, if these services are provided through commercial presence or the presence of natural persons, they are subject to the same limitations described above.

With respect to passenger and freight road transport services, limitations on cross-border supply remain unbound, and the above restrictions on commercial presence and the presence of natural persons apply. In addition, the Philippines' schedule stipulates that market access may be further limited by a requirement that provisional authority in the form of a certificate of public convenience must be secured from the Land Transportation Franchising and Regulatory Board (LTFRB). Granting of such authority may be subject to the results of economic needs tests.

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[11] Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

Thailand

Thailand's commitments are fairly limited in scope as they apply only to subsectors of maintenance and repair of rail transport equipment, storage and warehousing services, supporting services for rail transport,[12] and road transportation services.[13] For these selected services, Thailand guarantees market access and national treatment only for services delivered through consumption abroad. Restrictions on cross-border supply remain unbound. With respect to establishing a commercial presence, restrictions are similar. For railroad maintenance, storage and warehousing, and support services, Thailand references certain cross-industry limitations and imposes a 49-percent foreign equity cap. For road transportation services, Thailand adds to these restrictions that Thai nationals should compose at least half of the commercial presence's board of directors. For services delivered through the presence of natural persons, current limitations remain unbound except for measures permitting the entry and temporary stay of senior managers, executives, and specialists[14] for periods of 1 year, with two 1-year extensions possible. Other natural persons are limited to stays of 90 days.[15]

Industry Opinion

Due to the limited scope and disparate nature of commitments on land transport services, U.S. firms and associations have indicated that Asia/Pacific commitments accord them few immediate benefits.[16] Major restrictions on the use of both foreign and private capital remain, as do widely varying regulatory approaches to safety and operations. Industry representatives indicate that restrictions on commercial presence are most important, particularly those that concern rights to establish road transport operations.[17] Also, regulatory variance between countries results in delays, higher costs, and logistical problems. Industry representatives acknowledge the need for regulation in transportation, particularly with respect to infrastructure, equipment technology, and training, but state that such regulation should not impede service delivery. For example, under current regulations in Indonesia, foreign trucking companies are denied multi-modal transportation rights, the right to wholly own trucking operations, and the right to obtain certain operational licenses, all of which limit their competitiveness.[18] To improve market conditions and achieve more

[12] Supporting services include passenger and freight car cleaning, and security services at railway stations.

[13] The sectors covered include only road transport of frozen or refrigerated goods, bulk liquids or gases, and containerized freight, rental services of passenger cars with operator, and rental services of buses and coaches with operator.

[14] The single exception applies to civil engineers, who are subject to unbound limitations regarding entry and stay when involved in railroad maintenance, storage and warehousing, and support services.

[15] The provision for civil engineers appears extraneous, as the type of work covered by the schedule is normally the responsibility of a mechanical, rather than a civil, engineer.

[16] Industry representatives, interviews by USITC staff, Washington, DC, Dec. 8, 1996.

[17] Ibid.

[18] Industry representatives, interviews by USITC staff, Jakarta, Indonesia, Feb. 20, 1997, and Singapore, Feb. 25, 1997.

efficient transportation systems, the U.S. industry places strong emphasis on the need to promote regulatory harmonization and transparency.[19]

The lack of transparency with respect to customs procedures reportedly remains an onerous trade barrier in the majority of the subject countries.[20] Such problems could be ameliorated by obtaining binding commitments from trading partners to provide customs clearance in a timely manner, to base such clearance on explicitly defined rules and regulations published in advance of their implementation, and to provide an effective system through which to appeal rulings and decisions.[21] Nevertheless, the U.S. land transport sector supports the GATS and is pleased that the talks recognized the critical role that land transport plays in international trading relations. Liberalization of this important sector is ultimately expected to create new opportunities to establish and operate businesses in Europe, Asia, and Latin America, which likely will benefit U.S. companies with innovative distribution, communications, and technological expertise.[22] Industry optimism is tempered, however, by the realization that some nations wish to avoid the politically sensitive issues associated with the opening of this strategic sector.[23]

Summary

Overall, the Asia/Pacific trading partners examined in this study scheduled few commitments that clarify trade restrictions pertaining to land transportation services. Consequently, transparency has improved only slightly. Moreover, few commitments appear to bind open large segments of the land transport sectors. As a result, the subject trading partners' commitments provide a rough framework for future liberalization but do not, in general, appear to provide comprehensive benchmarks. In addition, the commitments do not appear to reflect accurately current market conditions in the Asia/Pacific region, which range from quite restrictive, as in India, to relatively open, as in Singapore, where full foreign ownership is permitted and complete privatization on a national treatment basis is being explored.[24]

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[19] Transportation Panel, Summary of Proceedings, Western Hemisphere Trade and Commerce Forum, Denver, CO, July 1-2, 1995, found at Internet http://americas.fiu.edu/denver/moving.txt.

[20] American Trucking Associations, written submission to the USITC, Apr. 10, 1997.

[21] Ibid.

[22] Industry Sector Advisory Committee on Services for Trade Policy Matters, p. 22.

[23] Malaysian and Indonesian Government representatives, interviews by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997, and Jakarta, Indonesia, Feb. 20, 1997.

[24] Singapore Government representative, interview by USITC staff, Singapore, Feb. 25, 1997.

CHAPTER 14
Travel and Tourism Services

Introduction[1]

For the purpose of this report, travel and tourism is defined as travel away from home, for 1 night to 1 year in duration. This chapter covers the services that business travelers and tourists purchase, ranging from food and lodging to intermediary services provided by travel agents, tour operators, and tourist guides.[2] It excludes air transportation services, which are governed by various bilateral agreements, and computer reservation services, which are counted among other computerized database services.

International Trade in Travel and Tourism Services

The most important mode of supply of international travel and tourism is consumption abroad. Trade through consumption abroad depends upon the ability to leave one's country, tour foreign countries, return home, and obtain the means of payment for tourism services purchased abroad.[3]

Expenditures by foreign travelers who visit the United States are reported in the U.S. balance of payments as cross-border exports. Conversely, expenditures by U.S. citizens visiting other countries enter the U.S. balance of payments as cross-border imports. Although travel and tourism services are traded mainly through cross-border channels, affiliate trade also takes place when firms establish commercial presences abroad that provide travel and tourism related services, such as hotels, travel agencies, and tour operators.

[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following organizations: American Hotel and Motel Association, American-Malaysian Chamber of Commerce, American Chamber of Commerce-Korea, American Society of Travel Agents, G.C. Nanda & Sons Pte. Ltd., P.T. Jakarta International Hotels & Development, Shangri-La Adventures, U.S. Tour Operators Association, and the International Trade Administration, U.S. Department of Commerce (USDOC).

[2] For the purpose of this report, the travel and tourism sector consists of services purchased during travel from travel and tourism related industries, which fall under U.N. Central Product Classification (CPC) codes 641-643, hotels and restaurants, including catering; 7471, travel agencies and tour operators services; and 7472, tourist guide services.

[3] "Tourism and the General Agreement on Trade in Services (GATS)," World Tourism Organization, Madrid, Apr. 1994.

Cross-Border Transactions

In 1995, the U.S. travel and tourism industry generated a $15.3 billion cross-border trade surplus (figure 14-1), accounting for 25 percent of the total cross-border services trade surplus. Receipts of $61.1 billion from travel and tourism trade and expenditures of $45.9 billion by U.S. travelers represented 35 percent and 40 percent of total U.S. service exports and imports, respectively.[4] During 1990-95, the average annual growth rate of cross-border exports in travel and tourism exceeded that of imports, resulting in a 22-percent average annual increase in the services trade surplus, despite a small dip in 1994. Visitors to the United States from Europe accounted for 32 percent of U.S. tourism receipts in 1995, followed by visitors from Latin America (19 percent), and Japan (18 percent). The subject Asia/Pacific trading partners accounted for about 10 percent of total U.S. receipts (figure 14-2). Compared to the previous year, receipts generated from visitors to the United States from the subject Asia/Pacific region grew 15 percent, or three times the growth rate in total U.S. exports of travel and tourism services. Of the receipts generated from travelers from the subject Asia/Pacific region, 28 percent came from Korea, 24 percent from Australia, and 10 percent from Hong Kong.

Sales by Majority-Owned Affiliates

Data on affiliate trade in travel and tourism are available only for the lodging industry, and reflect lodging, food, and beverage services offered in hotels, motels, and similar establishments. Foreign-based affiliates of U.S. lodging firms generated sales estimated at $2.2 billion in 1994 (figure 14-3),[5] representing a 10-percent gain over the previous year and a departure from the decline recorded during 1990-93. With respect to affiliate transactions in 1994, the largest markets for foreign affiliates of U.S. lodging firms were Europe, accounting for 54 percent of sales; Latin America, for 18 percent; and Canada, for 10 percent (figure 14-4). Data attributable to sales by Asia/Pacific affiliates of U.S. firms can not be separated from similar data pertaining to sales by affiliates in the Middle East and Africa. Taken together, this grouping accounts for 18 percent of sales by affiliates. However, separate data were reported in 1994 for Australia, which accounted for 8 percent of total sales by all foreign affiliates of U.S. lodging firms.

Purchases from foreign lodging companies' affiliates in the United States increased to an estimated $6.6 billion in 1994, continuing uninterrupted growth in both U.S. purchases and the deficit in affiliate transactions. The rising value of U.S. purchases is largely explained by foreign direct investment patterns, as several widely recognized hotels in the United States are foreign-owned. For example, because Holiday Inn is a British-owned firm, purchases of services from Holiday Inn in the United States are counted as purchases from a foreign firm. In 1993, Japan held U.S. hotel assets valued at $16.1 billion, representing 54 percent of all foreign affiliates' assets in U.S. hotels.[6] More

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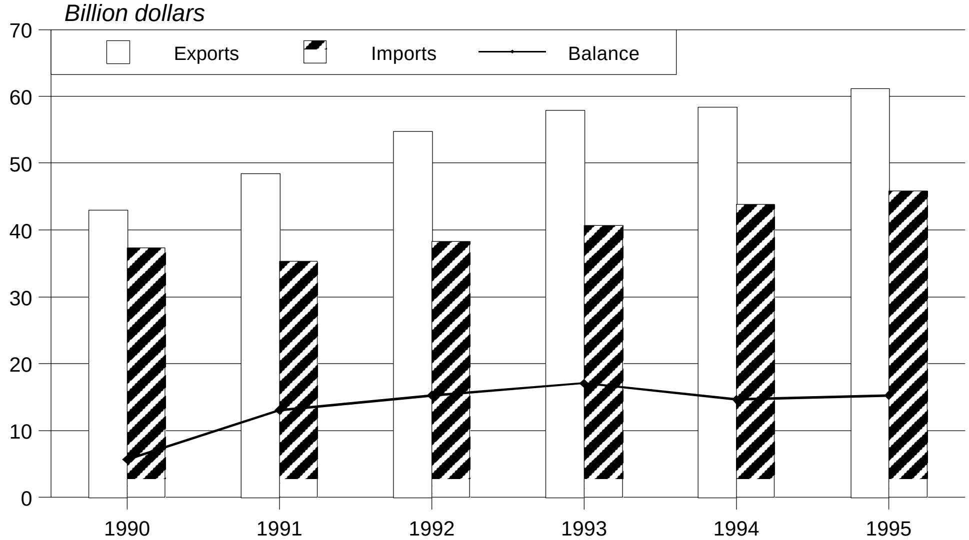
[4] USDOC, Bureau of Economic Analysis (BEA), *Survey of Current Business*, Nov. 1996, pp. 82, 89.

[5] Ibid., p. 111.

[6] USDOC, BEA, *Foreign Direct Investment in the United States, Preliminary 1993 estimates*, Table B-5.

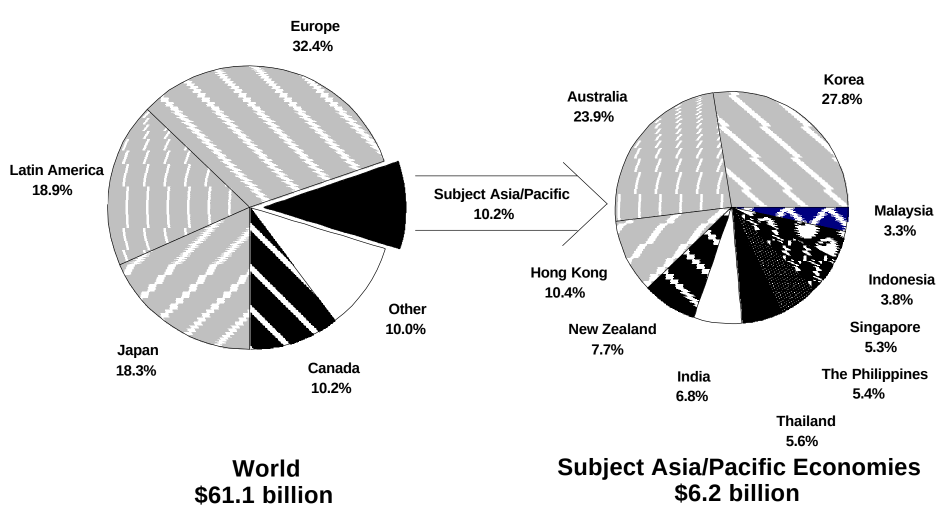
Figure 14-1
Cross-border trade in travel and tourism: U.S. exports, imports, and trade balance, 1990-95



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1992, Sept. 1994, Sept. 1995, and Nov. 1996.

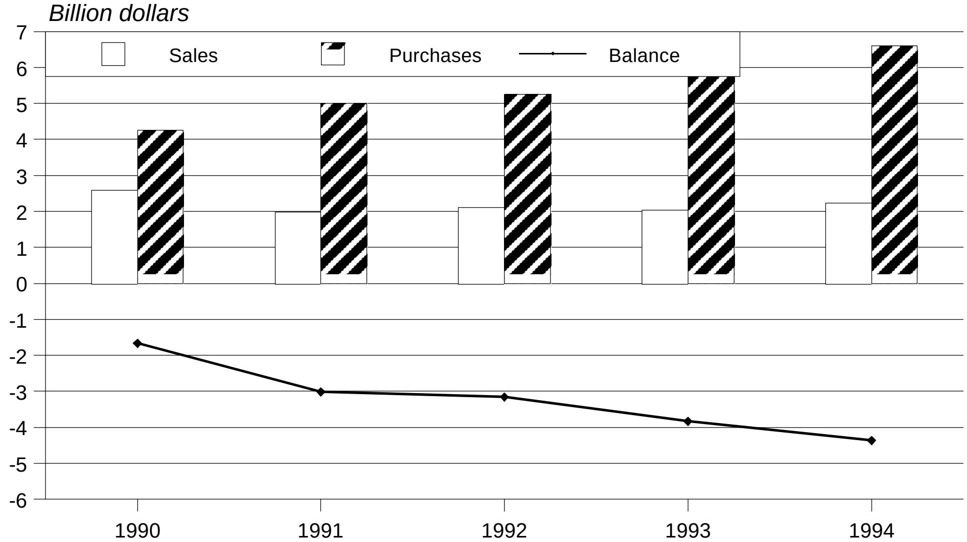
recently, new foreign investment in U.S. hotels is believed to be originating from elsewhere in Asia, such as Singapore and Hong Kong.

Figure 14-2
Travel and tourism services: U.S. cross-border exports, by principal markets, 1995



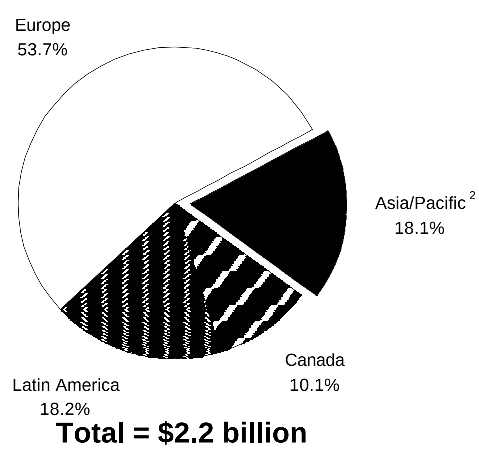
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov . 1996.

Figure 14-3
Travel and tourism transactions by majority-owned affiliates: U.S. sales, purchases, and balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1992, Sept. 1994, Sept. 1995, and Nov. 1996.

Figure 14-4
Travel and tourism services: Sales by majority-owned affiliates of U.S. firms, by principal markets, 1994[1]



Total = $2.2 billion

[1] Due to rounding figures may not add to 100 percent.

[2] Includes all Asia/Pacific countries, some of which are not the subject of this report, as well as Africa and the Middle East.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Nov. 1996.

Examination of Commitments on Travel and Tourism Services

Trade in travel and tourism is generated mainly by tourists who cross borders and stay in hotels, eat at restaurants, and take tours. As noted previously, an open regulatory regime for consumption abroad is important with respect to facilitating travel overseas. All 10 of the trading partners examined in this report scheduled some commitments on travel and tourism services. Three appear to bind full market access and national treatment for travel and tourism services consumed abroad. Three other countries scheduled minor restrictions on consumption abroad on a single travel and tourism subsector, such as tourist guide services, or certain beverage serving and catering services. Thus, it appears that most subject Asia/Pacific trading partners impose few restrictions on the movement of tourists to destinations outside their borders.

Trade in travel and tourism also entails the provision of services through foreign commercial presences. Although some Asia/Pacific countries have eliminated restrictions on commercial presence, the majority still limit forms of establishment and the extent of foreign equity holdings.

Overall, the schedules of commitments on travel and tourism services submitted by Australia and New Zealand appear to impose the fewest formal restrictions on foreign providers of travel and tourism services (table 14-1). Korea's schedule is somewhat more restrictive especially with regard to beverage serving services, and Singapore's schedule is similarly restrictive with regard to travel agency, tour operator, and tourist guide services. Other countries' schedules contain more numerous formal restrictions. The following discussion focuses on the cross-industry commitments[7] and on the industry-specific commitments made with respect to consumption abroad, commercial presence, and the presence of natural persons.

