

SERVICE INDUSTRIES COMMERCE DEVELOPMENT  
ACT OF 1982

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AUGUST 19, 1982.—Ordered to be printed

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Mr. DINGELL, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

[To accompany H.R. 5519 which on February 10, 1982, was referred jointly to the Committee on Ways and Means, the Committee on Energy and Commerce, and the Committee on Foreign Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce to whom was referred the bill (H.R. 5519) to give trade negotiating priority to service sector issues, to expand and clarify existing laws governing interstate and foreign commerce to better deal with service trade problems, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 4, strike out lines 7 through 11.

Page 4, line 12, strike out "(6)" and insert in lieu thereof "(5)".

Page 4, line 14, strike out "(7)" and insert in lieu thereof "(6)".

Page 4, line 16, strike out "(8)" and insert in lieu thereof "(7)".

Page 4, line 21, strike out "(9)" and insert in lieu thereof "(8)".

Page 7, strike out line 10 and all that follows through line 24, page 10, and insert in lieu thereof the following:

SEC. 5. (a)(1) The Secretary of Commerce (hereinafter in this Act referred to as the "Secretary") shall establish in the Department of Commerce a service industries development program designed to—

(A) promote the competitiveness of United States service and American employees through appropriate economic policies;

(B) promote actively the use of United States services abroad and develop trade opportunities for United States service firms abroad;

(C) on an annual basis, collect and analyze information from United States service industries, including United States foreign affiliates, regarding the nature and location of their foreign activities, and investment in, and income from, such activities;

(D) on an annual basis, collect and analyze information from foreign service industries, including foreign United States affiliates, regarding the nature and location of their activities in the United States market, and investment in, and income from, such activities;

(E) on an annual basis, collect and analyze information regarding United States purchases of foreign services;

(F) at least once every three years, collect and analyze information regarding foreign portfolio investments of United States institutional investors including, but not limited to, the location of such investments, the source and amount of such investments and the income derived from such investments;

(G) analyze Federal regulation and taxation of service industries, with particular emphasis on the effect of Federal taxation on the international competitiveness of United States firms and exports;

(H) collect such statistical information on the domestic service sectors as may be necessary for the development of governmental trade policies toward these sectors;

(I) conduct sectoral studies of domestic service industries, including assessments of their present and future capital needs and their ability to compete with foreign service industries;

(J) conduct a program of research and analysis of service-related trade issues and problems, including forecasts and industrial strategies; and

(K) provide statistical, analytical, and policy information to State and local governments and service industries.

(2) (A) The Secretary may request persons to submit to the Secretary such information as the Secretary may require as being necessary or appropriate to assist him in carrying out paragraph (1).

(B) All information submitted to the Secretary by a person under paragraph (1) shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that—

(i) the Secretary shall release upon request any such information of the Congress or any committee thereof; and

(ii) the Secretary may release or make public any such information, excluding investment and income data, in any aggregate or summary statistical form which does

not directly or indirectly disclose the identity or business operations of the person who submitted the information.

(3) (A) The Secretary shall have power to issue subpoenas requiring the production of any information requested by him under paragraph (1). Such production of information may be required from any place within the United States.

(B) If a person issued a subpoena under subparagraph (A) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which such person is found or resides or transacts business may (upon application by the Secretary) order such person to appear before the Secretary to produce the information. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(C) The subpoenas of the Secretary shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(D) All process of any court to which application may be made under this paragraph may be served in the judicial district wherein the person required to be served resides or may be found.

(4) (A) Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have willfully refused to obey a subpoena issued under paragraph (3) (A) shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$10,000. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice.

(B) Any person against whom a civil penalty is assessed under subparagraph (A) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(C) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(D) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph.

(b) The United States Trade Representative and the Secretary shall provide to State and local governments, upon their request, advice, assistance, and (except as may be otherwise prohibited by law) information concerning United States policies on international trade in services.

