



Written Submission on behalf of the

Securities Industry and Financial Markets Association

United States Trade Representative's Intention to Enter into Negotiations for an
International Services Agreement (ISA)

Docket: USTR-2013-0001

Contact:
Stephen Pastrick
Director, Public Policy and Advocacy
spastrick@sifma.org
202-962-7459

Douglas Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Mr. Bell:

RE: SIFMA Support for International Services Agreement Negotiations

The Securities Industry and Financial Markets Association (SIFMA) appreciates the opportunity to submit testimony in support of the United States Trade Representative's (USTR) intention to enter into negotiations for an International Services Agreement (ISA). The financial services industry believes the ISA offers an opportunity to secure a strong agreement that will enhance the industry's ability to compete with other globally active firms and operate on a level playing field in participating countries. As negotiations in the Doha Development Round of multilateral trade negotiations in the World Trade Organization (WTO) have stalled, a more focused services agreement presents a unique opportunity to enhance the efficiency of the financial markets, facilitate trade, and reduce the cost of products to investors and issuers.

A successful ISA should: establish ambitious commitments on market access, including corporate form of choice and national treatment; address regulatory coherence including commitments that would incorporate the principles of financial regulatory reform negotiated through the G20; include appropriate investment protections; and prohibit restrictions on cross-border information flows. We detail these core elements further below and in Annex A.

Currently, the U.S. has free trade agreements with 10 of the 20 ISA participants. However, the negotiations offer the potential to strengthen economic relationships and deepen services integration that extends beyond these countries. The ISA will reinforce U.S. efforts to secure strong commitments in the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership.

Benefits to the U.S. Economy

Strengthening economic and services ties between the U.S. and ISA participants will contribute to economic growth and recovery, offer new opportunities for job creation, and provide an economic boost for all parties. A report¹ by the Peterson Institute for International Economics shows that U.S. services exports would increase by \$14 billion annually. This growth, and the promise of strengthened economic ties, will enhance the competitiveness and position of U.S. services firms. Recent research also suggests that business services, which include the financial services sector, employ twenty five

¹ Hufbauer, Gary Clyde, Bradford Jensen, and Sherry Stephenson. *Framework for the International Services Agreement*. Policy brief no. P B 1 2 - 1 0. N.p.: Peterson Institute for International Economics, 2012.

percent of U.S. workers and has grown by more than 20 percent over the past 10 years.²

Importantly, the global economy is more focused on services-based trade than ever before. Further analysis shows that service exports by “core” ISA countries to one another now amounts to roughly \$1.3 trillion annually. However, the service exports of those core countries to the world amount to over \$2 trillion, about 73 percent of world service exports. In 2008, the stock of FDI in services by these core countries to one another totaled \$4.2 trillion, almost 70 percent of world FDI in services.³

The U.S. services sector also enjoys a comparative advantage when operating globally. A recent study from the Organization for Economic Cooperation and Development (OECD) suggests the services sector is poised to benefit from significant opportunities, including a “global boom in infrastructure that could generate \$40 trillion ... from the private sector,” in the next two decades.⁴ Financial services will be vital to financing and supporting these types of projects. Continued access to these markets is critical for both the financial services industry and American growth -- the U.S. International Trade Administration (ITA) estimates that every \$1 billion in exports supports 5,000 American jobs.⁵

Expanding Opportunities for Financial Services

The U.S. is currently negotiating a number of regional trade and investment agreements that can both break down barriers to trade and set high standards for the financial services industry. The ISA, along with the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership, represents an important opportunity to build from the high standards already agreed to in previous bilateral agreements such as the Korea-U.S. FTA.

As the U.S. and many of the participating countries have well-developed financial markets, we emphasize that any agreement would be supported by already strong domestic regulatory traditions in addition to significant G20 regulatory reforms that are either underway or implemented. Given the global nature of the modern financial services markets and the way firms actually provide the capital markets services that their global customers demand, we urge for the agenda setting for these negotiations to be ambitious.

Financial services liberalization is often incorrectly equated with deregulation. We support strong regulation and prudential standards. However, there is much to be

² Jensen, J. Bradford. “U.S. Should Focus on Business Services, Not Manufacturing.” *Washington Post*. The Washington Post, 24 Feb. 2012.

³ Hufbauer, Gary Clyde, Bradford Jensen, and Sherry Stephenson. *Framework for the International Services Agreement*. Policy brief no. P B 1 2 - 1 0. N.p.: Peterson Institute for International Economics, 2012.

⁴ Ottesen, Frederic. “Infrastructure Needs and Pension Investments.” *OECD Journal: Financial Market Trends* 2011.1 (2011): 97-109.

⁵ International Trade Administration. Office of Trade and Industry Information. *U.S. EXPORT FACT SHEET May 2011 Export Statistics*. Trade.gov. N.p., 12 July 2011.

gained by focusing on questions of market access, nondiscriminatory treatment, enhancing regulatory efficiency, and promoting appropriate recognition regimes. Opening markets can be done without prejudice to regulatory standards. Liberalizing trade in financial services is about open markets, clear rules and fair competition, not deregulation.

In order to develop a global services template, we believe it is essential to liberalize financial services trade and pursue compatible regulatory regimes. To this end, SIFMA respectfully submits the following framework for consideration in the negotiations, which includes the following principles:

- 1) Full market access commitments, including provisions for commercial presence, cross-border business operations, consumption abroad, and regulatory transparency;
- 2) Regulatory coherence, including commitments that would incorporate the principles of financial regulatory reform negotiated through the G20; and
- 3) Ensuring appropriate investment protections for investors.