Australia

Australia scheduled few limitations on travel and tourism services, and therefore presents one of the most open regulatory regimes. All travel and tourism services provided through consumption abroad or commercial presence are guaranteed full market access and national treatment. Australia did leave unbound limitations on the presence of natural persons, but cross-industry commitments permit the entry and temporary stay of executives, senior managers, and specialists for periods of up to 4 years.

[7] See appendix E for a detailed presentation of cross-industry commitments.

Table 14-1
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Australia	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 641 - Hotel and other lodging services. • CPC 642 - Food serving services. • CPC 643 - Beverage serving services for consumption on the premises.
	TRAVEL AGENCY SERVICES: **Market Access:** • Commercial presence required. **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7471 - Travel agency and tour operator services.
	TOURIST GUIDE SERVICES: **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7472 - Tourist guide services.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Hong Kong	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** Unbound	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • Hotel services limited to provision on a fee basis of short-term lodging and sale of prepared foods and drinks within hotel premises. Restaurant and catering services limited to sale of prepared foods and drinks through catering or in restaurants both for consumption on and off premises. Hong Kong does not specify a CPC for these categories.
	TRAVEL AGENCY SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** Unbound	**TRAVEL AGENCY SERVICES:** **Market Access:** • None other than that only a company may operate tours and open branch offices. An applicable company is one incorporated in Hong Kong under the Companies Ordinance or incorporated outside Hong Kong which establishes a place of business and registers in Hong Kong under the Companies Ordinance. **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	These commitments cover: • Travel agency and tour operator services, limited to obtaining for clients carriage and/or accommodation outside Hong Kong and providing related services such as travel information, advice, and planning. Hong Kong does not specify a CPC for these categories. Hong Kong's commitments exclude: • CPC 7472 - Tourist guide services.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
India	**LODGING SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**LODGING SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES:** **Market Access:** • Only through incorporation with a foreign equity ceiling of 51 percent. **National Treatment:** None	**LODGING SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 641 - Hotel and other lodging services.
	TRAVEL AGENCY SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCY SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCY SERVICES:** **Market Access:** • Only through incorporation with a foreign equity ceiling of 51 percent. **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 747 - Travel agency, tour operator, and possibly tourist guide services. India's commitments exclude: • CPC 642 - Food serving services. • CPC 643 - Beverage serving services for consumption on the premises.
Indonesia	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** • In eastern part of Indonesia, Kalimantan, Bengkulu, Jambi and Sulawesi, 100 percent of capital share can be owned by foreign investor. **National Treatment:** • Higher paid-in capital is required of foreign service suppliers than of domestic ones. This measure will be eliminated in 2020. Only 3-, 4-, or 5-star hotels are permitted.	**LODGING SERVICES:** **Market Access:** Unbound except for: • In hotels - top management in hotel business comprised of general manager, food and beverage manager, resident manager, comptroller, and marketing director; and highly skilled professionals comprised of executive chef, sous chef, and specialty cook. • In tourist resorts - resort manager. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • Starred hotels, defined as service businesses that provide accommodation and food and beverage facilities and other services, except casino and other activities prohibited by law and against public morals, religion, security, and public order. • Tourist resorts, defined as areas built to accommodate the facilities needed for the tourist such as hotels, marinas, golf courses, cultural open stage and other facilities, except casino and other activities prohibited by law and against

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Indonesia (continued)					public morals, religion, security, and public order. Indonesia does not specify a CPC for this category.
	TRAVEL AGENCY SERVICES: **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Maximum of 30 service providers. **National Treatment:** • Tour operator must be travel agent located in Jakarta and Bali.	**TRAVEL AGENCY SERVICES:** **Market Access:** • Unbound except for technical advisor. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7471 - Travel agency and tour operator services. Indonesia's commitments exclude: • CPC 7472 - Tourist guide services. • Food serving services and beverage serving services for consumption on the premises, other than those provided under lodging services.
Korea	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 641 - Hotel and other lodging services. • CPC 642 - Food serving services.
	TRAVEL AGENCY SERVICES: **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7471 - Travel agency and tour operator services.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Korea (continued)	**TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** • Only travel agencies are allowed to supply tourist guide services. **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 7472 - Tourist guide services. Korea's commitments exclude: • CPC 643 - Beverage serving services for consumption on the premises.
Malaysia	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Entry for activities under CPCs 641-643 is permitted only through a locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint-venture corporation shall not exceed 30 percent. • Entry for activities under CPC 87909 is permitted only for the purposes of a services contract awarded in Malaysia and implemented through a branch. **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound except as indicated in certain cross-industry commitments. These commitments indicate that senior managers and specialists may stay for periods up to five years, and that business visitors may stay up to 90 days. **National Treatment:** • Unbound except for the categories of natural persons referred to above under market access.	These commitments cover: • CPC 641 - Hotel and other lodging services. • CPC 642 - Food serving services. • CPC 643 - Beverage serving services for consumption on the premises. • CPC 87909 - Other business services, not elsewhere classified. Malaysia did not define this category.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Malaysia (continued)	**TRAVEL AGENCY SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Only through a locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both, and aggregate foreign shareholding in the joint-venture corporation shall not exceed 30 percent. Establishment of another office requires an additional license. **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Unbound except as indicated in a specific cross-industry commitment, which provides for the entry and temporary stay of senior managers for periods up to five years. **National Treatment:** • Unbound except for the category of natural persons referred to above under market access.	These commitments cover: • CPC 7471 - Travel agency and tour operator services. Malaysia's commitments exclude: • CPC 7472 - Tourist guide services.
New Zealand	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCY SERVICES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCY SERVICES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCY SERVICES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCY SERVICES, AND TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	These commitments cover: • CPC 641 - Hotel and other lodging services. • CPC 642 - Food serving services. • CPC 643 - Beverage serving services for consumption on the premises. • CPC 7471 - Travel agency and tour operator services. • CPC 7472 - Tourist guide services.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
The Philippines	**LODGING SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** • Subject to foreign equity limitation of 40 percent for pension house, tourist inn, and apartel. **National Treatment:** None	**LODGING SERVICES:** **Market Access:** • In general, only citizens of the Philippines can be employed in tourism-related establishments. However, for hotels and resorts, aliens may be employed subject to tripartite agreement among Department of Tourism, Department of Labor and Employment, and Bureau of Immigration. Only hotels/resorts accredited by Department of Tourism may engage services of aliens. Aliens may occupy only four managerial positions. In new properties, employment of aliens during pre-operation stage and up to 6 months after property opens is allowed. Aliens may be engaged during special occasions/events, provided service contract is limited to 3 months and renewable for another 3 months at a maximum. **National Treatment:** None	These commitments cover: • Services related to the following types of tourism accommodation facilities: hotel, resort, pension house, tourist inn, and apartel. The Philippines does not specify a CPC code for these categories.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
The Philippines (continued)	**FOOD SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**FOOD SERVICES:** **Market Access:** • No foreign equity is allowed if the specialty restaurant is not part of the facilities of a hotel. **National Treatment:** None	**FOOD SERVICES:** **Market Access:** • Aliens may be employed in specialty restaurants subject to tripartite agreement as noted above, as follows: only restaurants accredited with Department of Tourism as well as those forming part of integrated operation of accredited hotels/resorts may be allowed to engage service of aliens; restaurants with 75+ seating capacity may employ 1 alien specialty chef or sous chef, although 3 additional such chefs may be employed in initial operating stage for 2 years maximum; and restaurants with 500+ seating may be allowed 3 additional aliens as specialty chef or sous chef, food service manager, or combination. **National Treatment:** None	These commitments cover: • Specialty restaurants. The Philippines does not specify a CPC code for this category.
	TRAVEL AGENCY SERVICES: **Market Access:** • Commercial presence is required. **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Subject to a foreign equity limitation of 40 percent. **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • Managers and executives must be resident Filipino citizens. **National Treatment:** None	These commitments cover: • Travel agencies, without elaboration or reference to tour operator services. The Philippines does not specify a CPC for this category.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
The Philippines (continued)	**OTHER SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**OTHER SERVICES:** **Market Access:** None **National Treatment:** None	**OTHER SERVICES:** **Market Access:** • Subject to a foreign equity limitation of 40 percent. **National Treatment:** None	**OTHER SERVICES:** **Market Access:** None **National Treatment:** None	These commitments cover: • Professional congress organizers, without elaboration. The Philippines does not specify a CPC for this category. The Philippines' commitments exclude: • CPC 7472 - Tourist guide services.
Singapore	**LODGING SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** None	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • Hotels. Singapore does not specify a CPC code for this category.
	FOOD SERVICES: **Market Access:** None **National Treatment:** None	**FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**FOOD SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • Restaurant and catering services. Singapore does not specify a CPC code for this category.
	TRAVEL AGENCY SERVICES AND TOURIST GUIDE SERVICES: **Market Access:** None **National Treatment:** Unbound	**TRAVEL AGENCY SERVICES AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES AND TOURIST GUIDE SERVICES:** **Market Access:** • None, except that travel agency and tour operators must be a private limited company. **National Treatment:** Unbound	**TRAVEL AGENCY SERVICES AND TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** Unbound	These commitments cover: • Travel agent, tour operator, and tourist guide services. Singapore does not specify a CPC code for this category.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Thailand	**LODGING SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • None as long as foreign equity participation does not exceed 49 percent.	**LODGING SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 6411 - Hotel lodging services.
	FOOD SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**FOOD SERVICES:** **Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • None so long as foreign equity participation does not exceed 49 percent.	**FOOD SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 6421 - Meal serving services with full restaurant service. • CPC 6423 - Catering services.
	TRAVEL AGENCY SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCY SERVICES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCY SERVICES:** **Market Access:** • None except as indicated in the cross-industry commitments, and not less than half of the board of directors of the company must be of Thai nationality. **National Treatment:** • None so long as foreign equity participation does not exceed 49 percent.	**TRAVEL AGENCY SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • CPC 7471 - Travel agency and tour operator services.

Table 14-1, *continued*
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply				
Trading Partner	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**
Thailand (continued)	**OTHER SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**OTHER SERVICES:** **Market Access:** None **National Treatment:** None	**OTHER SERVICES:** **Market Access:** • None except as indicated in the cross-industry commitments. **National Treatment:** • None so long as foreign equity participation does not exceed 49 percent.	**OTHER SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** None	These commitments cover: • Hotel management services. Thailand does not specify a CPC code for this category. Thailand's commitments exclude: • CPC 6412 - Motel lodging services. • CPC 6419 - Other lodging services. • CPC 6422 - Meal serving services in self-service facilities. • CPC 6429 - Other food serving services. • CPC 7472 - Tourist guide services.

Hong Kong

Hong Kong accords full market access and national treatment for lodging services and food services when delivered through commercial presence. However, less than a full range of lodging and food serving facilities and services appear to be included in these commitments. Hong Kong also limits the market access of travel agency and tour service providers operating through a commercial presence. Hong Kong requires establishment as a registered company in order to operate tours and open branch offices. Such a company must either be incorporated in Hong Kong or incorporated outside Hong Kong but registered in Hong Kong under the Companies Ordinance. Hong Kong leaves limitations on the presence of natural persons unbound for all tourism services, although it permits general managers, senior managers, and specialists to enter and remain in Hong Kong for up to 5 years. National treatment limitations remain unbound for all services delivered through consumption abroad. Finally, Hong Kong leaves unbound limitations for all modes of supply with regard to tourist guide services.

India

India's schedule appears to be the most restrictive with respect to travel and tourism services. Despite the indication that India provides full national treatment for lodging services and travel agency and tour operator services when delivered through commercial presence, the commitment scheduled under market access identifies a restriction that limits both market access and national treatment. Namely, to provide these services, foreign firms must incorporate and hold no more than 51-percent equity. India also places unbound limitations on all travel and tourism services provided through consumption abroad, which as noted earlier is a significant mode of supply pertaining to these services. The value of India's commitments is further diminished by the exclusion of food and beverage serving services from the scope of the schedule. India leaves unbound measures pertaining to the presence of natural persons, although cross-industry commitments permit managers, executives, and specialists to enter and remain for periods up to 5 years.

Indonesia

Indonesia places no restrictions on foreign provision of lodging, travel agency, and tour operator services through cross-border supply or consumption abroad. However, several significant restrictions apply to foreign commercial presences. With respect to lodging services, foreign service suppliers may only establish tourist resorts and 3-, 4-, or 5-star hotels that provide accommodation, food, beverage, and certain other services. In addition, foreign service providers are required to supply more paid-in capital than Indonesian firms, although this restriction is scheduled to be eliminated in 2020. With respect to travel agents and tour operators, Indonesia limits the number of firms to a maximum of 30, and tour operators must be travel agents in Jakarta and Bali. Indonesia also places restrictions on services supplied through the presence of natural persons. In hotels, restrictions remain unbound with the exception that a limited number of top management and highly skilled positions may be filled with foreign personnel. In tourist resorts, restrictions on the presence of natural persons are unbound, with the exception that the resort manager may be a foreign person. In travel agencies, restrictions on the presence of natural persons are unbound, with the exception that a technical advisor may be a foreign person. Indonesia's cross-industry commitments indicate that directors, managers, and technical experts may enter and reside in the country for periods up to 3 years, subject to economic needs tests and charges levied by national, provincial, and municipal authorities. Indonesia leaves unbound restrictions on tourist guide services, and food and beverage services not provided by hotels.

Korea

Korea scheduled relatively few limitations on travel and tourism services. Korea generally accords full market access and national treatment to foreign providers of travel and tourism services. However, Korea excluded beverage-serving services from the scope of its commitments, which leaves restrictions unbound for all modes of supply. Korea's schedule also lists a market access limitation that pertains to providing tourist guide services through a commercial presence. These services may only be supplied by travel agencies. For most travel and tourism services, limitations on the presence of natural persons are unbound, although cross-industry measures permit the entry and temporary stay of senior managers and specialists for periods up to 3 years or more, if deemed necessary.

Malaysia

Malaysia accords full market access and national treatment for all travel and tourism services provided through consumption abroad. However, Malaysia excludes tourist guide services from the scope of its commitments, which leaves limitations on foreign provision of these services unbound. With respect to commercial presence, market access for the provision of all lodging, food, travel agency, and tour operator services is permitted only through a locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations, or both, with aggregate foreign shareholding not exceeding 30 percent. The schedule also indicates that an additional license must be obtained in order to establish another office of a travel agency or tour operator. Malaysia imposes unbound limitations pertaining to the presence of natural persons, except that cross-industry commitments permit the entry and temporary stay of certain senior managers and specialists for up to 5 years, and business professionals for up to 90 days.

New Zealand

New Zealand's schedule, which is similar to that submitted by Australia, guarantees one of the most open regulatory regimes with respect to travel and tourism services. New Zealand accords full market access and national treatment to foreign providers of all travel-related services through all modes of supply except the presence of natural persons. New Zealand's schedule leaves limitations on natural persons unbound, although provisions listed in the cross-industry commitments permit the entry and temporary stay of executives, senior managers, and specialists for periods up to 3 years.

The Philippines

The Philippines' schedule appears to be moderately restrictive concerning travel and tourism services. The exact extent of coverage under each subsector is difficult to determine because the Philippines does not specify CPC codes to identify its travel-related services. Lodging service facilities are simply listed as hotel, resort, pension house, tourist inn, and apartel. Food service facilities are cited only as specialty restaurants, without elaboration. Based upon the description of covered services, the schedule appears to apply to lodging services, certain food services, and travel agency services, while tourist guide services are excluded. It is not clear whether the Philippines' commitments extend to tour operator services.

With respect to the covered services, the Philippines accords full market access and national treatment only for services provided through consumption abroad. For services provided through commercial presence, several market access restrictions apply. Specifically, foreign firms are subject to a 40-percent foreign equity limitation on lodging services at a pension house, tourist inn, and apartel. No foreign equity is allowed in food service establishments except for specialty restaurants that are part of the facilities of a hotel. For travel agencies and so-called professional congress organizers, foreign equity is limited to 40 percent.

Finally, the Philippines' schedule includes a number of unique limitations on the presence of natural persons. In reference to lodging services, the schedule states that in general, only Filipino citizens can be employed in tourism-related establishments, except under narrowly defined circumstances based on factors such as governmental bodies' accreditation of the facility, the worker's responsibilities, and whether the property is preoperational or newly opened, among other limitations. Concerning food services, the schedule holds that the employment of foreigners may be restricted, based on such factors as accreditation and the seating capacity of restaurants, and a worker's specialization. In reference to travel agency services, the schedule stipulates that managers and executives must be resident Filipino citizens.

Singapore

Singapore presents a relatively open regime concerning travel and tourism services by generally according full market access and national treatment to foreign providers of travel-related services through the most significant modes of supply. The single exception is that, in reference to commercial presence, the government stipulates that market access for travel agencies and tour operators is contingent on formation as a private limited company. Further, national treatment limitations remain unbound for travel agency, tour operator, and tourist guide services. Singapore places unbound measures on the presence of natural persons, but cross-industry commitments provide for the entry and temporary stay of managers, executives, and specialists for periods up to 5 years.

Thailand

Thailand's commitments on travel and tourism are relatively restrictive principally because they exclude entire subsectors or parts of subsectors. For example, although hotel lodging services are covered, lodging services provided by motels or other facilities are excluded. Also excluded are meal-serving services in self-service facilities and tourist guide services. However, Thailand's schedule makes binding commitments pertaining to one service not found in other schedules - hotel management services - although it does not specify a corresponding CPC number or define the scope of services.