(c) For each year after 1982, the Secretary shall prepare a report (which shall be submitted to the Congress not later than January 15 of the following year) containing—

(1) an analysis of the activities during the year covered by the report of foreign suppliers within the various service sectors in the United States market;

(2) an analysis of Federal, State, and local regulation during such year of such foreign suppliers and of the potential effect of such regulation on trade relationships and negotiations;

(3) an analysis of the activities during such year of United States suppliers of services in foreign countries, including the types of services provided, the value of investment made in such services, and the income resulting from their provision;

(4) a study and an analysis of the trade impact during such year of any act, policy, or practice of each designated major trading country that—

(A) is inconsistent with the provisions of, or otherwise denies benefits to, United States service industries under any trade agreement, or

(B) with respect to service industry commercial activities of the United States which, as determined by the Secretary, are intentionally competitive, denies to United States service industries commercial opportunities which are substantially equivalent to those offered by the United States, and

(5) any legislative recommendations the Secretary deems necessary or appropriate, based upon the analyses required under paragraphs (1) through (4).

For purposes of paragraph (4)—

(A) The term “designated major trading country” means any major trading country which the Secretary, after consultation with the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives, designates as a country with respect to which the study and analysis under such paragraph is necessary and appropriate.

(B) The term “major trading country” means Canada, the European Economic Community, the individual member countries of such community, Japan, and any

other foreign or instrumentality designated by the Secretary for consideration for designation under subparagraph (A).

Page 14, strike out line 20 and all that follows through line 9, page 17, and insert in lieu thereof the following:

**PRESIDENTIAL ACTION REGARDING SERVICE SECTOR ACCESS AUTHORIZATIONS FOR FOREIGN SUPPLIERS OF SERVICES**

**SEC. 8. (a) For purposes of this section—**

(1) The term "congressional committee" refers to the Committee on Energy and Commerce or the Committee on Ways and Means of the House of Representatives, or the Committee on Commerce, Science, and Transportation or the Committee on Finance of the Senate.

(2) The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that allows a foreign supplier of services access to the United States market in a service sector concerned.

(b) After taking into account a recommendation of the Secretary made pursuant to subsection (d), or on his own motion, and subject to subsection (e), the President may restrict, to the extent he deems appropriate, the terms and conditions, or deny the issuance of, service sector access authorizations for foreign applicants if he determines that such applicants are citizens, nationals, or legal entities of a foreign country that limits the access of United States suppliers of services to markets in that country in a manner that is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

(c) (1) Any interested person may file a petition with the Secretary requesting the President to take action under subsection (b) and setting forth the allegations in support of the request. The Secretary shall review the allegations in the petition and, not later than forty-five days after the date on which he received the petition, shall determine whether to initiate an investigation.

(2) The Secretary shall immediately initiate an investigation upon receipt of a resolution of a congressional committee requesting the President to take action under subsection (b). Any such resolution shall set forth supporting allegations.

(3) If the Secretary considers that action should be taken under subsection (b), and no petition or resolution requesting action on the matter involved has been received, he may determine whether to initiate an investigation on his own.

(4) If the Secretary determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and, within ten days after the date on which the petitioner is so informed, shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(5) If the Secretary determines to initiate an investigation with respect to a petition under paragraph (1) or on his own under paragraph (3), or is directed to initiate an investigation by resolution of a congressional committee, he shall initiate an investigation regarding the issues raised. The Secretary shall publish the text of the petition or resolution, or a statement of his reasons for initiating an investigation under paragraph (3), as the case may be, in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing within the thirty-day period after the date of the determination or receipt of the resolution, or on a date after such period if agreed to by the petitioner or congressional committee.

(6) On the date an affirmative determination is made under paragraph (5) or a resolution of a congressional committee received, the Secretary shall initiate consultations with the foreign nation involved.