These commitments, when taken together, provide a framework where financial products and services can efficiently and effectively meet the needs of investors and issuers.

While high-standard financial services commitments that include these core protections remain a priority for the industry, other measures, such as the protection of cross-border data flows and transfers, and the inclusion of investor-state dispute settlement commitments, warrant closer attention and are important for firms operating in the global marketplace. The ability to store and process data from a central regional location, rather than establishing a local facility is essential. Forced localization of information will impede the economic efficiency of firms operating on a cross-border basis and clearly undermine the underlying premise of a comprehensive ISA in which barriers to trade and investment are removed in commerce between the parties. An agreement of this unique size and scope, we believe, will encourage other countries to enact similar measures.

Conclusion

The ISA negotiations provide an opportunity to improve services sector exports, create jobs, establish important protections for financial services firms operating globally, and develop a high-standard, 21st century agreement that can serve as a platform for ongoing and future trade and investment agreements.

Further, we encourage the Administration to proceed urgently on negotiations and set ambitious goals for finalizing and implementing an agreement. Concluding an agreement in a timely manner should be considered a top priority.

Annex A

Core Elements of Financial and Securities Industry Priorities

The following criteria are essential components of an International Services Agreement:

Commercial Presence

Each Party should permit foreign suppliers of capital markets-related services to establish a new commercial presence or acquire an existing commercial presence in the other Party's territory. Such suppliers should be able to choose their corporate form (e.g., a 100%-owned subsidiary, a branch or a joint venture) and be treated no less favorably than domestic suppliers (i.e., national treatment).

Cross-Border Business Operations

In the financial services sector many types of services can be performed across borders, without sacrificing appropriate prudential supervision. These services include buying and selling financial products across borders, participating in and structuring transactions, and providing investment advice. The Agreement should permit firms established in a Party to provide services cross-border to sophisticated clients (e.g., "qualified investors") without establishing a commercial presence and without being subject to separate licensing and approval requirements of the type that generally apply to firms commercially present in a market.

Consumers Traveling Abroad

A Party should permit consumers traveling outside their territories to utilize any capital markets related service in the other Party's jurisdiction.

Information Processing

Each party should permit dissemination and processing of financial information to provide clients with services necessary for the conduct of ordinary business. The Parties should therefore agree not to adopt or maintain measures that prevent or restrict transfers of information or the processing of financial information, including transfers of data by electronic means, or that prevent transfers of equipment, where such transfers of information, processing of financial information, or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. This commitment would not seek to nullify the right of a relevant authority to protect personal data, personal privacy, and the confidentiality of individual records and accounts. However, the agreement should include a commitment that when an act, policy or practice of a relevant authority seeks to restrain cross-border data transfers or processing, that that authority must demonstrate that the restriction is not an unnecessary restraint of trade or investment in light of alternative means by which to achieve the objective of protecting the identity of the customer, security of the data or the performance of prudential oversight.

Movement of Persons

Given the highly specialized nature of financial services work, the quality of service will depend to a great extent on a supplier's capacity to engage top managerial or other personnel without regard to their nationality. Each Party should permit temporary entry into their territories for persons who supply capital markets-related services to work with clients or to staff a commercial presence.

Codification of Existing Favorable Market Access Conditions

Each Party may currently provide market access that is consistent with some or all of the recommendations described above. In some cases, this level of access may not be reflected in their current GATS commitments. The Parties should at a minimum ensure that their commitments in any comprehensive trade and investment agreement reflect the level of market access afforded under their domestic laws. This will afford the legal certainty and predictability that stimulate economic activity.

New Services

The competitiveness of financial services firms depends on their ability to innovate, often rapidly in order to meet the special needs of customers by developing and offering new products and services. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Party but which is supplied in the territory of the other Party. Each Party should ensure that regulators allow private firms to meet these needs, while maintaining appropriate prudential supervision.

Regulatory Transparency

Regulation must be transparent: both suppliers and consumers of capital markets-related services must know what the rules are and have confidence that the rules will be applied consistently and fairly. Although there are different ways to achieve this, in general, regulators should: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations, where practicable; (ii) make publicly available the requirements that suppliers must meet in order to supply a service; and (iii) enforce laws and regulations on a non-discriminatory basis, according to fair and transparent criteria. Consideration could be given to the development of a joint publication similar to the U.S. Federal Register, or the EU Official Journal where capital market participants review and comment on legislative and regulatory financial services measures taken by either Member.

Investment Chapter

A strong investment chapter that applies equally to financial services investors, including with respect to core protections and investor-state dispute settlement, is vital. Such core protections would include ensuring that suppliers could establish a commercial presence, protection from expropriation, dispute settlement, and the free transfer of capital.

Intellectual Property Rights

Many financial services are providing and utilizing proprietary means and products that have been developed at considerable cost and need protection in order to maintain value and competitiveness for the property owner. As a result, it is important to ensure that intellectual property protection, including proprietary trade secrets, are adequately protected under the agreement.

Recognition Arrangements

The agreement should create a framework for developing recognition arrangements, which could include appropriate forms of substituted compliance focused on outcomes. Other steps might include consultation among capital markets participants and regulatory authorities which would lead to the development of a list of regulatory obstacles where recognition arrangements could be developed. For example, the U.S. and EU might seek to develop a common prospectus, or recognize current arrangements already in place for issuing a prospectus. We note that this can be accomplished while protecting investors and ensuring the integrity and stability of their financial systems.