For those services covered by the commitments, Thailand accords full market access and national treatment to services provided through consumption abroad. Foreign firms also may establish a commercial presence, but national treatment is accorded only if foreign equity participation does not exceed 49 percent. In addition, as with other service industries, market access for a commercial presence is permitted only through a company registered in Thailand. In such companies, Thai nationals must account for 50 percent or more of all shareholders. An additional market access limitation applies with regard to travel agency and tour operator services provided through commercial presence, whereby not less than one-half of the board of directors of the company must be of Thai nationality. Thailand's limitations on the presence of natural persons are unbound except for measures permitting the entry and temporary stay of executives, managers, and specialists for periods up to 3 years.

Industry Opinion

High economic growth in many Asia/Pacific countries during the 1980s and 1990s resulted in substantial increases in personal disposable income, enabling significant numbers of people from the region to travel for business or leisure. For example, virtually every Singapore household can now afford some type of holiday travel and many citizens have become well traveled.[8] Experiencing high demand for travel abroad, numerous Asia/Pacific governments lowered trade barriers to consumption abroad. For example, Korea removed restrictions regarding age, passport issuance, and monetary deposits in 1989, and outbound travel soared during 1990-92.[9] In 1992, in the midst of its first deficit in tourism trade, Korea instituted special tax audits and other measures on individuals in order to limit expenditures on outbound travel, but abandoned these in 1993 as government resources were redirected to promote inbound tourism and improve infrastructure appropriately. Korean officials, as well as the U.S. Chamber of Commerce in Korea, note that presently the biggest impediment to Korean outbound tourism is the difficulty in obtaining a U.S. tourism visa.[10] Even so, in 1995, Korean travelers spent more than $1 billion in the United States and there is every indication that outbound Korean travel will continue to grow over the next 10 years.[11]

India appears to be the only subject Asia/Pacific economy that currently discourages outbound tourism. India reportedly authorizes outbound travelers to exchange only

[8] Industry representative, interview by USITC staff, Singapore, Feb. 25, 1997.
[9] "South Korea Outbound," *Travel and Tourism Analyst*, No. 1, 1996, pp. 17-19.
[10] Industry and Korean Government representatives, interviews by USITC staff, Seoul, Korea, Jan. 27, 1997, and Mar. 12, 1997.
[11] Industry representative, interview by USITC staff, Seoul, Korea, Jan. 27, 1997.

$2,000 worth of foreign currency every 2 years, which likely deters outbound tourism[12] and may explain in part why the majority of Indian tourism consists of domestic travel.[13]

In the 1990s, heightened domestic demand for travel and tourism services and stiff competition among Asia/Pacific countries for current account revenues from inbound tourism influenced several countries to attempt to stimulate investment in tourism and related infrastructure projects such as airports and highways. For example, in 1991, India identified hotel and tourism as a high priority sector and in 1996 reduced the ceilings applied to foreign direct investment in hotels.[14] Further, in numerous instances foreign investment above the statutory ceilings was approved by the authorities.[15] However, U.S. firms are reportedly not taking advantage of these investment liberalization measures, perhaps due to concerns over infrastructure and reports regarding difficult commercial conditions. Most of those entering the market have chosen to do so through franchising agreements that use the capital of Indian partners.[16] Despite ongoing development efforts, the shortage of accommodations in India reportedly contributed to a decline in foreign tourist arrivals into that country in 1995.[17]

Recognizing that demand is rising faster than supply for travel and tourism services, U.S. hotel firms have substantially increased their involvement in the subject Asia/Pacific region in recent years through foreign investment and other forms of participation. Industry representatives expect strategic alliances, mergers, and acquisitions to surpass new construction as the primary means to enter or expand in the region.[18] For example, in February 1997, Marriott International acquired Hong Kong-based Renaissance Hotel Group, providing Marriott with an established hotel business in regions not previously served by the firm.[19] Management, operations, and franchise agreements have also increased as important alternatives to development and ownership by U.S. firms seeking expansion in Asia/Pacific markets. U.S.-based Best Western, Carlson, Choice Hotels International, HFS Inc.'s Days Inns, Hilton Hotels, Hyatt, and Sheraton are among the hotel firms with management, operations, or franchise agreements in subject Asia/Pacific markets.[20] In many of these markets, participation by U.S.-based hotel firms led to

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[12] "China and India--Asia's next big travelers?" Comtex Scientific Corporation, NewsEDGE, Feb. 27, 1997.

[13] Indian Government representative, interview by USITC staff, New Delhi, India, Feb. 5, 1997.

[14] Indian Government official, interview by USITC staff, New Delhi, India, Feb. 5, 1997.

[15] Ibid.

[16] Ibid.

[17] Manjula Chaudhary, "India's tourism: a paradoxical product," *Tourism Management*, vol. 17, No. 8, Dec. 1996, p. 618.

[18] "Looking Ahead: Study highlights hospitality issues for 21st century," *Lodging Magazine*, Nov. 1996, found at Internet http://www.lodgingmagazine.com/nov-trends, Apr. 2, 1997, and Indian Government official, interview by USITC staff, New Delhi, India, Feb. 5, 1997.

[19] The acquisition gives Marriott access to new Asian markets by assimilating existing New World brand hotels affiliated with the Renaissance Hotel Group N.V. Marriott International Inc., Form 10-K, Mar. 5, 1997, found at Internet http://www.sec.gov/archives/edgar/data/905036, Mar. 7, 1997.

[20] "Accommodation: Hotels in India," *Travel & Tourism Analyst*, no. 2, 1995,

(continued...)

segmentation in accommodations with the introduction of extended-stay and economy-suite hotels serving business travelers, and mid-priced accommodations serving Asia/Pacific leisure travelers who often vacation with family members.

Food and beverage services, especially as supplied through franchises, also are considered attractive ventures for U.S.-based firms seeking growth in certain Asia/Pacific markets.[21] In Malaysia, labor shortages have prompted more women to enter the workforce, leading a greater percentage of dual-income families to dine out more frequently.[22] Similarly, an expanding middle class with growing disposable income has bolstered growth in the food-related sectors in Indonesia.[23] Such developments encourage the industry to regard expansion in the region positively, particularly since the U.S. domestic restaurant market is no longer perceived as a high-growth sector.[24] Nevertheless, regulatory measures in some markets are believed to inhibit full participation by U.S. and foreign food and beverage service providers. For example, in Malaysia, Muslim religious tradition requires separate kitchens in order to prepare Muslim and non-Muslim foods, and Bumiputras receive certain employment preferences.[25] Similarly, Korean Government restrictions on the importation of food and beverage items such as fruits, prepared foods, wines, and spirits, reportedly hinder the ability of tourist hotels to provide internationally competitive services in terms of quality and price.[26]

Several subject countries accord preference to country nationals with respect to owning and managing travel agency and tour operator services, and especially serving as tourist guides.[27] This preferential treatment often is manifested by limitations on foreign ownership. Such ownership restrictions led some U.S. travel agencies to abandon efforts to establish a commercial presence in Malaysia.[28] Licensing restrictions may also hinder foreign participation in the travel services sector. For example, new licenses for travel agents are not being issued in Indonesia, which effectively reserves the market for existing service providers.[29]

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[20] (...continued)
"Accommodation: Hotels in Australia," *Travel & Tourism Analyst*, no. 2, 1996, "Boom then bust for Kuala Lumpur hotels?" *Travel News Asia*, Jan. 20, 1997, found at Internet http://www.web3.asia1.com.sg/timesnet/data/tna/docs/tna4435, Mar. 4, 1997, and "Days Inns International Growth Explodes," Comtex Scientific Corporation, NewsEDGE, Feb. 20, 1997.

[21] U.S. industry representative, facsimile letter to USITC staff, Feb. 14, 1997.

[22] Industry representative, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 18, 1997.

[23] Industry representative, interview by USITC staff, Jakarta, Indonesia, Feb. 21, 1997.

[24] Standard & Poor's, "Restaurants: Challenges and opportunities in the graying '90s," report in *Industry Surveys: Leisure Time*, Apr. 18, 1996, p. L51.

[25] Malaysian Government official, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.

[26] AMCHAM-Korea, *U.S. Trade & Investment Issues 1996*, p. 81.

[27] Malaysian Government official, interview by USITC staff, Kuala Lumpur, Malaysia, Feb. 26, 1997.

[28] Industry representative, interview by USITC staff, Singapore, Feb. 25, 1997.

[29] Ibid.

Summary

Travel and tourism services are subject to few formidable trade barriers when compared to other service industries. Travelers are largely free to travel for pleasure or business and pay for such services. Foreign investment is generally encouraged, although its extent and form may be limited in certain subject Asia/Pacific countries. In the context of this service industry, Australia, New Zealand, and Singapore committed to full market access and national treatment for all travel and tourism services with respect to consumption abroad. In contrast, India left market access and national treatment limitations unbound, and Hong Kong left national treatment limitations unbound, with respect to consumption abroad. Only Australia and New Zealand committed to accord full market access and national treatment for all travel-related services with regard to commercial presence.

Overall, restrictions are slightly more prevalent on beverage and food services than on lodging services. Tourist guide services received the fewest commitments of all the travel and tourism services, as five countries left commitments unbound for all modes of supply, and three other countries restricted the extent of foreign investment or otherwise limited commercial presence for such services.

On balance, the schedules provide some improvement in regulatory transparency, but the lack of clarity in numerous countries' descriptions of travel and tourism subsectors still presents problems. Overall, the goal of establishing benchmarks was substantially achieved with regard to the schedules of Australia, Korea, and New Zealand, moderately achieved in relation to Indonesia, Malaysia, the Philippines, Singapore, and Thailand, and mostly lacking in the case of India and Hong Kong.

CHAPTER 15
Summary

Introduction

The preceding chapters examine the schedules of commitments submitted to the World Trade Organization (WTO) by 10 Asia/Pacific trading partners under the General Agreement on Trade in Services (GATS). The chapters explain the commitments made by these partners and identify the benefits and limitations of the commitments with respect to U.S. service providers. The discussions conclude with statements as to the relative restrictiveness of the subject trading partners' markets and the extent to which relevant commitments provide benchmarks[1] and improve regulatory transparency.[2]

This chapter provides a summary of the report's contents and findings, beginning with an overview of the nature and intent of the GATS framework and national schedules. Afterward, this chapter highlights significant aspects of the Asia/Pacific schedules. Aspects of cross-industry commitments, industry-specific commitments, and most-favored-nation (MFN) exemptions are discussed separately.

GATS Overview

As noted in chapter 1, the GATS basically comprises a framework, national schedules of commitments, annexes, and ministerial decisions. In the Uruguay Round, the Group Negotiating on Services (GNS) first developed a framework of general disciplines and obligations pertaining to trade and investment in services, as signatories to the General Agreement on Tariffs and Trade (GATT) had done some 50 years ago with respect to trade in goods. Parties to the GATS designed the framework as a mechanism for challenging trade-impeding measures. Such measures generally limit foreign firms' market access or accord these firms treatment less favorable than that accorded domestic firms. Signatories to the GATS believe that removal of trade and investment restrictions in an economic sector that generally accounts for more than 60 percent of gross domestic product and 50 percent of employment in the world's largest economies will promote

[1]Benchmarks comprise full and partial commitments. Full commitments are obligations to accord foreign firms full market access and national treatment. Partial commitments are obligations to accord foreign firms at least some degree of market access and/or national treatment subject to specified limitations. Where GATS signatories have scheduled full and partial commitments, they may introduce trade-impeding measures only if they are willing to compensate aggrieved parties. Where trade impediments remain unbound, no benchmarks have been established, and signatories may introduce trade-impeding measures without penalty.

[2]Transparency exists when the nature and extent of all trade-impeding measures are explained in their entirety, with precision and clarity.

global economic growth.[3]
The GATS framework is complemented by national schedules that specify, primarily on an industry-by-industry basis, whether and to what degree foreign firms will be accorded market access and national treatment. Ideally, national schedules serve two immediate purposes. First, they provide benchmarks that identify export opportunities and trade impediments specific to service industries and modes of delivering services. In the context of the GATS, these benchmarks also discourage countries from imposing further restrictions, or making existing restrictions more burdensome. Second, national schedules provide regulatory transparency, supplying information regarding the nature and extent of current trade-impeding measures.

Overview of Asia/Pacific Trading Partners' Schedules

The following discussion summarizes the degree of transparency and the extent of benchmarking found in Asia/Pacific schedules. Each of the major components of the schedules is discussed, beginning with cross-industry commitments, followed by industry-specific commitments, and concluding with MFN exemptions. The summary indicates that there is wide variation among the schedules submitted by the subject Asia/Pacific trading partners. Some countries, such as Australia and New Zealand, provide a high degree of benchmarking and transparency, while others, including India and Indonesia, do not.

Cross-industry Commitments

The GATS did not require participants to schedule cross-industry commitments and the GATT Secretariat provided no formal guidelines for presenting them. However, most countries found it convenient to list restrictions that apply to all service sectors in one place at the beginning of their schedules. These restrictions typically apply to services delivered through commercial presence and through the presence of natural persons. All ten of the subject Asia/Pacific countries scheduled such commitments. Table 15-1 highlights the major cross-industry commitments scheduled by Asia/Pacific trading partners.

Cross-industry commitments on commercial presence generally list measures that impose some limitations on foreign direct investment. Such measures include notification and approval requirements, limitations on foreign equity control of corporations, and restrictions on foreign ownership of real estate. Among the Asia/Pacific trading partners examined, only Hong Kong did not list any cross-industry restrictions on establishing a commercial presence. The restrictions listed by other countries vary widely in terms of scope and severity. For example, Singapore's cross-industry commitments require foreign firms wishing to establish a commercial presence to employ a local manager and at least

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[3] World Bank and United Nations Centre on Transnational Corporations, *The Uruguay Round: Services in the World Economy* (World Bank: Washington, DC, 1990), pp. 29-31 and Geza Feketekuty, *International Trade in Services: An Overview and Blueprint for Negotiations* (Cambridge, MA: Ballinger Publishing Company, 1988), pp. 191-195.

two locally resident agents, which do not appear to be overly intrusive to foreign firms. Similarly, Australia and New Zealand maintain measures requiring advance notification and authorization for foreign direct investment. While such measures have the potential to be highly restrictive if the criteria for approval are not transparent or not consistently applied, these countries claim to implement them in such a fashion that they do not significantly impede investment. Cross-industry restrictions that appear most onerous are those that limit foreign investors to minority shareholder status. For example, Indonesia and Thailand list measures that restrict foreigners to no more than 49-percent equity participation in a

Table 15-1
Highlights of cross-industry commitments

	Mode of Supply	
Trading Partner	**Commercial Presence**	**Presence of Natural Persons**
Australia	• Notification and examination are required, however no needs tests are applied and approval is generally granted unless national interest considerations arise. • Compliance with the foreign investment policy guidelines is required. • Foreign entities may receive differential treatment with respect to receiving research and development subsidies.	• Residency is required of at least two of the directors of a public company. • Committed only to permit the entry and temporary stay of executives, senior managers, certain independent executives, service sellers, and specialists. Some labor market testing may be applied with respect to specialists.
Hong Kong	• No commitments.	• Committed only to permit the entry and temporary stay of general managers, senior managers, and specialists.
India	• Preference may be accorded to foreign service suppliers or entities that offer the best terms for technology transfer.	• Committed only to permit the entry and temporary stay of business visitors, managers, executives, specialists, and certain professionals.
Indonesia	• Commercial presence permitted only in the form of joint ventures or representative offices, unless otherwise specified. • Foreign equity in joint ventures is limited to 49 percent. • Foreigners are not allowed to own land, although joint ventures may hold land and building rights, and also may rent or lease land and property. • Non-resident taxpayers are subject to a 20-percent withholding tax on income derived in Indonesia.	• Committed only to permit the entry and temporary stay of directors, managers, and technical experts and advisors. • Managers and technical experts must satisfy an economic needs test. • Foreign natural persons supplying services are subject to charges levied by national, provincial, or municipal governments.
Korea	• Foreign portfolio investment is limited. • Foreign direct investment must be at least 50 million Won. • Acquisition of land is subject to approval. • Foreign entities may receive differential treatment with respect to receiving subsidies.	• Committed only to permit the entry and temporary stay of executives, senior managers, specialists, and business visitors.
Malaysia	• Approval required in order to acquire controlling interest, individual interest greater than 15 percent, or aggregate foreign interest greater than 30 percent in Malaysian entities. • Approval required to acquire real estate. • Subsidies and incentives may be reserved to Malaysian-owned corporations, Bumiputra, or government-owned entities.	• Committed only to permit the entry and temporary stay of senior managers, specialists, professionals, and business visitors.
New Zealand	• Approval required for investment of more than $NZ10 million or acquisition of greater than 25 percent of voting shares. Approval also required for acquisition of real estate. • More favorable treatment may be accorded to any Maori person or organization.	• Committed only to permit the entry and temporary stay of executives, senior managers, specialists, senior personnel, installers and servicers, and service sellers.

Table 15-1, *continued*
Highlights of cross-industry commitments

	Mode of Supply	
Trading Partner	**Commercial Presence**	**Presence of Natural Persons**
Philippines	• Foreign firms borrowing in pesos must maintain a 50:50 debt-to-equity ratio. • All executive and managing officers must be citizens of the Philippines. • Foreigners may not own or acquire land.	• Access by foreign natural persons subject to the determination of the non-availability of a person in the Philippines competent, able, and willing to perform the required services.
Singapore	• In order to register a business, a foreign firm must employ a local manager who is a Singapore citizen, a permanent resident, or an employment pass holder. • At least one director must be locally resident. • All branches of registered foreign companies must employ at least two locally resident agents.	• Committed only to permit the entry and temporary stay of managers, executives, and specialists.
Thailand	• Foreign equity participation must not exceed 49 percent of registered capital and the number of foreign shareholders must be less than half of the total number of shareholders. • Unless explicitly specified, limitations on national treatment remain unbound. • Foreigners are not allowed to purchase or own land. However, foreigners may lease land and own buildings.	• Committed only to permit the entry and temporary stay of business visitors, managers, executives, or specialists, subject to an assessment of management needs.