(d) On the basis of the investigation undertaken under subsection (c) (5) and the consultation, if any, under subsection (c) (6), the Secretary shall recommend to the President what action, if any, he should take under subsection (b) regarding the issues raised in the petition, resolution, or by his own motion. The Secretary shall make the recommendation not later than ninety days after the date on which the Secretary determines to initiate the investigation under subsection (c) (1) or (3) or receives the resolution from the congressional committee. Before making such recommendation, the Secretary shall provide opportunity for the presentation of views, including a public hearing by interested persons, and shall consult with the Federal agency having jurisdiction over the service sector access authorization involved, with other appropriate Federal agencies, and with the congressional committee concerned.

(e) (1) If the President decides to take action on his own motion under subsection (b) regarding a matter for which no petition or resolution was received under subsection (c), the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) Not later than twenty-one days after the date on which he receives the recommendation of the Secretary under subsection (d) with respect to a petition or resolution, the President shall determine what action, if any, he will take under subsection (b), and shall publish notice of his determination, including reasons for the determination, in the Federal Register.

#### PURPOSE AND SUMMARY

The purpose of this bill is to promote exports by U.S. service firms through the negotiation of international agreements that reduce or eliminate barriers to trade in services; the collection of accurate and

comprehensive data on the activities of U.S. service firms abroad and the activities of foreign service firms in the U.S. market; and the extension of authority to the President to limit or deny access of foreign service firms to the U.S. market if he determines that a foreign country discriminates against U.S. firms.

#### HEARINGS

The Subcommittee on Commerce, Transportation and Tourism held one day of hearings on this bill on March 11, 1982.

#### COMMITTEE CONSIDERATION

On Wednesday, June 16, 1982, the Subcommittee on Commerce, Transportation and Tourism met in open markup session and, with a quorum being present, considered the bill H.R. 5519, which was ordered reported as amended, by voice vote, to the Full Committee on Energy and Commerce.

On Thursday, June 24, 1982, the Full Committee met in open markup session and, with a quorum being present, considered the bill H.R. 5519, which was ordered reported, as amended, by voice vote, to the Full House.

#### BACKGROUND AND NEED

The United States has the largest service economy in the world. Services are generally meant to include "intangibles" such as insurance, banking, advertising, transportation, communications, data processing, engineering and construction. According to testimony submitted to the Subcommittee during its hearing, the services sector has become "the primary source of economic activity, economic growth, and employment in the United States today." It is estimated that approximately 65 percent of our GNP is attributable to services and that 7 out of 10 Americans are employed in the services sector. The United States is also the leading exporter of services in the world. In 1980 alone, it is estimated that our services industries exported over \$60 billion in services.

Trade in services has also become an increasingly large part of world trade as the services sector of other industrial countries has steadily increased. By 1978, service sector output was equal to production in the "goods" sector of most nations engaged in international trade. Between 1967 and 1975, world trade in services increased by approximately 6 percent and, by 1975, exports of services accounted for more than 20 percent of total exports of goods and services for all countries.

Furthermore, there is a growing link between trade in goods and trade in services. As a result of the large surpluses in the service account, the U.S. balance of payments in goods and services has been in surplus for the last two years.

In recent years, however, the United States has not been achieving the high level of growth in trade in services which was experienced in the past. This is due in large part to the proliferation of non-tariff barriers to trade in services. These barriers have developed in the absence of an international trade agreement on services and take a variety of forms.

The following examples of foreign barriers to U.S. service exports have been reported to the U.S. Trade Representative:

*Accounting*

*Argentina.*—Requirement that local audits be supervised by locally registered and qualified accountants, and audits must be signed by them.

*Brazil.*—Requirement that all accountants possess the requisite professional degree from a Brazilian University.

*France.*—Requirement that French citizens own more than 50 percent of accounting firms.

*Advertising*

*Argentina, Australia, Canada.*—Radio and television commercials produced outside of the country are forbidden.

*Canada.*—Income Tax Act prevents expenditures for foreign broadcast media along with foreign publications from being treated as a business expense for tax purposes.

*Air transport*

*England.*—Charges foreign air carriers higher landing fees than domestic carriers.

*France.*—French government has refused to allow foreign carriers to participate in the government sponsored Muller-Access Reservation System, while foreign participation in Air France Alpha III Reservation System is restricted to non-competitive rates.

*Chile.*—National carriers are given preferential user (landing and other) rates, while foreign carriers are not. This places foreign companies at a competitive disadvantage.

*Germany.*—Foreign carriers are denied access to the national airline reservation systems.

*Auto/truck rental and leasing*

*Mexico.*—Mexican law prohibits the operations of foreign motor carriers in Mexico at the same time as recent changes in U.S. law make it easier for Mexican carriers to apply for operating licenses in the United States. U.S. trucks are required to reload at borders while Mexican trucks travel directly through.

*Canada.*—Provincial regulations severely restrict operations of U.S. motor carriers in Canada, while hundreds of Canadian motor carriers have obtained licenses to operate in the United States. As a result, Canadian motor carriers may soon monopolize all shipments crossing the United States-Canadian border.

*Banking*

*Australia.*—Policy since 1945 allows foreign banks only to have representative offices in Australia. Foreign equity participation in commercial banks limited to less than 10 percent.

*Nigeria.*—Local incorporation of existing and new branches mandatory.

*Venezuela.*—1975 General Banking Law. Foreign banks new to Venezuela are limited to representative offices. Already established banks forced to reduce their equity participation to 20 percent.

*Franchising*

*Japan.*—Foreign franchisors are not allowed to restrict franchise from handling competitive products.

*Hotel and motel*

*Switzerland.*—Work permits for foreign employees are difficult to obtain, extend or renew.

*Insurance*

*Korea.*—Foreign insurance companies have been prohibited from doing business.

*Japan.*—Long waiting periods are required before foreign insurance companies can establish operations.

*Martime transportation*

Total percent of U.S. commerce shipped on domestic bottoms has fallen from 11 percent in 1960 to less than 5 percent in 1980. This is due to a variety of problems, *including* foreign barriers. Lack of coordinated U.S. policy is equally detrimental to U.S. shipping interests.

*Modeling*

*Germany.*—Requires all models to be hired through German agencies.

*Motion pictures*

*Egypt.*—Imports can only be made through state-owned commercial companies. No foreign films may be shown if Egyptian films are available.

*France.*—Restrictions placed on the earnings of foreign films.

*Tele-Communications, data processing and information services*

*Brazil.*—International links for teleprocessing systems are subject to approval by the government. The principal criteria used in evaluating requests for data links:

1. protection of Brazilian labor market
2. protection of operations of national firms and organizations

All data links approved are reviewed for renewal.

*Germany.*—International leased lines prohibited from being connected to German public networks unless the connection is made via a computer in Germany which carries out at least some processing in-country.

International leased lines available only if it is guaranteed that they are not used to transmit unprocessed data to foreign telecommunications networks.

*Spain.*—Fifty-seven percent import duty on equipment available locally.

Foreign barriers to U.S. service exports are similar to those barriers which restrict trade in goods. For example, government subsidies are the most effective type of barrier. Other foreign trade barriers include currency restrictions, licensing restrictions, discriminatory tax treatments, and barriers to trade in goods which directly affect the provision of services.

Government subsidies may be in the form of export credits or loan guarantees of private bank financing to create sufficient working capital. In addition, many countries give special tax subsidies on the basis of a company's export sales. Some countries also share in the risks of export sales by guaranteeing a part of the profits which a company expects to realize from such sales.

Currency restrictions include restrictions on capital and profit transfers in and out of a country. Oftentimes, ceilings are imposed on the amount of currency that can be taken out of a country. In addition many governments reserve the right to fix the exchange rate at which currency conversion can occur and how much money can be converted at any particular time.