Source: Compiled by the staff of the U.S. International Trade Commission.

commercial presence. Such measures are particularly troublesome for foreign firms because they may weaken the ability of the parent organization to exert control over its operations.

Cross-industry commitments on the presence of natural persons are presented fairly consistently by most GATS signatories. These commitments generally guarantee market access by permitting the entry and temporary stay of foreign persons who are considered to be essential for the provision of the service. Essential staff members typically include senior managers, executives, and specialists. Measures affecting other types of employees often remain unbound. The subject Asia/Pacific trading partners generally permit the entry and temporary stay of senior managers and specialists. However, some countries also note that such access may be contingent upon some form of needs testing. For example, Australia may apply some labor market testing, Indonesia requires completion of an economic needs test to permit the entry and stay of managers and technical experts, the Philippines permits access only after determining that none of its citizens is capable of providing the service, and Thailand requires the effective demonstration of management requirements. While it appears that foreign firms will be able to move essential employees as required, the presence of such needs-testing policies leaves a high level of uncertainty concerning how consistently the policies will be implemented and how objectively the assessment criteria will be determined.

Industry-Specific Commitments

Industry-specific commitments establish benchmarks for market access and national treatment from which countries may not retreat without providing compensation. In addition, the exercise of listing these commitments enhances regulatory transparency even if the schedule results only in a catalogue of existing restrictions. Prior to the GATS, there was no systematic means of identifying regulatory policy concerning service industries on a multilateral basis. By scheduling a full commitment to accord market access and national treatment with respect to one mode of supplying a particular service, countries indicate that they impose no restrictions, thereby establishing a benchmark and enhancing transparency. By scheduling a partial commitment, which requires a country to specify the nature of the restriction in place, a country once again establishes a benchmark and enhances transparency. In scheduling a full or partial commitment, a country recognized that under the terms of the GATS, it could reverse itself and introduce trade-impeding measures only if it were willing to compensate aggrieved parties. Conversely, by undertaking no commitment, countries decline to establish benchmarks and make no contribution to regulatory transparency. The absence of a commitment leaves trade limitations unbound, allowing a country to retain unspecified restrictions or impose unspecified restrictions without penalty.

Impediments to trade in services are usually manifest in regulations that restrict or deny foreign service providers market access or national treatment. For this reason, national schedules require each GATS signatory to indicate whether it is undertaking a full commitment, partial commitment, or no commitment with respect to both market access and national treatment. Further, because the GATS recognizes four modes of supplying services, signatories are required to indicate the nature of their undertaking with respect to each mode of supply, yielding 8 entries for each industry, 55 of which fall within the scope of this report. Thus, this report examines 440 schedule entries made by each of the subject countries.[4]

To compare the extent to which countries have established benchmarks and improved transparency, Commission staff summed each Asia/Pacific trading partner's full and partial commitments, and for the purpose of comparison, those of the European Union, Japan, Canada, Mexico, and South America, and expressed them as a share of the 440 potential schedule entries.[5] The resulting shares are depicted along the horizontal axis in figure 15-1, where trading partners at the far right-hand side - New Zealand and Canada - appear to have accomplished the most in terms of establishing benchmarks and enhancing transparency. The percentage share of schedule entries by country is indicated by the vertical axis. Among the subject Asia/Pacific economies, New Zealand appears furthest to the right, undertaking full and partial commitments in 74 percent of its schedule entries, followed by Australia and Korea, which undertook commitments in 57 percent and 48 percent of their schedule entries, respectively. India appears to have offered the fewest commitments, by undertaking commitments for only 12 percent of the potential schedule entries. With the exceptions of India, Indonesia, and Hong Kong, Asia/Pacific trading partners compared favorably to most South American trading partners in terms of establishing benchmarks and enhancing transparency.[6]

To indicate where GATS signatories are in terms of establishing free trade in this report's subject industries, the share of schedule entries represented by full commitments is depicted along the vertical axis of figure 15-1. Again, the more developed countries tend to compare favorably. New Zealand and Australia lead other Asia/Pacific economies by undertaking full commitments with 51 percent and 40 percent of their schedule entries, respectively. In addition, most of the Asia/Pacific schedules compared favorably with the average score recorded for the nine largest South American countries.

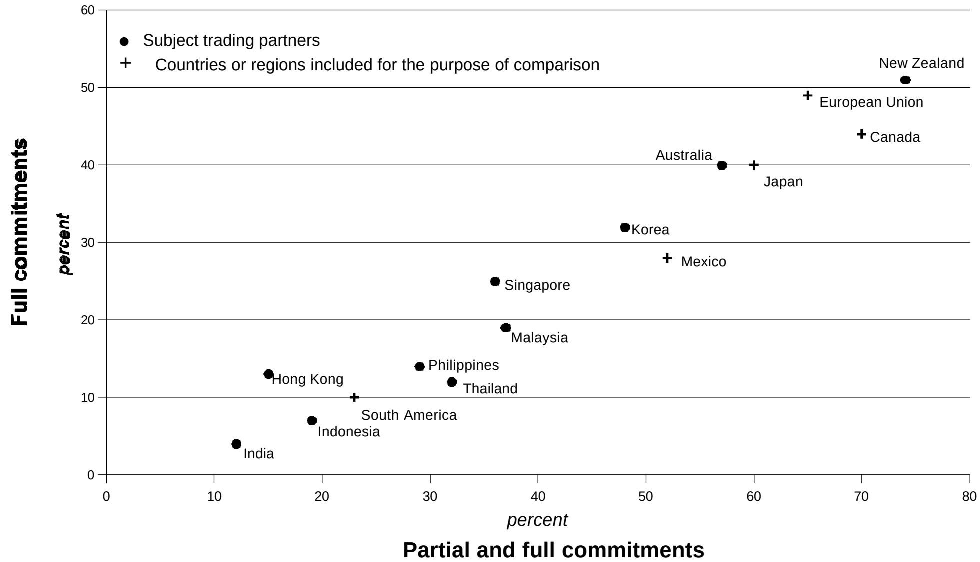
The extent to which the Asia/Pacific economies, taken as a group, established benchmarks and enhanced transparency differed significantly by industry. Figure 15-2 shows, along the horizontal axis, that the subject countries undertook commitments (full and partial) i n

[4]The report examines undertakings with respect to 2 distinct types of limitations, for each of 4 modes of supply, in 55 industries (2x4x55=440).

[5]This quantitative analysis of the schedules draws upon work presented in Bernard Hoekman, *Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services*, paper presented at The Uruguay Round and the Developing Economies Conference of the World Bank, Washington, DC, Jan. 26-27, 1995. Further details pertaining to this quantitative analysis are provided in the annex that immediately follows this chapter.

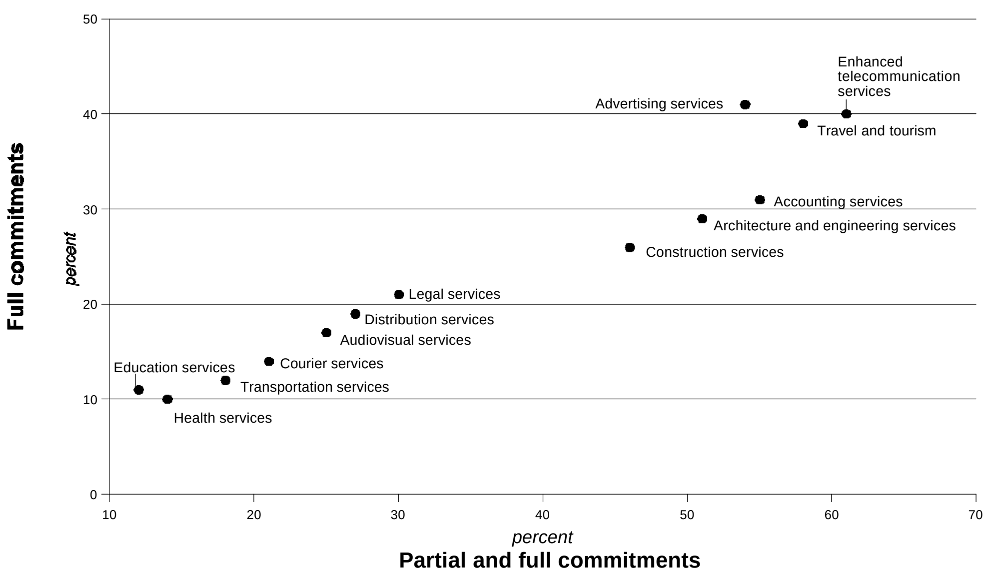
[6]The Commission has conducted previous studies that assess commitments scheduled by the European Union, Japan, Canada, Mexico, and nine South American countries - Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay, Peru, Uruguay, and Venezuela. For more detailed information on the schedules submitted by the European Union, Japan, Canada, and Mexico, see USITC, *General Agreement on Trade in Services: Major Trading Partners' Schedules of Commitments*, USITC publication 2940, 1995, and USITC, *U.S. Trade Shifts in Selected Industries: Services*, USITC publication 2969, 1996. For more detailed information on the schedules submitted by South American countries, see USITC, *General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments*, USITC publication 3007, 1996.

Figure 15-1
Shares of total possible schedule entries, by country



Source: Compiled by the staff of the U.S. International Trade Commission.

Figure 15-2
Shares of total possible schedule entries, by industry



Source: Compiled by the staff of the U.S. International Trade Commission.

61 percent of their combined schedule entries pertaining to enhanced telecommunication services. Full commitments, reflected along the vertical axis, represented 40 percent of the Asia/Pacific trading partners' schedule entries regarding these services. The relatively large number of commitments scheduled with respect to enhanced telecommunication services is somewhat unusual in comparison with other regions like South America, and may reflect broad acceptance that unrestricted access to such services is an essential element for attracting foreign direct investment and participating actively in global commerce.

Other subject service industries did not fare as well. Education and health services received the fewest number of commitments, indicating that most of the Asia/Pacific economies were not prepared to offer binding commitments in such sensitive, publicly controlled areas. Transportation, courier, and distribution services also received few commitments, which has significant implications for merchandise trade since these services play an essential role in the distribution of goods. Finally, the weak showing for audiovisual services reflects the interest many governments share in controlling mass media and developing indigenous audiovisual and multimedia industries.[7] In broad terms, then, it appears that the Asia/Pacific schedules tend to preserve governmental powers to manage social welfare and oversee the distribution of goods, including films. On the other hand, Asia/Pacific schedules appear to bind open sectors of the economy that promote capital inflows, whether through encouraging inbound tourism or enticing foreign investment. Bindings on enhanced telecommunication and architecture, engineering, and construction services encourage infrastructure development in the host country, which in turn promotes inbound investment by manufacturing and service firms that require an advanced telecommunication, power, and transportation infrastructure. Bindings on advertising, accounting, architecture, and engineering may further reflect the distinct inclination of firms in these industries to establish operations abroad, sparking Asia/Pacific countries' interest in establishing open trade and investment climates in these particular sectors.

MFN Exemptions

MFN exemptions describe existing regulatory measures that violate the most-favored-nation principle by according preferential treatment to selected countries or individuals. Among the Asia/Pacific trading partners, only Hong Kong and Korea declined to list MFN exemptions applicable to the service industries under examination. With respect to the remaining eight countries, MFN exemptions principally consist of broad measures that apply to all services or specific measures relating to audiovisual services (table 15-2). There is a considerable amount of variation concerning the nature of the exemptions that apply to all services. For example, New Zealand lists measures that accord preferential treatment for nationals from Kiribati and Tuvalu seeking entry and temporary stay. Since these measures apply only to a specified number of natural persons as part of a development assistance program, they do not appear to impose any significant obstacles to foreign firms. Along similar lines, exemptions from Malaysia, Singapore, and

[7]See USITC, "U.S. Film Industry: How Mergers and Acquisitions are Reshaping Distribution Patterns Worldwide," *Industry, Trade and Technology Review,* USITC publication 3017, Jan. 1997.

Indonesia note that preference may be accorded to selected groups of workers from the region. Another common and fairly benign type of MFN exemption provides for p r e f e r e n t i a l

Table 15-2
Highlights of most-favored-nation exemptions pertaining to subject industries

Trading Partner	Services Affected	Description of Measures
Australia	Audiovisual services	• National treatment accorded preferentially for co-produced film and television productions. • Undetermined measures may be taken to respond to any unreasonable measures imposed on Australian services or service providers by another GATS signatory.
India	Audiovisual services	• National treatment accorded preferentially to co-produced motion picture and television productions.
Indonesia	All services	• Low level occupations, typically reserved for Indonesian citizens, may be filled by citizens of Malaysia, Singapore, Brunei Darussalam, Papua New Guinea, and Australia.
	Construction services	• Preferential short-listing may be provided during international competitive bidding for government funded projects.
Malaysia	All services	• Liberalization of measures affecting movement of foreign semi-skilled and unskilled workers into Malaysia may be carried out in a differentiated manner based on reasons including proximity, either contiguous or regional, religious and/or cultural compatibility. • Waiver of measures in existing or future policies limiting foreign equity or interests in companies and businesses in Malaysia shall be carried out in a preferential and differentiated manner.
	Advertising services	• The 20-percent foreign content limitation is waived for selected countries.
New Zealand	All services	• More favorable entry conditions are possible for nationals from Kiribati and Tuvalu.
	Audiovisual services	• National treatment is accorded preferentially to audiovisual works covered under Film Co-Production Agreements or Arrangements with selected countries.
Philippines	All services	• The labor market test is waived and simplified entry procedures are provided through a special visa category for traders and investors of countries with which the Philippines has concluded treaties on entry rights for traders and investors.
Singapore	All services	• Preference accorded to foreign workers from traditional sources of supply. • Investment guarantees are accorded only to cosignatories of Investment Guarantee Agreements. • Preferential tax treatment granted to Commonwealth countries that offer reciprocal treatment.
	Audiovisual services	• Preferential broadcast and transmission rights accorded to selected countries with which bilateral agreements have been signed.
	Legal services	• Preference may be accorded with respect to all measures pertaining to the provision of legal services in Singapore.
Thailand	All services	• Only U.S. citizens and entities are granted national treatment with respect to operating businesses and providing services in Thailand.
	Accounting	• National treatment accorded preferentially based on reciprocity.

Source: Compiled by the staff of the U.S. International Trade Commission.

treatment to countries with which bilateral tax or investment agreements already exist. The Philippines, Singapore, and Thailand have scheduled such exemptions.

While the above exemptions appear relatively limited in scope, MFN exemptions may significantly affect trade and investment. For example, a Malaysian exemption that applies to all service industries broadly states that decisions concerning waivers of limits on foreign investment will be carried out in a preferential and differentiated manner. Such a measure could be used to discriminate among firms from different countries by, for example, permitting companies from some countries to establish a wholly owned subsidiary and forcing companies from other countries to form joint ventures in which they may retain only a minority interest.

With respect to audiovisual services, four of the subject Asia/Pacific economies listed MFN exemptions. In all four cases, the exemption provides for preferential treatment in accordance with co-production agreements or, concerning Singapore, other existing bilateral agreements. Carve-outs for co-production agreements are retained by many countries in order to promote the development of an indigenous film or television industry. Australia's MFN exemption on audiovisual services extends somewhat further, however, by including a measure that provides for the imposition of "undetermined measures" in response to "unreasonable measures" taken by another GATS signatory. Such a broad measure in combination with Australia's failure to schedule specific commitments on audiovisual services means that Australia may accord some nations favorable treatment while reserving distinctly less favorable treatment for others.

The remaining MFN exemptions affect construction, advertising, legal, and accounting services. The measures affecting construction and advertising services appear to be fairly consistent with other types of exemptions scheduled by non-subject countries. Indonesia reserves the right to differentiate between foreign construction service providers for government-funded projects. Malaysia states that, with respect to advertising services, it may waive the 20-percent foreign content limitation for selected countries. The exemptions pertaining to accounting and legal services are somewhat less typical. With respect to accounting services, Thailand's MFN exemption indicates that national treatment will be accorded on the basis of reciprocity, meaning that only firms from countries that recognize Thai accounting credentials will receive full national treatment. As for legal services, Singapore reserves the right to accord preference with respect to all measures pertaining to legal services. Since Singapore did not schedule any specific commitments on legal services, this reservation would permit Singapore to treat some nations favorably and others unfavorably in a discriminatory fashion.

Conclusion

The schedules of commitments presented by Asia/Pacific trading partners vary widely in terms of the level of benchmarking and transparency provided. Some countries, such as Australia and New Zealand, made broad commitments covering most of the subject service industries in an approach comparable to that of the European Union, Canada, and Japan.[8] At the other end of the spectrum, trading partners such as India, Indonesia, and Hong Kong made very few commitments, an approach also taken by many South American countries.[9] As a group, the Asia/Pacific schedules are less comprehensive than those of the largest U.S. trading partners (Europe, Japan, Canada, and Mexico), yet they are somewhat more comprehensive than those provided by South American countries.

As was common practice among all participants during this first round of negotiations on services trade, the Asia/Pacific schedules include few liberalizing commitments, offering instead generally standstill positions. Nevertheless, standstill positions assist the trade liberalization process by establishing binding benchmarks where few or none had been established before, and by providing some improvement in regulatory transparency. Thus, the schedules of commitments, in combination with the general obligations and provisions for progressive liberalization, provide an effective foundation to support future rounds of negotiations.

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[8]For a full analysis of the schedules from the European Union, Canada, Japan, and Mexico, see USITC, *General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments,* USITC publication 2940, Dec. 1995.

[9]For a full analysis of the schedules from South American countries, see USITC, *General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments*, USITC publication 3007, Dec. 1996.