Many countries establish purposely restrictive licensing requirements which are designed to discourage foreign business operations. These restrictions often involve prohibitively long delays and requirements that foreign businesses establish joint ventures with domestic companies.

Some countries also tax the profits of foreign business operations on a discriminatory basis. Such taxes often make foreign services non-competitive with services provided by domestic companies.

Many countries restrict the importation of products such as airline ground handling equipment, which certain service industries need in order to operate. Such restrictions effectively limit U.S. service exports.

It would not be accurate or fair to say that discrimination against foreign service firms is the only motivation for establishing barriers to service trade. Clearly, there is a strong desire of all nations to protect infant service industries and to improve the competitiveness of otherwise non-competitive service firms. There are, however, at least two reasons which most nations agree justify certain types of barriers: protection of currency and balance of payments and protection of the public interest through professional and technical standards.

All nations have an obligation to maintain a stable currency and a favorable balance of payments. Trade flows have a great deal to do with currency stability. As a result, restrictions on amounts of capital that can be converted at any particular time, limitations on profits and ceilings on the amount of a foreign national's salary that can be repatriated are tools which nations sometimes use in order to avoid wild fluctuations in currency value. On the other hand, lengthy procedural delays in the handling of currency transactions oftentimes reflect more of an obstructionist purpose than a concern over currency stability.

In addition, all governments have the responsibility to protect the health and safety of its citizens. In order to fulfill this responsibility, it is necessary to regulate many service industries, such as construction and engineering, airline operations and transportation generally.

Each country may choose a different way of regulating these industries. Differences in regulatory procedures and methods, therefore, need not necessarily represent discrimination against foreign firms. When such standards are applied fairly to both domestic as well as foreign firms, such standards are clearly non-discriminatory. On the other hand, some countries have developed such standards for the sole purpose of burdening foreign business operations.

The Committee bill is not designed to penalize foreign nations that regulate U.S. business activities for legitimate national purposes. Instead, it is meant to address only discriminatory practices against U.S. firms which cannot be justified for valid public interest reasons.

Barriers such as these will continue to hamper our trade in services unless they are removed. According to the testimony of Assistant U.S. Trade Representative Geza Feketekuty, these barriers have contributed in part to the decline of the U.S. share of international trade in services from approximately 20 percent in 1972 to 15 percent in 1980.

Recognizing the importance of trade in services to our economy, the present Administration has made a strong commitment to the elimination of trade in service barriers. While the Administration's efforts have already resulted in significant progress, the Administration witnesses testified that U.S. efforts in this area would be "greatly enhanced by the enactment of services legislation that would reflect a broad political commitment in the United States to this endeavor.

The Committee agrees with the assessment and, therefore, has given high priority to the consideration of the reported bill. The Committee's bill has three pivotal elements: a requirement that the United States give priority to the negotiation of a multilateral agreement establishing rules under which trade in services shall be conducted; a requirement that the Commerce Department increase its data and information gathering on service trade activities by establishing a service industries development program; and a grant of authority to the President to deny foreign service firms access to the U.S. market if the foreign country in question denies U.S. service firms access to its markets.

#### NEGOTIATING MANDATE

Section 4 of the bill makes the establishment of a services agreement under the auspices of the General Agreements on Tariff and Trade (GATT) a principal negotiating objective of the United States. Thus, the bill gives primary attention to the negotiation of a multi-lateral treaty based on agreed upon principles of fair trade. The Committee believes that only such an agreement can protect foreign as well as U.S. service firms from discriminatory trade practices.

The negotiating mandate contained in Section 4 does not give new negotiating authority to the President; none is needed. Instead, Section 102 of the Trade Act of 1974 already authorizes the President to negotiate the reduction, elimination, and harmonization of barriers to international trade in *both goods and services*. Any international agreement negotiated under section 102 authority is to be submitted to Congress, along with the appropriate implementing legislation, for Congressional approval under the "fast track" procedures of section 151 of the Trade Act of 1974. The authority of section 102 does not expire until 1988.

Rather than granting new authority, therefore, the purpose of section 4 of the bill is to give priority to the negotiation of a services agreement. Currently, the only international agreements which involve trade in services are the bilateral treaties of "friendship, commerce and navigation" (FCN) between the United States and 43 other countries.

In a review of these treaties, the Commerce Department has found that, in all cases, the treaty partners are permitted to distinguish between domestic and foreign businesses engaged in service sector activities. Some of these treaties were negotiated long before services had achieved their current economic importance, although all of the ones with our most important trading partners were negotiated since World War II.

These treaties provide two different types of treatment with respect to the establishment and operations of foreign businesses: most-favored-nation treatment, in which a country may discriminate against foreign businesses and investment generally but not against businesses

of one country and not those of another, and national treatment, in which a country must treat foreign businesses and investment in the same way it treats its own domestic businesses.

Our treaties with Japan, France, Israel and all of our major trading partners, except Italy, provide for national treatment of foreign businesses. Yet, each of these treaties provides for most-favored-nation treatment rather than national treatment for many of the business activities covered under services, such as air transport, banking, insurance, shipping, financial services, and many others.

The following excerpt from Article VII of the 1953 Treaty of Friendship, Commerce and Navigation between the United States and Japan illustrates the kind of exemptions provided in many of these treaties:

1. Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other business activities within the territories of the other Party whether directly or by agent or through the medium of any form of lawful juridical entity.

2. *Each party reserves the right to limit the extent to which aliens may within its territories establish, acquire interests in, or carry on public utilities enterprises or enterprises engaged in shipbuilding, air or water transport, banking involving depository or fiduciary functions, or the exploitation of land or natural resources.* (emphasis added).

3. Nationals and companies of either party, as well as enterprises controlled by such nationals and companies, shall in any event be accorded most-favored-nation treatment with reference to the matters treated in the present Article.

Similar exclusions are present in treaties with the following countries:

Belgium (1963, Article VI).  
 France (1960, Article V).  
 Germany (1956, Article VII).  
 Israel (1954, Article VII).  
 Korea (1957, Article VII).  
 Luxembourg (1963, Article VI).  
 Netherlands (1957, Article VII).  
 Nicaragua (1956, Article VIII).  
 Thailand (1968, Article IV).  
 Togolese Republic (1967, Article V).

Although the changing nature of the world and U.S. economies makes it important to re-evaluate the appropriateness of the distinction between foreign and domestic service firms which the FCN treaties permit, the Committee believes that national and public interest considerations may require limitations on foreign access to such service markets as banking, transportation, insurance and professional services.

For example, various laws in the United States exclude or limit foreign participation in the airline industry, banking, communications and insurance. Thus, the Committee believes that the ability of nations to protect the public interest in the manner such nations determine to be best must be safeguarded by any new agreement governing trade in services.

In this regard, it is useful to look at how our government has approached this problem, thus far.

Last April, the Administration's Trade Policy Committee (chaired by U.S. Trade Representative William Brock) approved the U.S. Government Work Program on Trade in Services which has five elements:

To develop better statistics on trade in services;

To examine U.S. laws in order to eliminate barriers to service exports. (These laws include elements of the Foreign Corrupt Practices Act and the tax rate on Americans working abroad);

To use normal bilateral relationships to eliminate services trade barriers that are identified by U.S. companies;

To review domestic legislative provisions relating to the achievement of reciprocity of U.S. service industries;

To prepare for multilateral negotiations under the General Agreements on Tariffs and Trade (GATT) or the Organization for Economic Cooperation and Development (OECD).