CHAPTER 15
Annex

Methodology

In chapter 15, figures 15-1 and 15-2 summarize the extent to which Asia/Pacific trading partners scheduled full and partial commitments. The following discussion first identifies the principal difficulties encountered in quantifying these aspects of the national schedules and indicates how these difficulties were resolved. Thereafter, the discussion further delineates the methodology employed to derive the quantitative indicators found in these figures, and provides examples of how the indicators were calculated. The annex concludes with a tabular presentation of the data presented in figures 15-1 and 15-2.

Treatment of Miscellaneous Service Groupings

The service industries of interest to the United States Trade Representative correspond to 62 industries specified in the GATT Secretariat's *Services Sectoral Classification List* (see annex table 15-A-1). Staff reduced the number of industries to 55 by discarding 7 miscellaneous groupings for which commitments scheduled by the subject trading partners were not comparable. The seven discarded groupings appear as "other" under distribution services, education services, enhanced telecommunication services, audiovisual services, health care services, transportation services, and travel and tourism services.[10]

Hence, the figures 15-1 and 15-2 display shares calculated on the basis of 55 industries, or 440 possible schedule entries.[11] This does not alter the relative standing of the subject trading partners in figures 15-1 and 15-2, but it does result in slightly higher shares in both figures.

[10]The miscellaneous groupings were included in the GATT Secretariat's list so that offers could be broadened at the discretion of GATT members.

[11]For each of the 55 distinct service industries, trading partners could make 8 entries: 4 with respect to market access (one for each mode of supply), and 4 with respect to national treatment.

Table 15-A-1
Subject industries and corresponding subsectors found in the GATT Secretariat's Services Sectoral Classification List

Number	Subject Industry	Subsector
	Distribution services	
1.		Commission agents' services
2.		Wholesale trade
3.		Retailing
4.		Franchising
5.		Other[1]
	Education services	
6.		Primary education services
7.		Secondary education services
8.		Higher education services
9.		Adult education
10.		Other[1]
	Communication services:	
11.	Land-based courier services	(none)
	Enhanced telecommunication services	
12.		Electronic mail
13.		Voice mail
14.		On-line information and data base retrieval
15.		Electronic data interchange
16.		Enhanced/value-added facsimile services
17.		Code and protocol conversion
18.		On-line information and/or data processing
19.		Other[1]
	Audiovisual services	
20.		Motion picture, video tape production and distribution
21.		Motion picture projection services
22.		Radio and television services
23.		Radio and television transmission services
24.		Sound recording
25.		Other[1]
	Health care services	
26.		Medical and dental services
27.		Veterinary services
28.		Services provided by midwives, nurses, et. al.
29.		Hospital and other health care facilities
30.		Other human health services
31.		Other[1]

Table 15-A-1, *continued*
Subject industries and corresponding subsectors found in the GATT Secretariat's Services Sectoral Classification List

Number	Subject Industry	Subsector
	Professional services:	
	Legal services	
32.		(none)
	Accounting services	
33.		(none)
	Advertising services	
34.		(none)
	Architecture, engineering, and construction	
35.		Architectural services
36.		Engineering services
37.		Integrated engineering services
38.		General construction work for buildings
39.		General construction work for civil engineering
40.		Installation and assembly work
41.		Building completion and finishing work
42.		Other
	Transportation services:	
	Rail transport	
43.		Passenger transport
44.		Freight transport
45.		Pushing and towing services
46.		Maintenance/repair of rail transport equipment
47.		Supporting services for rail transport services
	Road transport	
48.		Passenger transport
49.		Freight transport
50.		Rental of commercial vehicle with operator
51.		Maintenance/repair of road transport equipment
52.		Supporting services for road transport services
	Services auxiliary to all modes of transport	
53.		Cargo-handling services
54.		Storage and warehouse services
55.		Freight transport agency services
56.		Other
	Other transport services[1]	
57.		(none)
	Travel and tourism services	
58.		Hotels and restaurants (excl. catering)
59.		Catering
60.		Travel agencies and tour operators
61.		Tourist guide services
62.		Other[1]

[1]Entries for these subsectors were discarded from the calculations.

Source: General Agreement on Tariffs and Trade, *Services Sectoral Classification List* (MFN.GNS/W/120).

Treatment of Entries Referencing Cross-Industry Commitments

Throughout the national schedules, many industry-specific commitments, especially those addressing commercial presence and the presence of natural persons, reference cross-industry commitments.[12] For instance, when identifying limitations that apply to the presence of natural persons, trading partners routinely make the following entry: "unbound, except as indicated in the cross-industry commitments." Because this entry grants some degree of market access and national treatment by allowing certain foreign service providers to enter markets under conditions specified in the cross-industry commitments, these entries have been recorded as partial commitments. They are less restrictive than "unbound" entries that provide no exemptions.

Similarly, all subject trading partners have made use of an entry that reads "none, except as indicated in the cross-industry commitments." These entries have been recorded as full commitments. Certain trading partners employed this language for the sake of transparency, but the additional language is not necessary. Under the GATS scheduling methodology, cross-industry commitments are applicable to all entries showing full or partial commitments.

Table 15-A-2

Table 15-A-2 expresses the number of full commitments as a share of the total entries made by each trading partner.[13] Composite shares reflect overall restrictiveness by trading partner (bottom row) and by industry (right-hand column). The composite share of each Asia/Pacific trading partner in table 15-A-2 is presented graphically along the vertical axis in figures 15-1 and 15-2. The higher the share, the less restrictive the market. Partial commitments are not reflected in the shares appearing in table 15-A-2 because they vary too much in terms of restrictiveness.

For example, the first cell of table 15-A-2 reflects Australia's full commitments regarding distribution services. For the purposes of this discussion, the distribution services industry consists of four subsectors: commission agents' services, wholesaling, retailing, and franchising.[14] Australia's full commitments number six with respect to commission agents' services, six for wholesaling, four for retailing, and six for franchising, for a combined total of 22 full commitments. Since there are 4 subsectors comprising

[12]Cross-industry commitments are referred to as "horizontal" commitments in the schedules.

[13]In some cases, schedules listed full commitments that were further qualified to include only a portion of the industry activity. For example, a country may offer a full commitment on wholesale trade services, but exclude wholesale of automobiles from coverage. Under this methodology, this schedule entry would still be counted as a full commitment. Due to this limitation, some schedules may appear to be more comprehensive than they are in actuality.

[14]The subsector entitled "other distribution services" was omitted from the calculations. This has the effect of reducing the total possible entries under the major heading of distribution services by eight.

distribution services, and 8 possible entries within each subsector,[15] there are 32 entries applicable to distribution services. Hence, full commitments account for 69 percent of all of Australia's entries applicable to distribution services.

Composite shares for trading partners were derived in a similar manner. In Australia's schedule, full commitments in all of the subject industries totaled 175. Dividing the number of full commitments by Australia's 440 total possible entries results in a composite share of 40 percent.

Composite shares for the subject industries reflect a similar methodology. For example, the 10 Asia/Pacific trading partners made a total of 320 entries with respect to distribution services. Full commitments on distribution services scheduled by the subject trading partners number 62, accounting for 19 percent of total entries.

Table 15-A-3

Table 15-A-3 expresses the number of full and partial commitments as a share of the total entries made by each trading partner for each industry. Composite shares have been calculated for each trading partner (bottom row) and each industry (right-hand column). These composite shares are represented graphically along the horizontal axis in figures 15-1 and 15-2. The higher the share, the greater the extent of benchmarking. Both full and partial commitments identify trade-impeding measures and prohibit trading partners from making these measures more restrictive. Hence, both act as benchmarks.

For example, the first cell of table 15-A-3 reflects Australia's full and partial commitments regarding distribution services. As in the previous discussion, the distribution services industry consists of four subsectors. Australia's full commitments number 22, and partial commitments number 10 with respect to all of these subsectors, for a combined total of 32. Since there are 32 entries applicable to distribution services, full and partial commitments account for 100 percent of all of Australia's entries applicable to distribution services. Composite shares for trading partners were derived similarly. In Australia's case, full and partial commitments to all the subject industries totaled 250. Dividing this number by Australia's 440 total possible entries results in a composite share of 57 percent.

Composite shares for the subject industries reflect a similar methodology. The 10 subject economies made 320 entries with respect to distribution services. Full commitments number 62 and partial commitments number 24, for a combined total of 86 full and partial commitments, which is equivalent to 27 percent of the subject countries' total entries pertaining to distribution services.

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[15] Schedule entries correspond to modes of supply. Four entries are made with respect to market access, and four more are made with respect to national treatment.

Table 15-A-2
The share of schedule entries binding full market access and national treatment

(Percent)

Industry	Australia	Hong Kong	India	Indonesia	Korea	Malaysia	New Zealand	Philippines	Singapore	Thailand	Composite share, by industry
Distribution services[1]	69	13	0	0	50	0	56	0	0	6	**19**
Education services[1]	31	0	0	0	0	0	56	0	0	25	**11**
Communication services											
Enhanced telecommunication services[1]	64	38	27	21	75	45	63	21	36	11	**40**
Courier services	0	38	0	0	0	0	0	38	63	0	**14**
Audiovisual services[1]	0	20	0	0	30	13	40	0	60	10	**17**
Health care services[1]	40	0	3	0	0	23	10	0	28	0	**10**
Professional services											
Accounting services	50	25	0	0	50	38	75	0	50	25	**31**
Architecture and engineering services	75	0	4	8	71	38	42	0	38	17	**29**
Construction services	40	18	3	10	43	38	50	0	45	15	**26**
Advertising services	75	50	0	0	75	38	75	0	75	25	**41**
Legal services	50	0	0	0	0	63	75	0	0	25	**21**
Transportation services[1]	21	0	0	0	5	0	54	34	0	9	**12**
Travel and tourism services[1]	59	28	3	38	59	28	75	31	47	19	**39**
Composite share, by trading partner	**40**	**13**	**4**	**7**	**32**	**19**	**51**	**14**	**25**	**12**	**22**

[1]Calculations for this industry exclude a subsector for miscellaneous services, for which commitments were not comparable across subject trading partners.

Source: Compiled by the staff of the U.S. International Trade Commission.

Table 15-A-3
The share of schedule entries binding full or partial market access and national treatment

(Percent)

Industry	Australia	Hong Kong	India	Indonesia	Korea	Malaysia	New Zealand	Philippines	Singapore	Thailand	Composite share, by industry
Distribution services[1]	100	13	0	0	81	0	75	0	0	13	**27**
Education services[1]	44	0	0	0	0	0	75	0	0	44	**12**
Communication services											
Enhanced telecommunication services[1]	86	50	54	43	100	71	100	43	63	29	**61**
Courier services	0	38	0	0	0	0	0	100	75	0	**21**
Audiovisual services[1]	0	20	10	0	40	28	80	0	70	30	**25**
Health care services[1]	55	0	10	0	0	40	15	0	18	15	**14**
Professional services											
Accounting services	100	50	0	0	100	100	100	0	100	50	**55**
Architecture and engineering services	100	0	17	67	100	100	67	0	63	42	**51**
Construction services	60	18	10	50	80	75	75	0	88	45	**46**
Advertising services	100	63	0	0	100	88	100	0	88	75	**54**
Legal services	100	0	0	0	0	100	100	0	0	50	**30**
Transportation services[1]	30	0	0	0	11	0	71	66	0	27	**18**
Travel and tourism services[1]	88	28	25	75	88	56	100	63	59	56	**58**
Composite share, by trading partner	**57**	**15**	**12**	**19**	**48**	**37**	**74**	**29**	**36**	**32**	**33**

[1]Calculations for this industry exclude a subsector for miscellaneous services, for which commitments were not comparable across subject trading partners.

Source: Compiled by the staff of the U.S. International Trade Commission.

APPENDIX A

REQUEST LETTER

INI/6

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

RECEIVED
OFC OF THE SECRETARY
US INT'L TRADE COMM

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Office of the Secretary
Int'l Trade Commission

The Honorable Marcia E. Miller
Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Dear Chairman Miller:

I wish to express my appreciation for the Commission's ongoing work examining the schedules of commitments submitted by our trading partners in accordance with the General Agreement on Trade in Services (GATS). The GATS provides a framework that disciplines government regulation of trade and investment in service industries and obligates signatory countries to establish schedules of commitments. These schedules indicate the extent to which signatory countries accord market access and national treatment to foreign service providers on an industry-by-industry basis. The Commission's reports present clear, concise summaries of commitments undertaken by our trading partners and describe the benefits of these commitments to U.S. service providers. In addition, this work provides an effective reference for future trade-liberalizing negotiations.

In this regard, additional assessments of foreign commitments pursuant to the GATS are of interest to my office. Therefore, under section 332(g) of the Tariff Act of 1930, I request, pursuant to authority delegated to me by the President, that the U.S. International Trade Commission conduct an investigation that (1) examines the content of schedules of commitments for the countries specified below, explaining the commitments in non-technical language; and (2) clearly and concisely identifies the potential benefits and limitations of such commitments.

The Commission's report should examine sector-specific and horizontal commitments pertaining to the following service industries in Australia, Hong Kong, India, Indonesia, Korea, Malaysia, New Zealand, the Philippines, Singapore, and Thailand:

- distribution services (defined as wholesaling, retailing, and franchising services);
- education services;
- communication services (defined as enhanced telecommunication, audiovisual, and courier services);
- health care services;
- professional services (defined as accounting, advertising, and legal services);
- architectural, engineering, and construction (AEC) services;
- land-based transport services (defined as rail and trucking services); and
- travel and tourism services.

The Commission is requested to deliver this report no later than August 15, 1997. Discussions regarding the feasibility and timing of an additional report examining commitments scheduled by certain East European and Middle Eastern nations should be held upon delivery of this report. The countries comprising the focus of this potential request would be Bulgaria, the Czech Republic, Hungary, Poland, Romania, the Slovak Republic, Bahrain, Egypt, Israel, Kuwait, Qatar, Turkey, and the United Arab Emirates.

It is the intent of this office to make the Commission's reports available to the general public in their entirety. Therefore, the report should not contain any confidential business or national security classified information.

The Commission's assistance in this matter is greatly appreciated.

Sincerely,

Charlene

Charlene Barshefsky
Acting United States Trade Representative

APPENDIX B

FEDERAL REGISTER NOTICE

The Commission will also provide a comprehensive and critical assessment of the results that this body of literature provides regarding the dynamic gains from trade. This assessment will explicitly identify the merits and shortcomings of the technical methods, data and results in the existing available literature. The Commission will also explore empirically the potential improvements that this assessment may suggest. USTR requested that the Commission provide its report by October 31, 1997, and that it make the report available to the public in its entirety.

Written Submissions: The Commission does not plan to hold a public hearing in connection with this investigation. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons. To be assured of consideration, written submissions must be filed by August 13, 1997.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Issued: December 2, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-31455 Filed 12-10-96; 8:45 am]

BILLING CODE 7020-02-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-374]

General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia/Pacific Trading Partners

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 26, 1996.

SUMMARY: Following receipt on November 13, 1996, of a request from the Office of the United States Trade Representative (USTR), the Commission instituted Investigation No. 332-374, General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia/Pacific Trading Partners, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: ormation on service industries may be obtained from Mr. Richard Brown, Office of Industries (202-205-3438) and Mr. Christopher Melly, Office of Industries (202-205-3461); economic aspects, from Mr. William Donnelly, Office of Economics (202-205-3223); and legal aspects, from Mr. William Gearhart, Office of the General Counsel (202-205-3091). The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202-205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

Background: As requested by the USTR in a letter dated November 12, 1996, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, has instituted an investigation and will prepare a report that (1) examines the content of schedules of commitments under the General Agreement on Trade in Services (GATS) for the countries specified below, explaining the commitments in non-technical language; and (2) seeks to identify the potential benefits and limitations of foreign commitments. The Commission will examine sector-specific commitments scheduled by Australia, Hong Kong, India, Indonesia, Korea, Malaysia, New Zealand, the Philippines, Singapore, and Thailand, with respect to the following industries:

- Distribution services (defined as wholesaling, retailing, and franchising services);
- Education services;
- Communication services (defined as enhanced telecommunication, courier, and audiovisual services);
- Health care services;
- Professional services (defined as accounting, advertising, and legal services);
- Architectural, engineering, and construction (AEC) services;
- Land-based transport services (defined as rail and trucking services); and
- Travel and tourism services.

In addition, the Commission will examine horizontal commitments relevant to the specified industries, such as those regarding investment and temporary entry and stay of foreign workers. As requested by the USTR, the Commission plans to deliver its report to the USTR by August 15, 1997. The investigation follows Commission Investigation No. 332-367, General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments, requested by the USTR on April 9, 1996, and Commission Investigation No. 332-358, General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments, requested by the USTR on December 28, 1994. In those reports, the Commission examined the commitments scheduled by selected trading partners with respect to the industries delineated above. The results of Investigation No. 332-367 will be published in December 1996. The results of Investigation No. 332-358 were published in December 1995 in USITC Publication 2940. This publication is available on the ITC Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on March 27, 1997. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 13, 1997. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 13, 1997. The deadline for filing post-hearing briefs or statements is 5:15 p.m., April 10, 1997. In the event that, as of the close of business on March 13, 1997, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1816) after March 13, 1997, to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the

Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on April 10, 1997. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: December 2, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–31454 Filed 12–10–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division; U.S. v. Oldcastle Northeast, Inc. et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (c)–(h), the United States publishes below the comment received on the proposed final judgment in *United States, et al.* v. *Oldcastle Northeast, Inc., et al.*, Civil Action No. 396CV01749 AWT, filed in the United States District Court for the District of Connecticut, together with the United States' response to that comment.

Copies of the comment and response to the comment are available for inspection and copying in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, DC 20530 (telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Connecticut. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

December 2, 1996

James A. Dunbar, Esquire
Venable, Baetjer and Howard
1800 Mercantile Bank & Trust Building
Two Hopkins Plaza
Baltimore, Maryland 21201–2978

Re: *United States, et al.* v. *Oldcastle Northeast, Inc., et al.*, Civil Action No.: *396CV01749 AWT (District of Connecticut, September 3, 1996)*

Dear Mr. Dunbar: This letter responds to your letter of November 1, 1996 commenting on the proposed Final Judgment in the above-referenced civil antitrust case challenging the acquisition by CRH plc (CRH) through Oldcastle Northeast, Inc. (Oldcastle) of Tilcon, Inc. (Tilcon) from BTR plc (BTR). The Complaint alleges that the acquisition violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because it is likely substantially to lessen competition in the manufacture and sale of asphalt concrete in the greater Hartford, Connecticut area. Under the proposed Final Judgment, the defendants are required to divest Tilcon's East Granby, Connecticut quarry; two, three-ton, hot-mix plants located at the East Granby Quarry; and all intangible assets located at the quarry to assure that competition is not substantially lessened in the greater Hartford area.

In your letter, you expressed concern that the proposed Final Judgment does not address competitive concerns in additional geographic areas (Vermont and the southwestern and central parts of New Hampshire). The analytical process used by the Antitrust Division to determine which areas the acquisition might raise substantial competitive concerns required us to assess a number of factors including market concentration, potential adverse competitive effects, and entry. These factors must be evaluated in an economically meaningful product and geographic market. This analysis is aimed at allowing the Division to answer the ultimate inquiry: whether the acquisition is likely to create or enhance market power or facilitate the exercise of market power in a relevant market. After a thorough investigation which included the geographic areas mentioned in your letter, the Division concluded that the asphalt concrete market in the greater Hartford area was the relevant market where Oldcastle's acquisition of Tilcon might create or enhance market power. It was determined that in Vermont and central New Hampshire, the same number of competitors would be present after the acquisition as were present before the acquisition. In southwestern New Hampshire, a sufficient number of competitors were found to be active in the region. The Division concluded that in these three areas, the acquisition did not raise significant competitive concerns.

Your letter also raises concerns about the transfer to Pike Industries (a subsidiary of Oldcastle) of Tilcon's right of first refusal to purchase the assets of your client, Frank W. Whitcomb Construction Corporation (Whitcomb). Until Oldcastle elects to exercise this option, Whitcomb will remain a competitor to Pike Industries in Vermont and New Hampshire. If Oldcastle elects to exercise the option, the Division has the ability to investigate the competitive impact of the potential acquisition at that time.

In carefully reviewing the concerns made in your letter about asphalt concrete competition in New Hampshire and Vermont, it is clear that your concerns are outside the scope of the Complaint filed by the Division. When evaluating a complaint and proposed final judgment under the Antitrust Procedures and Penalties Act, unless a strong showing of bad faith or improper behavior can be made, a court will not reach beyond the complaint to evaluate claims that the Division did not make and to inquire why they were not made (*See, United States v. Microsoft Corp.*, 56 F.3d 1448, 1459–60 (D.C. Cir 1995)). A court's authority to review a decree depends on how the Division exercises its prosecutorial discretion. In this instance, the Court's review is linked to whether the proposed Final Judgment assures that competition will not be substantially lessened as alleged in the Complaint brought by the Division.

The Division appreciates you bringing your concerns to our attention and hopes that this information will alleviate them. While the Division understands your position, we believe that the proposed Final Judgment will adequately alleviate the competitive concerns created by CRH's acquisition of Tilcon from BTR. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the Federal Register and filed with the Court.

Thank you for your interest in the enforcement of the antitrust laws.

Sincerely yours,

Frederick H. Parmenter,

Senior Trial Attorney.

November 1, 1996

VIA HAND-DELIVERY

J. Robert Kramer, Esquire
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W.—Suite 3000
Washington, D.C. 20530

Re. *United States of America, et al.* v. *Oldcastle Northeast, Inc., et al.*, Civil Action No. 396 CV 01749 AWT, *In the United States District Court for the District of Connecticut*

Dear Mr. Kramer: This letter will serve as the comments of my client, The Frank W. Whitcomb Construction Corporation ("Whitcomb"), on the proposed final judgment in the above-referenced matter. These comments concern an issue that has already been raised with the Department of Justice, but has not been acted upon.

We believe that the facts and circumstances set forth in this letter demonstrate that the acquisition of Tilcon, Inc. by Oldcastle Northeast, Inc. ("Oldcastle") presents a substantial threat to competition in the aggregate and asphalt paving business in Vermont and the southwestern and central parts of New Hampshire, by elimination of a potential

APPENDIX C

GLOSSARY OF TERMS

APPENDIX C

GLOSSARY OF TERMS

Benchmarks : Benchmarks are commitments that identify trade-impeding measures and, under the terms of the GATS, prevent these measures from becoming more onerous in the future.

Bound commitment: A commitment that cannot be made more restrictive in the future; only further liberalization is permitted (unless an agreed penalty is paid). See measure.

Commercial presence: One of four possible modes of delivering services to foreign consumers, whereby a service supplier establishes any type of business or professional establishment in the foreign market. Commercial presence comprises entities such as corporations, trusts, joint ventures, partnerships, sole proprietorships, associations, representative offices, and branches. See modes of supply.

Commitment: An agreement regarding a measure, usually regarding market access and national treatment, that affects international trade in services. Commitments are listed in national schedules and identify service sectors and modes of supply that are affected. See bound commitment, unbound measure, full commitment, partial commitment, standstill commitment, rollback commitment, and sector-specific commitment.

Consumption abroad: One of four possible modes of delivering services to foreign consumers, whereby the consumer, or the consumer's property, receives a service outside the territory of the home country, either by moving or being situated abroad. See modes of supply.

Cross-border supply: One of four possible modes of delivering services to foreign consumers, whereby the service is transported beyond the home country of the service supplier to the foreign consumer. Cross-border supply may entail transportation by mail, telecommunications, or the physical movement of merchandise embodying a service (e.g., a diskette storing information) from one country to another. The mode is "cross-border" when the service supplier is not present within the territory where the service is delivered. See modes of supply.

Cross-industry commitment: Commitment that applies to international trade in multiple service sectors. Typically, cross-industry commitments include limitations on market access or national treatment. Cross-industry commitments appear at the beginning of the national schedules where they are referred to as "horizontal commitments."

Full commitment: This is recorded in the national schedule of a country that wishes to impose no limit on market access or national treatment in a given sector and mode of supply. In the national schedules, a full commitment is reflected by the word "none" (meaning no limitations) in the entry for the relevant service sector and mode of supply.

Home country: The country in which the service supplier is based. See host country.

Host country: The country in which services are rendered by a foreign service supplier, in the form of a natural person or commercial presence. See home country.

Juridical person: Any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately or governmentally owned. Juridical persons include any corporation, trust, partnership, joint venture, sole proprietorship, or association. Branches and representative offices are not included.

Limitations on market access: The column on a country's GATS schedule that lists the restrictions on specific modes of supply (cross-border supply, consumption abroad, commercial presence, or presence of natural persons) that apply to conducting a services business in the Member country for the given sector or subsector.

Limitations on national treatment: The column on a Member's GATS schedule that lists the restrictions on specific modes of supply (cross-border supply, consumption abroad, commercial presence, or presence of natural persons) that apply to how foreign services companies are treated in comparison to domestic ones in a given sector or subsector.

Measure: A law, regulation, rule, procedure, decision, or administrative action that affects trade in services. Measures may pertain to: (1) the purchase of, payment for, or use of a service; (2) a service supplier's access to, and use of, services which are available to the general public; and (3) a service supplier's ability to establish a presence, including a commercial presence, in a host country.

Modes of supply: Means of delivering services to foreign consumers. Modes of supply are defined on the basis of the origins of the service supplier and consumer, and the degree and type of territorial presence which they have at the moment that the service is delivered. There are four modes of supply: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; and (4) presence of natural persons. See definitions of each for more information.

Most-Favored-Nation (MFN): Trading status accorded to a nation wherein the terms and conditions of trade with that nation are as favorable as those granted any other nation. The MFN obligation in Article II of the GATS states that the most favorable treatment actually accorded in all sectors, whether the subject of a commitment or not, must also be accorded to all other Members.

Most-Favored-Nation (MFN) exemption: Specific exceptions to the MFN obligation are included in each Member's "List of MFN Exemptions."

National treatment: Treatment of a foreign service supplier that is no less favorable than that accorded to domestic service suppliers.

Natural person: A person who is a national of a country under the law of that country (e.g., persons eligible to hold a passport of that country), or in the case of a country which does not have nationals (e.g., territories), a person who has the right of permanent residence under the law of that country.

Partial commitment: This is recorded in the national schedule of a country that wishes to impose some limits on market access or national treatment in a given sector and mode of supply. Unless otherwise stated, the limitations presented in the national schedule are the only limitations that apply to a specific mode of supplying the service.

Presence of natural persons: One of four possible modes of delivering services to foreign consumers, whereby one individual, acting alone or as an employee of a service supplier, provides a service while present in a foreign market.

Rollback commitment: A type of bound commitment wherein a country maintains some, but not all, currently existing regulations that limit market access or national treatment in a given sector and mode of supply. In the national schedules, a rollback commitment will describe the remaining measures that are inconsistent with free market access and national treatment.

Supply of a service: The production, distribution, marketing, sale, and delivery of a service.

Standstill commitment: A type of bound commitment wherein a country maintains all existing regulations that limit market access or national treatment in a given sector and mode of supply. In the national schedules, a standstill commitment will describe the measures that are currently inconsistent with free market access and national treatment.

Sector-specific commitment: Legally enforceable commitment affecting trade in a specific service sector. They generally specify limitations regarding market access or national treatment.

Transparency: Transparency exists in a commitment when the nature and extent of all regulatory impediments to trade are explained in their entirety, with precision and clarity.

Unbound measure: A measure that may be inconsistent with market access or national treatment that can be made more restrictive in the future. In the national schedules, an unbound measure is reflected by the word "unbound" in the relevant service sector and mode of supply. In the event that a service sector or mode of supply is unbound, a new measure that is inconsistent with market access and national treatment may be introduced in the future. The word "unbound" may be accompanied by an asterisk if a particular mode of supply is not technically feasible.

APPENDIX D

CONCORDANCE OF INDUSTRY CLASSIFICATIONS

Concordance of industry classification

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
1. BUSINESS SERVICES	
A. Professional services	
a) Legal services	Group 861: Legal services *Subclass 86119*: Legal advisory and representation services in judicial procedures concerning other fields of law *Class 8612*: Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc. *Class 8613*: Legal documentation and certification services *Class 8619*: Other legal advisory and information services
b) Accounting, auditing, and bookkeeping services	Group 862: Accounting, auditing, and bookkeeping services *Subclass 86212*: Accounting review services
d) Architectural services	Class 8671: Architectural services *Subclass 86711*: Advisory and pre-design architectural services *Subclass 86712*: Architectural design services *Subclass 86713*: Contract administration services *Subclass 86714*: Combined architectural design and contract administration services *Subclass 86719*: Other architectural services
e) Engineering services	Class 8672: Engineering services *Subclass 86721*: Advisory and consultative engineering services *Subclass 86722*: Engineering design services for the construction of foundations and building structures *Subclass 86723:* Engineering design services for mechanical and electrical installations for buildings *Subclass 86724:* Engineering design services for the construction of civil engineering works *Subclass 86725*: Engineering design services for industrial processes and production *Subclass 86726:* Engineering design services, not elsewhere classified *Subclass 86727*: Other engineering services during the construction and installation phase *Subclass 86729:* Other engineering services
f) Integrated engineering services	Class 8673: Integrated engineering services *Subclass 86731*: Integrated engineering services for transportation infrastructure turnkey projects *Subclass 86732*: Integrated engineering and project management services for water supply and sanitation works turnkey projects *Subclass 86733*: Integrated engineering services for the construction of manufacturing turnkey projects *Subclass 86739*: Integrated engineering services for other turnkey projects
h) Medical and dental services	Class 9312: Medical and dental services
i) Veterinary services	Group 932: Veterinary services
j) Services provided by midwives, nurses, physiotherapists and para-medical personnel	*Subclass* 93191: Deliveries and related services, nursing services, physiotherapeutic and para-medical services

Concordance of industry classification--*continued*

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
F. Other business services	
a) Advertising services	Group 871: Advertising services
2. COMMUNICATION SERVICES	
B. Courier services	Class 7512: Courier services *Subclass 75121*: Multi-modal courier services
C. Telecommunication services	
f) Facsimile services	Class 7521: Public telephone services Class 7529: Other telecommunication services
h) Electronic mail	Class 7523: Data and message transmission services
i) Voice mail	Class 7523: Data and message transmission services
j) On-line information and data base retrieval	Class 7523: Data and message transmission services
k) Electronic data interchange	Class 7523: Data and message transmission services
l) Enhanced/value-added facsimile services (including store and forward, store and retrieve)	Class 7523: Data and message transmission services
m) Code and protocol conversion	*No corresponding CPC*
n) On-line information and/or data processing (including transaction processing)	Group 843: Data processing services
D. Audiovisual services	
a) Motion picture and video tape production and distribution services	Class 9611: Motion picture and video tape production and distribution services *Subclass 96112*: Motion picture or video tape production services
b) Motion picture projection service	Class 9612: Motion picture projection services *Subclass 96121*: Motion picture projection services
c) Radio and television services	Class 9613: Radio and television services
d) Radio and television transmission services	Class 7524: Program transmission services
e) Sound recording	*No corresponding CPC*
f) Other	*No corresponding CPC*

Concordance of industry classification--*continued*

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES	
A. General construction work for buildings	Group 512: Construction work for buildings *Subclass 5121*: Construction work for one- and two-dwelling buildings *Subclass 5122*: Construction work for multi-dwelling buildings *Subclass 5124*: Construction work for commercial buildings *Subclass 5127*: Construction work for educational buildings *Subclass 5128*: Construction work for health buildings
B. General construction work for civil engineering	Group 513: Construction work for civil engineering Class 5131: Construction work for highways (except elevated highways), streets, roads, railways, and airfield runways Class 5135: Construction work for local pipelines and cables, ancillary works
C. Installation and assembly work	Group 514: Assembly and erection of prefabricated constructions Group 516: Installation work *Subclass 5161*: Heating, ventilation, and air conditioning work *Subclass 5162*: Water plumbing and drain laying work *Subclass 5163*: Gas fitting construction work *Subclass 5164*: Electrical work
D. Building completion/finishing work	Group 517: Building completion and finishing work
E. Other	Group 511: Pre-erection work at construction site Group 515: Special trade construction work Group 518: Renting services related to equipment for construction or demolition of building or civil engineering work, with operator
4. DISTRIBUTION SERVICES	
A. Commission agents' services	Group 621: Commission agents' services
B. Wholesale trade services	*Subclass 61111*: Wholesale trade services of motor vehicles Group 622: Wholesale trade services Class 6222: Wholesale trade services of food, beverages, and tobacco
C. Retailing services	Class 6111: Sales of motor vehicles *Subclass 61112*: Retail sales of motor vehicles Class 6113: Sales of parts and accessories of motor vehicles Class 6121: Sales of motorcycles and snowmobiles and related parts and accessories Group 613: Retail sales of motor fuel Group 631: Food retailing services Group 632: Non-food retailing services Class 6329: Other specialized retail sales of non-food products Group 633: Repair services of personal and household goods
D. Franchising	Class 8929: Other non-financial intangible assets

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
5. EDUCATIONAL SERVICES	
A. Primary education services	Group 921: Primary education services *Subclass 9211*: Preschool education services *Subclass 9219*: Other primary education services
B. Secondary education services	Group 922: Secondary education services *Subclass 9221*: General secondary education services *Subclass 9222*: Higher secondary education services *Subclass 9223*: Technical and vocational secondary education services
C. Higher education services	Group 923: Higher education services *Subclass 9231*: Post-secondary technical and vocational educational services *Subclass 9239*: Other higher education services
D. Adult education services	Group 924: Adult education services, not elsewhere classified
E. Other education services	Group 929: Other education services
8. HEALTH RELATED AND SOCIAL SERVICES, *excludes those subsectors listed in section 1A(h-j), under Business Professional Services. (see page G-2)*	
A. Hospital services	Class 9311: Hospital services
B. Other human health services, *excludes CPC "93191: Deliveries and related services, nursing services, physiotherapeutic and para-medical services*."	*Subclass 93123*: Dental services Class 9319: Other human health services *Subclass 93193*: Residential health facilities services other than hospital services *Subclass 93199*: Other human health services, not elsewhere classified
D. Other	*No corresponding CPC*
9. TOURISM AND TRAVEL RELATED SERVICES	
A. Hotels and restaurants, *includes catering services*	Group 641: Hotel and other lodging services Class 6411: Hotel lodging services Class 6412: Motel lodging services *Subclass 64192*: Holiday center and holiday home services *Subclass 64193*: Letting services of furnished accommodations *Subclass 64194*: Youth hostel and mountain shelter services *Subclass 64195*: Camping and caravanning site services Group 642: Food serving services Class 6421: Meal serving services with full restaurant service Class 6422: Meal serving services in self-service facilities Class 6423: Caterer services, providing meals to outside Group 643: Beverage serving services for consumption on the premises Class 6431: Beverage serving services without entertainment Class 6432: Beverage serving services with entertainment
B. Travel agencies and tour operators services	Class 7471: Travel agency and tour operator services
C. Tourist guides services	Class 7472: Tourist guide services
D. Other	*No corresponding CPC*

Concordance of industry classification--*continued*

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
11. TRANSPORT SERVICES	
E. Rail transport	
a) Passenger transportation	Class 7111: Rail passenger transportation
b) Freight transportation	Class 7112: Rail freight transportation
F. Road transport	
a) Passenger transportation	*Subclass 71211*: Urban and suburban regular transportation *Subclass 71213*: Interurban regular transportation Class 7122: Other non-scheduled passenger transportation *Subclass 71221*: Taxi services *Subclass 71222*: Rental services of passenger cars with operator *Subclass 71223*: Rental services of buses and coaches with operator
b) Freight transportation	Class 7123: Freight transportation *Subclass 71231*: Transportation of frozen or refrigerated goods *Subclass 71232*: Transportation of bulk liquids or gases *Subclass 71233*: Transportation of containerized freight *Subclass 71234*: Transportation of furniture
c) Rental of commercial vehicles with operator	Class 7124: Rental services of commercial freight vehicles with operator Class 7213: Rental services of seagoing vessels with operator
G. Pipeline transport	Class 7139: Transportation of other goods
b) Transportation of other goods (excluding fuel)	
H. Services auxiliary to all modes of transport	
a) Cargo handling services	Class 7411: Container handling services Class 7419: Other cargo handling services
b) Storage and warehouse services	Group 742: Storage and warehousing services
c) Freight transport agency services	Group 748: Freight transport agency services
d) Other	Group 749: Other supporting and auxiliary transport services
I. Other transport services	*No corresponding CPC*

Source: GATT Secretariat's *Services Sectoral Classification List* (MTN/GNS/W/120).