Last June at the urging of the United States, the OECD, whose 22 members include the major western nations and Japan, issued a statement saying "efforts should be undertaken to examine ways and means for reducing or eliminating the identified problem . . ." in the service sector. Although the OECD is a consultative organization whose decisions are not binding on the organization's individual members, the OECD staff was directed to analyze trade barriers in four areas: banking, insurance, shipping, and engineering and construction.

In addition, the Office of the Special Trade Representative has prepared trade issue papers on insurance, engineering and construction and telecommunications, data processing and information services. The Trade Representative's Office has also prepared a 200 page list of more than 2000 barriers to trade in services. This information is being developed in preparation for the meeting of the GATT ministers to be held this November in Geneva. At that meeting, the United States will attempt to convince the GATT ministers to develop an agenda for the negotiation of barriers to trade in services.

It took also 20 years to negotiate agreements under GATT governing trade in goods (1961-1979). These agreements, called "codes", deal with the most significant non-tariff barriers which were not addressed in the original GATT articles (1947). There are four codes which are especially relevant to services: the government procurement code, the subsidies code, the standards code, and the licensing code.

Government Procurement Code: this code extends national treatment to certain government procurement contracts and includes those services which are incidental to the provision of goods. A Commerce Department memorandum says that although this code might appear the most applicable to services, "[t]here are, however, difficult issues to be resolved in attempting to extend national treatment in government procurement to services." Chief among these problems is the fact that in many countries, governments themselves operate monopolies of important services such as transportation, telecommunications and insurance. The memo goes on to say that "[e]ven when not government owned, services such as banking and insurance are so important to the national interest

that it would be difficult for governments to open their procurement fully.”

**Subsidies Code:** this code sets rules on the use of export subsidies and countervailing duties. This code may not be particularly applicable to such services as banking and insurance, especially in instances of state control; however, it may be useful in establishing guidelines for subsidizing shipping and other transportation services.

**Standards Code:** this code deals with standards, testing and certification of goods. There is no reason that a standards code should not be negotiated for services as well. A standards code would, at least, establish guidelines for determining what a trade barrier is in sensitive service industries such as banking and insurance.

**Licensing Code:** this code is designed to eliminate the use of import licensing procedures as barriers to trade in goods. It also could be applied to services. By establishing uniform licensing guidelines, a licensing code for services could help eliminate the problem banks, insurance companies, accountants and others have had gaining access to many foreign markets.

Since most countries regulate service industries extensively, there is good reason to believe that a GATT agreement on services would be more difficult to negotiate than was the case for goods.

Evidence of this fact is the lack of support other countries (with the exception of the United Kingdom and Sweden) have given the U.S. effort to raise the services issue at the GATT level. Although such negotiations need not take 20 years like the agreements on trade in goods, it is clear that GATT agreements on services offer the possibility of long-term, not short-term relief for U.S. service industries.

#### SERVICE INDUSTRIES DEVELOPMENT PROGRAM

Section 5 of the bill directs the Secretary to establish in the Department of Commerce a service industries development program. The main purpose of the service industries development program would be to collect better and more accurate data on U.S. service trade.

Witnesses at the hearing on the bill agreed that the federal government does not have accurate, comprehensive or timely data on the competitiveness of U.S. service industries. Better data is urgently needed in order for the United States to develop a sound service sector trade policy.

Furthermore, data currently collected by the Commerce Department is inadequate to identify and analyze services trade issues. As a result, the Committee believes it will be necessary to establish new data collection requirements in order to obtain an accurate picture of U.S. service trade.

The Administration has recognized the inadequacy of official data on services for a long time. The work program on trade in services released by the Administration's cabinet level Trade Policy Committee in April of last year, stated that the lack of adequate service trade data is a major obstacle to U.S. efforts to develop service sector trade policy.

At the hearing on the bill, the witnesses from the Commerce Department and the Office of the U.S. Trade Representative acknowledged that data currently available to the government does not accurately

measure the competitiveness of U.S. service firms in world markets—overall or by specific service industries such as insurance. For example, the Commerce Department concluded last year that data on the foreign operations of U.S. insurance firms was inadequate to permit the government to develop a sound policy on international insurance issues.