APPENDIX E

CROSS-INDUSTRY COMMITMENTS

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Australia	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** • Foreign investment is permitted subject to notification and examination under Australia's foreign investment policy guidelines and the Foreign Acquisitions and Takeovers Act 1975. • Proposals for foreign interests to invest in the services identified in the Schedule are examined without the need to demonstrate economic benefits or to provide for Australian equity participation and are approved unless national interest considerations arise. **National Treatment**: • Australia's foreign investment policy guidelines apply to foreign-owned or controlled enterprises after establishment in Australia.	**Market Access:** None **National Treatment:** • At least two of the directors of a public company must be ordinarily resident in Australia. • Unbound for current and future measures at the federal, state, or local government levels according rights or preferences to any indigenous person or organization providing for the favorable treatment of any indigenous person or organization in relation to acquisition, establishment, or operation of any commercial or industrial undertaking in the service sector. For the purposes of the Schedule, an indigenous person means a person of the Aboriginal race of Australia or a descendant of an indigenous inhabitant of the Torres Strait Islands.
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Unbound for subsidies for research and development.	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Australia (continued)	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for measures concerning the entry and temporary stay of natural persons in the following categories: - Executives and senior managers, as intracorporate transferees, are granted initial stay for periods of up to 4 years. Executives and senior managers being natural persons who are employees of a company operating in Australia, and who will be responsible for the entire or a substantial part of that company's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business, including directing the company or a department or sub-division of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or sub-division of the company. - Independent executives, without requiring compliance with labor market tests, are granted initial stay for periods up to a maximum of 2 years. Independent executives being natural persons who meet the criteria of executives and senior managers who intend, or are responsible for the establishment in Australia, of a new business of a service supplier with its head of operations in the territory of another Member and which has no other representative, branch or subsidiary in Australia. - Service sellers, as business visitors, without requiring compliance with labor market tests, are granted initial stay of up to 6 months. Service sellers being natural persons not based in Australia who are (sales) representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves. Applicants for business visitor visas are natural persons seeking to travel to Australia for business purposes and not intending to engage in work that might otherwise be carried out by an Australian citizen or permanent resident. This requirement will be satisfied where the service seller's remuneration and financial support for the duration of the visit are derived entirely from sources outside Australia.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Australia (continued)	Entry and Temporary Stay of Natural Persons, continued			**Market Access, continued:** - Specialists, subject to individual compliance with labor market testing, are permitted initial stay up to a maximum of 2 years with provision of extension not to exceed 4 years. Specialists being natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of a company's operations in Australia. Skills are assessed in terms of the applicant's employment experience, qualifications and suitability for the position. - Labor market testing is not required for (I) natural persons who have specialized knowledge at an advanced level of a proprietary nature of the company's operations and have been employed by the company for a period of not less than 2 years and (ii) if the position in question is within a labor agreement in force at the time of application. A labor agreement is an agreement between the Australian Government, employers or industry organizations and unions for the entry of specialists from overseas. • None of the above apply in cases of labor/management disputes. **National Treatment:** • Unbound except as indicated under Market Access.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Hong Kong	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for measures concerning general managers, senior managers, and specialists, which are permitted temporary stay for a period of 1 year, with possible extension to 5 years. - General manager shall be defined as the chief executive officer or equivalent who leads and directs an establishment in Hong Kong of a service supplier of a Member and who is personally responsible for the overall performance of the establishment in Hong Kong. - Senior manager shall be defined as a person who directs the establishment in Hong Kong of a service supplier of a Member or a department of that establishment. Such a person would normally supervise and control the work of other supervisory, professional or managerial employees in Hong Kong, have the authority to hire and fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorization) in Hong Kong, exercise discretionary authority over day-to-day operations in Hong Kong, and be personally responsible to the general manager for the performance of a major part of the establishment in Hong Kong. The term 'senior manager' does not include first-line supervisors, unless the employees supervised are professional, nor does it include employees who primarily perform tasks necessary for the production of the service. - Specialist shall be defined as a person within an establishment of a service supplier of a Member who possesses knowledge at an advance level of expertise, possesses proprietary knowledge of the organization's service, research equipment, techniques, or management and who is essential to the operation of the establishment of that service supplier in Hong Kong. • Natural persons seeking entry under the commitments made by Hong Kong shall: - be employees who have been in the prior employ of the concerned service supplier which sponsors their entry into Hong Kong for a period of not less than 1 year immediately preceding the date of application for admission; and - during their stay in Hong Kong, except with the prior approval of the Hong Kong Government, not change employment or employers. • The commitments on intra-corporate transfer shall only apply to natural persons of service suppliers which have a bona fide business establishment operating in Hong Kong. The number of natural persons who may seek entry under these commitments shall be reasonable having regard to the size and the nature of the business operation of the relevant establishment in Hong Kong. **National Treatment:** • Unbound except as indicated under Market Access.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
India	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment**: • In the case of collaboration with public sector enterprises or government undertakings as joint venture partners, preference in access will be given to foreign service suppliers/entities that offer the best terms for technology transfer.	**Market Access:** None **National Treatment:** None
	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for measures affecting the temporary entry and stay of: - Business visitors, who are permitted entry and stay of no more than 90 days. Business visitors are defined as persons who visit India for business negotiations or for preparatory work for establishing a commercial presence in India and who will not receive remuneration from within India. - Intracorporate transferees of managers, executives, and specialists, who are permitted entry and stay of no longer than 5 years. Such personnel must have been employed by the foreign service provider for at least one year prior to the date of application for entry into India and must be transferred to a branch or representative office or a juridical person owned or controlled by the aforesaid juridical person. Managers are persons who direct a branch office or one or more departments as their head, or supervise or control the work of other supervisory, professional or managerial personnel and have the authority to appoint or remove the personnel and powers to exercise discretionary authority over day-to-day operations. Executives are persons who are in senior positions within a juridical person including a branch who primarily direct the management, have wide decision-making powers and are either members of the board of directors or receive directions from the board or the general body of shareholders. Specialists are persons who possess high qualifications and knowledge at an advanced level relevant to the organization's activities or of the organization's research, equipment, techniques or management and may include persons who are members of accredited professional bodies. - Professionals, who are permitted entry and stay of 1 year, extendable with permission for a maximum of 3 months. Professionals are defined as natural persons to be engaged by a juridical person in India as part of a services contract for rendering professional services for which he/she possesses the necessary academic credentials and professional qualifications with 3 years experience in the field of physical sciences, engineering, or other natural sciences. **National Treatment:** • Unbound except as indicated under Market Access.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Indonesia	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** • Commercial presence permitted only in the form of joint ventures or representative offices, unless specified. • Joint ventures should be in the form of Limited Liability Enterprise (Perseroan Terbatas/PT) with no more than 49 percent foreign equity. **National Treatment**: None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Foreigners are not allowed to own land under the Undang-Undang Pokok Agraria (Land Law) No. 5 of 1960. However, a joint venture enterprise could hold the right for land use (Hak Guna Usaha) and building rights (Hak Guna Bangunan), and also may rent or lease land and property.	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Non-resident taxpayers will be subject to withholding tax of 20 percent for income derived in Indonesia from interest, royalties, dividends, or service fees.	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Indonesia (continued)	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for directors, managers, and technical experts and advisors, unless otherwise specified. These categories of natural persons are permitted a maximum stay of 2 years subject to 1 year extension under Indonesian Labor and Immigration Laws and Regulations. - Director is defined as one or a group of persons entrusted by the shareholders of a services providing entity with the final overall control and direction of the enterprise, and legally responsible to act on behalf of the enterprises inside and/or outside of the court. - Manager is defined as a senior employee of a service supplier who primarily directs the management of the organization, receiving general supervision or direction principally from the board of directors of the business, including directing the service supplier or a department or sub-division thereof, supervising or controlling the work of other supervisory, professional or managerial employee or having the authority to hire or fire or recommend such or other personnel actions. - Technical expert/advisor is defined as a person employed by a service supplier who possesses a standard of high or common (I) qualifications referring to a type of work or trade requiring specific technical knowledge or (ii) knowledge essential or proprietary to the service, research equipment, techniques or management. • Managers and technical experts must satisfy an economic needs test. **National Treatment:** • Foreign natural persons supplying services are subject to charges levied by National, Provincial, and Municipal Governments. • Expatriate employees must hold valid working permits issued by the Ministry of Manpower. • Expatriate employees must meet immigration requirements and procedures to enter the territory of the Republic of Indonesia.
Korea	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** • The acquisition of outstanding stocks of existing domestic companies is restricted. • Foreign portfolio investment in Korean stocks is permitted only for the stocks listed on the Korean Stock Exchanges. Individual foreign investors can own up to 3 percent of each company's total stock, while aggregate foreign investment can not exceed 10 percent. These ceilings were to be raised in 1995. • The establishment of branches must be approved in accordance with the Foreign Exchange Management Act. **National Treatment**: • The amount of foreign investment must be at least 50 million Won.	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

		Mode of Supply[2]		
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Korea (continued)	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • The acquisition of land is unbound except: I) by companies that are not deemed as foreign under the Alien Land Law, and ii) by companies that are deemed as foreign under the Alien Land Law and branches of foreign companies, subject to approval or notification in accordance with the Alien Land Law for the following legitimate business purposes: - Land used for supplying services during the course of normal business activities; - Land used for housing senior company personnel under pertinent laws; and - Land used for fulfilling landholding requirements stipulated by pertinent laws.	**Market Access:** None **National Treatment:** • The acquisition of land is unbound except that the leasehold right of land is permitted, subject to approval.
	Subsidies and/or taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Eligibility for subsidies, including tax benefits, may be limited to companies that are established in Korea according to pertinent laws. • Unbound for research and development subsidies.	**Market Access:** None **National Treatment:** • Eligibility for subsidies, including tax benefits, may be limited to residents according to the pertinent laws.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Korea (continued)	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for measures permitting the entry and temporary stay of executives, senior managers, or specialists. These personnel must be employees of firms that supply services through 100-percent foreign ownership, joint venture companies, or branches established in Korea and who have been in the employ of their firm for a period of not less than 1 year immediately preceding the date of their application for admission. Such personnel are permitted entry and stay for 3 years, which may be extended. Business visitors are permitted entry and stay of only 90 days. - Executives are persons within an organization who primarily direct the management of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organization. - Senior Managers are persons within an organization who primarily direct the organization or a department of the organization; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to-day operations. Senior managers do not include first-line supervisors, unless the employees supervised are professionals, nor do they include employees who primarily perform tasks necessary for the supply of the service. - Specialists are persons within an organization who possess knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research equipment, techniques, or management of the organization. - Business visitors are i) Executives or senior managers who are responsible for the setting up, in Korea, of a commercial presence of a service supplier of a Member when the service supplier has no representative office, branch or subsidiary in Korea and the persons are not engaged in making direct sales or supplying services; or ii) Natural persons not based in the territory of Korea and receiving no remuneration from a source located within Korea, who are engaged in activities of representing a service supplier for the purpose of negotiating for the sale of the services of that supplier when such sales are not directly made to the general public and the persons are not engaged in supplying the services. • Korea's commitments do not apply in the case of labor-management disputes. **National Treatment**: • Unbound except for the categories indicated under Market Access.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Malaysia	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** • Approval required for the acquisition of assets or interests of Malaysian companies and businesses, as well as for mergers or take-overs, in cases where: - the acquisition of voting rights of a Malaysian corporation by any single foreign interest or associated group amounts to 15 percent or more or an aggregate foreign interest of 30 percent or more, or exceeds RM5 million in value; - any proposed acquisition of any assets or interests by any means will result in ownership or control passing to foreign interest; and - Foreign interests take control of Malaysian corporations through any form of joint-venture agreement, management agreement, technical assistance agreement or other arrangements. • Approval is normally granted, but may be denied in circumstances where the proposed investment conflicts with the interest of the State. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Approval is required, and may be denied if the acquisition, disposal, or dealing of land or any interest in land, property, and real estate is undertaken for speculative or non-productive purpose, or for purposes that may conflict with the interest of the State.	**Market Access:** None **National Treatment:** None
	Subsidies and/or taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Incentives are limited to eligible Malaysian-owned corporations engaged in service sectors promoted by the Government. • Any measure and special preference granted to Bumiputra, Bumiputra status companies, trust companies and institutions set up to meet the objectives of the new Economic Policy (NEP) and the National Development Policy (NDP) shall be unbound. • Corporations in which the Government has an interest shall, in acquiring services, give first consideration to service suppliers in which the Government also has an interest. This requirement does not prevent the acquisition of services from other service suppliers where their services are competitive in terms of price, quality, and delivery.	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Malaysia (continued)	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for measures affecting the entry and temporary stay of senior managers, specialists, professionals or business visitors. Senior managers, specialists, and professionals are permitted temporary stay of up to 5 years, and business visitors are permitted temporary stay of no longer than 90 days. - Senior managers are defined as persons within an organization having proprietary information of the organization and who exercise wide latitude in decision making relating to the establishment, control and operation of the organization and who are directly responsible to the CEO and receive only general supervision or direction from the board of directors or partners of the organization. - Only two specialists per organization are permitted. Specialists must be persons within the organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's new service products and technology, research equipment, and techniques or management. Additional specialists or experts may be allowed subject to market tests and the training of Malaysians through an acceptable training program. - Senior managers and specialists must have been in the employ of the foreign service supplier for a period of not less than 1 year immediately preceding the date of their application for a work permit and must serve in a similar capacity. - Professionals are defined as persons who possess necessary academic credentials, professional qualifications, experience and/or expertise which have been duly recognized by the professional bodies in Malaysia and registered with those respective professional bodies. - Business visitors are defined as persons not based within Malaysia, receiving no remuneration from a source located within Malaysia, who have been employed for at least 1 year by a foreign service supplier, whose entry and temporary stay is for the purposes of negotiating for the sale of services or entering into agreements to sell services for that service supplier and who will not engage in direct sales to the general public. **National Treatment:** • Unbound except as indicated under Market Access.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
New Zealand	Investment	**Market Access:** None **National Treatment:** • Unbound for current and future measures at the central and sub-central levels according more favorable treatment to any Maori person or organization in relation to the acquisition, establishment or operation of any commercial or industrial undertaking.	**Market Access:** None **National Treatment**: • Under the Overseas Investment Regulations 1985, issued under the Overseas Investment Act 1973, Overseas Investment Commission approval is required for the following investments by overseas persons: - Acquisition or control of 25 percent or more of the shares or voting power in a company where either the consideration of transfer or the value of assets of the company exceeds $NZ10 million; - the establishment of new business in New Zealand where the total expenditure in setting up the business exceeds $NZ10 million; - the acquisition of the assets of the business where the total consideration paid or payable for the assets exceeds $NZ10 million; - the issue or allotment of shares where the 25-percent threshold has already been exceeded or will be exceeded as a result of the issue and where the total consideration paid or payable exceeds $NZ10 million. • Unbound for enterprises currently in State ownership. • Unbound for current and future measures at the central and sub-central levels according more favorable treatment to any Maori person or organization in relation to the acquisition, establishment or operation of any commercial or industrial undertaking.	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Overseas Investment Commission consent is required, regardless of the dollar value of the investment, for acquisition of rural land. Approval is also required under the Land Settlement Promotion and Land Acquisition Act for the purchase of some classes of land.	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
New Zealand (continued)	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except for measures concerning the entry and temporary stay of natural persons employed by a service supplier of another Member that supplies services within New Zealand through a commercial presence, falling within the following categories; - Executives and senior managers, as intracorporate transferees, are permitted initial stay for periods up to 3 years. These managers are defined as natural persons who are senior employees of an organization, who have been employed by that organization for at least 12 months prior to their proposed transfer to New Zealand, and who are responsible for the entire or a substantial part of an organization's operations in New Zealand, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business; - Specialist and/or senior personnel, as intracorporate transferees, for periods of an initial stay up to a maximum of 12 months. Such personnel are defined as natural persons being transferred to undertake a specific or specialist task at a senior level within the company; this may include, for example, short-term specialist development projects; or the establishment in New Zealand of a commercial presence of a service supplier with its head of operations in the territory of another Member and not having any other commercial presence in New Zealand; - Specialist personnel, subject to labor market tests, as intracorporate transferees, for periods of stay up to a maximum of 3 ears. Such personnel are defined as natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of an organization's operations in New Zealand. Skills are assessed in terms of the applicant's employment experience, qualifications, and suitability for the position; - Installers and servicers, as intracorporate transferees, for periods not exceeding 3 months in any 12 month period. Such personnel are defined as natural persons who are installers and servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment; - Service sellers, as business visitors, for a period or periods not exceeding in aggregate 3 months in any calender year. Service sellers being natural persons who are representatives of a service supplier of another Member, whether or not that service supplier has a commercial presence in New Zealand, and are seeking temporary entry to New Zealand for the purpose of negotiating for the sale

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
New Zealand (continued)	Entry and Temporary Stay of Natural Persons, continued			of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct sales to the general public. • Unbound in the case of labor/management disputes. **National Treatment:** • Unbound except for measures concerning the categories of natural persons referred to under Market Access. • Unbound for current and future measures at the central and sub-central levels according more favorable treatment to any Maori person or organization in relation to the acquisition, establishment or operation of any commercial or industrial undertaking.
Philippines	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** • In Activities Expressly Reserved by Law to Citizens of the Philippines (i.e., foreign equity is limited to a minority share): - The participation of foreign investors in the governing body of any corporation engaged in activities expressly reserved to citizens of the Philippines by law shall be limited to the proportionate share of foreign capital of such entities. **National Treatment:** • A foreign firm, engaged in non-manufacturing activities availing itself of peso borrowings, shall observe, at the time of borrowing, the prescribed 50:50 debt-to-equity ratio. Foreign firms covered are: - partnerships, more than 40 per cent of whose capital is owned by non-Filipino citizens; and - corporations, more than 40 per cent of whose total subscribed capital stock is owned by non-Filipino citizens. - This requirement does not apply to banks and non-bank financial intermediaries.	**Market Access:** • All executive and managing officers must be citizens of the Philippines. **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** • All lands of the public domain are owned by the State. • Only citizens of the Philippines or corporations or associations at least 60 percent of whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease. • Foreign investors may lease only private-owned lands. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Non-resident aliens may be admitted to the Philippines for the supply of a service after a determination of the non-availability of a person in the Philippines who is competent, able and willing, at the time of application, to perform the services for which the alien is desired. • The Philippines shall undertake a review of this provision within 2 years after entry into force of the Agreement. **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Singapore	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** • Commercial presence, right of establishment and movement of juridical persons are subject to compliance with the following provisions: - A foreigner who wishes to register a business firm must have a local manager who should be a Singapore citizen or a Singapore Permanent Resident or a Singapore Employment Pass holder. (However, a foreigner who is a Singapore Permanent Resident or a Singapore Employment Pass holder can register a business without appointing a local manager.)	**Market Access:** None **National Treatment:** • At least one director of the company must be locally resident. • All branches of foreign companies registered in Singapore must have at least 2 locally resident agents. (To qualify as locally resident, a person should be either a Singapore citizen or Singapore Permanent Resident or Singapore Employment Pass holder.)

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Singapore (continued)	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Measures concerning the presence of natural persons are unbound, except for intracorporate transferees. • Measures concerning the temporary movement of skilled personnel are unbound except for the temporary movement of intra-corporate transferees at the level of managers, executives and specialists. Intracorporate transferees refers to managers, executives and specialists, as defined below, who are employees of firms that provide services within Singapore through a branch, subsidiary, or affiliate established in Singapore and who have been in the prior employ of their firms outside Singapore for a period of not less than 1 year immediately preceding the date of their application for admission and who are one of the following: - Managers - persons within an organization who primarily direct the organization, or a department or sub-division of the organization, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorization), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service. - Executives - persons within the organization who primarily direct the management of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or services of the organization. - Specialists - persons within an organization who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organization's service, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions). • Entry for these intra-corporate transferees is limited to a 3 year period that may be extended for up to 2 additional years for a total term not to exceed 5 years. **National Treatment:** Unbound
Thailand	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** • Unless otherwise specified, commercial presence in sectors or subsectors in this schedule is permitted only through a limited liability company which is registered in Thailand and which meets the following conditions: - Foreign equity participation must not exceed 49 per cent of the registered capital; and - The number of foreign shareholders must be less than half of the total number of shareholders of the company concerned. **National Treatment:** • Unless otherwise specified, national treatment for commercial presence is unbound.	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Trading Partner	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** • Regarding acquisition and usage of land, according to the Land Code of Thailand, foreign nationals or domestic companies which are deemed foreigners are not allowed to purchase or own land in Thailand. However, they may lease land and own buildings. Foreigners are also allowed to own part of condominium units under the laws and regulations governing the ownership of condominiums. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Entry and Temporary Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unless otherwise specified, temporary movement of natural persons is unbound except in the following categories: - A natural person who stays in Thailand for not more than 90 days for the purpose of participating in business meetings or contacts, entering into contract to sell or purchase services, visiting of business establishments or other similar activities; - A corporate transferee of the managerial or executive level or a specialist, provided that such person has been employed by the company concerned outside Thailand for a period of not less than 1 year immediately preceding the date of his or her application for admission and has satisfied the criteria for management needs stipulated by the Department of Employment. Temporary entry is limited to a 1 year period and may be extended for a further two terms of not more than 1 year each. - In considering managerial needs, the following facts shall be taken into consideration by the relevant authority, namely: Size of fully paid-in capital, employment creation, extent of foreign investment, export promotion, transfer of technology, special needs of the management. **National Treatment:** None

[1] Only the cross-industry limitations that apply to the services covered in this report are included in this table. Please refer to the original commitments for a comprehensive listing of all cross-industry limitations.

[2] Consumption abroad is not included as a mode of supply in this table because restrictions on investment, real estate, subsidies, and taxation are not applicable to consumption abroad.

Source: World Trade Organization, General Agreement on Trade in Services (GATS), Schedules of Specific Commitments, Apr. 1994.

APPENDIX F

MOST-FAVORED-NATION (MFN) EXEMPTIONS

Most-favored-nation (MFN) exemptions

Trading Partner listing MFN Exemption	Services to which Exemption Applies	Description of Measures Inconsistent with MFN principle	Countries to Which the Measure Applies	Duration of Preference	Reason for Listing MFN Exemption
Australia	Audiovisual services	National treatment accorded preferentially for co-produced film and television productions. Co-production status confers national treatment in respect of access to finance and tax concessions and simplified requirements for the temporary entry of skilled personnel.	Italy, UK, Canada, and France, and any other country where cultural cooperation might be desirable and which is prepared to exchange preferential treatment on the terms and conditions specified in the Australian co-production program.	Indefinite	To promote collaborative efforts between Australian and foreign film producers and general cultural links.
	Audiovisual services	Undetermined measures taken to respond to any unreasonable measures imposed on Australian services or service suppliers by another Member.	Members maintaining MFN exemptions which provide for unreasonable unilateral actions.	Indefinite. However, this exemption will only be activated in the event of any other Member maintaining exemptions which provide for unreasonable unilateral action.	To protect Australia from any unreasonable unilateral actions from other members.
India	Audiovisual services	National treatment accorded preferentially to co-produced motion pictures and television productions.	All countries	Indefinite	To promote cultural exchange.
Indonesia	All services	Low level occupations are reserved for Indonesian citizens. Based on Government Policy, limited exemptions may be granted to citizens of certain countries.	Nationals of Malaysia, Singapore, Brunei Darussalam, Papua New Guinea, and Australia have been granted limited access to low level occupations.	Indefinite	To promote development of the region.
	Construction services (government funded projects)	Various measures providing preferential short listing in international competitive bidding.	Nationals of Brunei Darussalam, Malaysia, the Philippines, Singapore, and Thailand have been granted special treatment.	As long as the ASEAN treaties remain in force.	To enhance the advancement of civil works, industrial construction, and the economic development of the ASEAN region.
Malaysia	All services	Liberalization of measures affecting movement of foreign semi-skilled and unskilled workers into Malaysia may be carried out in a differentiated manner based on reasons including proximity, either contiguous or regional, religious and/or cultural compatibility.	All countries	Indefinite	To maintain arrangements under existing bilateral agreements and ensure that the movement of foreign semi-skilled and unskilled workers contributes to the social stability and industrial harmony in Malaysia.

Most-favored-nation (MFN) exemptions

Trading Partner listing MFN Exemption	Services to which Exemption Applies	Description of Measures Inconsistent with MFN principle	Countries to Which the Measure Applies	Duration of Preference	Reason for Listing MFN Exemption
Malaysia (continued)	All services	Waiver of measures in existing or future policies limiting foreign equity or interests in companies and businesses in Malaysia shall be carried out in a preferential and differentiated manner.	All countries	Indefinite	The measure would be applied in a differentiated manner to those investments that match Malaysia's specific development requirements with the abilities and facilities provided by foreign enterprises and their home countries. The objective is to maximize economic benefits of foreign participation in the Malaysian economy.
	Advertising services	The 20-percent foreign content limitation is waived for these countries.	Brunei Darussalam, Indonesia, the Philippines, Singapore, and Thailand.	5 years	To promote intra-ASEAN tourism.
New Zealand	All services	More favorable entry conditions possible for up to 20 nationals each year for employment purposes.	Kiribati	Indefinite	New Zealand's Development Assistance policies aimed at providing income, job skills, on-the-job training and work experience.
	All services	More favorable entry conditions possible for up to 80 nationals each year for employment purposes.	Tuvalu	Indefinite	
	Audiovisual services	National treatment, in the form of access to finance and tax concessions and simplified requirements for the temporary entry of skilled personnel into New Zealand for the purposes of the co-production of films and television programs, is extended to audiovisual works covered under Film Co-Production Agreements or Arrangements with the countries indicated.	Canada, France, United Kingdom, and any other country where cultural cooperation might be desirable and which is prepared to exchange preferential treatment on the terms and conditions specified in such arrangements or agreements.	Indefinite	To support the development of the New Zealand film industry for cultural reasons and to share benefits with others with similar policies.
Philippines	All services	The labor market test is waived and simplified entry procedures are provided through a special visa category for traders and investors of countries with which the Philippines has concluded treaties on entry rights for traders and investors.	All countries	Expiration date or termination of bilateral treaties.	To facilitate entry into the Philippines, on the basis of reciprocity, of foreign nationals for purposes of trade, investment, and related activities.

Most-favored-nation (MFN) exemptions

Trading Partner listing MFN Exemption	Services to which Exemption Applies	Description of Measures Inconsistent with MFN principle	Countries to Which the Measure Applies	Duration of Preference	Reason for Listing MFN Exemption
Singapore	All services	Preference accorded to foreign workers from traditional sources of supply.	Traditional sources of supply.	Indefinite, subject to periodic review in light of domestic and national policy considerations.	Due to land constraints and the fundamental need for social cohesion among the multiracial population, the Government needs to regulate the flow of foreign workers, both skilled and unskilled, to ensure that Singapore is not overpopulated and foreigners who could potentially disrupt social order are not admitted.
	All services	Investment guarantees are accorded only to cosignatories of Investment Guarantee Agreements.	All countries. Current signatories are: ASEAN countries, France, the Netherlands, Switzerland, the United Kingdom, Belgo-Luxembourg Economic Union, Sri Lanka, People's Republic of China, Vietnam, Taiwan, the United States.	Indefinite, subject to periodic review in light of international developments.	Currently, many countries' obligations to protect foreign investments from unforeseen contingencies are governed by the provisions established under bilateral investment guarantee agreements. The agreements also help to provide the economic and political guarantees for the promotion of bilateral relations.
	All services	Section 48 of the Income Tax Act provides for the granting of relief against Singapore tax payable on income derived from a Commonwealth country.	Commonwealth countries which grant reciprocal relief.	Indefinite, subject to periodic review in light of international developments.	To promote cooperation among Commonwealth members.
	Audiovisual services	The Singapore Broadcasting Corporation accords preferential broadcast and transmission rights to selected countries with which it has signed bilateral agreements.	All countries. Currently, Brunei and Indonesia have Memoranda of Understanding with Singapore.	Indefinite. Singapore will keep the possibility of removing this exemption under review.	To promote social, economic and cultural relations.
	Legal services	All measures pertaining to the provision of legal services in Singapore.	All countries	Indefinite. Singapore will keep the possibility of removing this exemption under review.	To maintain the current policy of case-by-case approval of establishments by foreign law firms in Singapore.
Thailand	All services	Only U.S. citizens and entities are granted national treatment with respect to operating businesses and providing services in Thailand.	United States	10 years	To comply with existing bilateral agreement.
	Accounting services	National treatment accorded preferentially based on reciprocity.	Countries that allow Thai nationals to practice auditing in their territories.	Indefinite	To promote reciprocity.

Most-favored-nation (MFN) exemptions

Trading Partner listing MFN Exemption	Services to which Exemption Applies	Description of Measures Inconsistent with MFN principle	Countries to Which the Measure Applies	Duration of Preference	Reason for Listing MFN Exemption
Thailand (continued)	Audiovisual services	Permission to publish newspapers granted to natural persons from countries which have treaties with Thailand.	Countries that have treaties with the Thai Government.	Indefinite	To promote reciprocity.
	Land transportation	Provision of passenger or freight transportation and rental of noncommercial vehicles subject to reciprocal treatment.	Countries participating in the agreement on international road transport with Thailand.	Indefinite	To promote reciprocity.

Source: World Trade Organization, General Agreement on Trade in Services (GATS), Final List of Article II (MFN) Exemptions, Apr. 1994.

APPENDIX G

CALENDAR OF WITNESSES APPEARING AT THE PUBLIC HEARING

CALENDAR OF PUBLIC HEARINGS

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject	:	GENERAL AGREEMENT ON TRADE IN SERVICES: EXAMINATION OF THE SCHEDULES OF COMMITMENTS SUBMITTED BY ASIA/PACIFIC TRADING PARTNERS
Inv. No.	:	332-374
Date and Time	:	March 27, 1997 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101, 500 E Street, S.W., Washington, D.C.

ORGANIZATION AND WITNESS

Panel 1

The Freeman Company, Chevy Chase, Maryland

Harry L. Freeman, President

Panel 2

Andersen Worldwide, Washington, D.C.

Charles P. Heeter, Jr., Partner, Office of Government Affairs

Panel 3

American Bar Association, Washington, D.C.

Peter D. Ehrenhaft, Chair, Task Force on Legal Services in Japan and International Legal Scholar

Panel 4

Motion Picture Association, Washington, D.C.

Bonnie J.K. Richardson, Vice President, Trade and Federal Affairs

APPENDIX H

LIST OF COMPANIES, ASSOCIATIONS, AND GOVERNMENT AGENCIES INTERVIEWED BY COMMISSION STAFF

APPENDIX H

LIST OF COMPANIES, ASSOCIATIONS, AND GOVERNMENT AGENCIES INTERVIEWED BY COMMISSION STAFF

Service Industries

Accounting services
Arthur Andersen and Company
Coopers and Lybrand
Deloitte and Touche
Ernst and Young International
International Federation of Accountants
KPMG Peat Marwick

Advertising services
American Association of Advertising Agencies
BBDO Worldwide
International Advertising Association
J. Walter Thompson
McCann-Erickson Worldwide
Ogilvy and Mather
Pepsi-Cola Company
Procter and Gamble
Xerox Corporation

Architecture, Engineering, and Construction services
Accreditation Board for Engineering and Technology
American Consulting Engineers Council
American Institute of Architects
National Council of Examiners for Engineering and Surveying
National Society of Professional Engineers
United States Council for International Engineering Practice

Audiovisual services
Motion Picture Association of America

Courier services
DHL Worldwide Corporation
Federal Express Corporation
United Parcel Service
Air Courier Conference of America

Distribution services
Home Depot
International Franchise Association
International Mass Retail Association
International@Counsel
J.C. Penney
Liz Claiborne
Wal-Mart Stores

Education services
Alliance for International Education and Cultural Exchange
Assumption University, Thailand
Boston University
Center for Quality Assurance in International Education
Institute of International Education
International Employment Recruiting
Ladder International
NAFSA: Association of International Educators
Worldwide Educational Service, Inc.
New York University
State University of New York at Buffalo
University of Delaware

Enhanced Telecommunication services
Advantis (IBM)
AT&T
General Electric
GlobalOne (Sprint)
MCI

Health Care services
American Hospital Association
Columbia/HCA Healthcare
Federation of American Health Systems
Johns Hopkins University Hospital
Mayo Clinic
Tenet Healthcare

Legal services
American Bar Association
Baker and McKenzie
Morgan, Lewis, and Bockius
White and Case
Donovan, Leisure, Newton and Irvine
LeBoeuf, Lamb, Greene & MacRae
Oppenheimer, Wolff & Donnelly

Transportation services
American Association of Port Authorities

American Trucking Associations
Association of American Railroads
Railway Progress Institute

Travel and Tourism services
American Hotel and Motel Association
American Society of Travel Agents
G.C. Nanda & Sons Pte. Ltd.
P.T. Jakarta International Hotels & Development
Shangri-La Adventures
U.S. Tour Operators Association

General
Coalition of Service Industries
U.S. Chamber of Commerce
American Chambers of Commerce of Hong Kong,
India, Indonesia, Korea, Malaysia, and Singapore

Governmental Agencies
Embassies of Australia, India, Indonesia, Korea, Malaysia
New Zealand, the Philippines, Singapore, and Thailand
Federal Highway Administration
Federal Railroad Administration
Health Care Financing Administration
Hong Kong Economic and Trade Office
Hong Kong Hospital Authority
India Ministry of Health and Family Services
Korean Ministry for Health and Welfare
Korean Hospital Association
Singapore Ministry of Health
United States Trade Representative
U.S. Department of Commerce, Bureau of Economic Analysis
U.S. Department of Commerce, Bureau of the Census
U.S. Department of Commerce, International Trade Administration
U.S. Department of State, Embassies or Consulates of Hong Kong,
India, Indonesia, Korea, Malaysia, and Singapore

International Organizations
World Trade Organization