More and better data is needed on:

The volume and market share of foreign service firms operating in the United States;

The volume and market share of U.S. firms operating as franchises and subsidiaries in various overseas markets;

U.S. direct export of services to various countries; and

The impact of foreign barriers on U.S. service trade.

Business groups, including the U.S. Chamber of Commerce, have also recognized the inadequacy of currently available data on services. Similarly, a report to the Office of the U.S. Trade Representative and the Departments of Commerce and State prepared by Economic Consulting Services, Inc. concluded that official data on services was of insufficient detail and uncertain quality for purposes of policy development.

Currently, the Commerce Department collects data on service industry activities abroad for purposes of its "benchmark" surveys of U.S. overseas investment and for the purposes of calculating the balance of payments. Both of these are inadequate sources of data in order to measure U.S. services trade. For example in the benchmark surveys, the Commerce Department looks only at sales of U.S. majority owned affiliates abroad, but not at sales of affiliates which are less than 50 percent owned by a U.S. entity. Furthermore, benchmark surveys are only done every 5 years and the survey results are often not available for several years after the benchmark period.

There are also problems with balance of payments data on services. Balance of payments data is often based on estimates rather than actual market data, and this data does not measure trade activity by specific industry.

The balance of payments system is a statistical record of the economic transactions which take place between the U.S. economy and other foreign economies within a given period. The system consists of two basic accounts—the current account and the capital account. The current account reflects merchandise export and import transactions, payments and receipts for service transactions and unilateral transfers of funds such as repatriation of earnings from U.S. subsidiaries overseas. The capital account is comprised of nonmonetary transactions such as increases or decreases in U.S. foreign currency holdings. System statistics are prepared and reported in a variety of reports covering quarterly, annual, and multi-year periods by the Bureau of Economic Analysis (BEA) within the Commerce Department.

In developing data for the balance of payments system, BEA does not use actual industry specific market data to construct system accounts. Instead only sufficient data to establish a *overall estimate* of service and investment activity between the U.S. economy and the rest of the world is included.

Furthermore, the balance of payments system omits some services transactions altogether and covers others only partially. For example, transactions in services by branches and subsidiaries of U.S. firms

overseas as well as foreign firms in the United States are not considered for balance of payment purposes as transactions between the U.S. economy and other countries. If a branch of a U.S. insurance firm in Germany writes a policy on a German citizen, it is not reported in balance of payment statistics because the transaction involves two entities within Germany and not a transaction between the United States and the German economy.

Since overseas branches and subsidiaries are the principal means that U.S. service industries operate in foreign markets, a major portion of the business done overseas by U.S. firms is not reported in the statistics. For this reason, the Trade Representative's office has estimated that the actual volume of service transactions may be twice the volume currently reported in such statistics.

Balance of payment accounts also do not identify data on the activities of specific service industries. In the capital account, insurance as well as other industry transactions are combined and reported in total. In the current account, insurance on merchandise exports and imports is reported in the merchandise section, while earnings of U.S. insurance subsidiaries overseas and of foreign insurance subsidiaries in the United States are combined with those of all other industries as unilateral transfers.

Although there is a summary covering U.S. trade in services within the current account, several categories include exports and imports from many service industries. Balance-of-payment system data are therefore too aggregated to identify the international position and problems of individual industries. The schedule below shows the services section of the current account:

U.S. TRADE IN SERVICES, 1979  
[In billions of dollars]

	Exports	Imports	Balance
Travel, fares, other transportation.....	19.8	22.5	(2.7)
Fees and royalties.....	6.3	.7	5.7
Other private services.....	4.5	2.6	1.9
U.S. Government miscellaneous services.....	.5	1.7	(1.2)
Direct investment earnings.....	37.7	6.0	31.7
Other private receipts and payments.....	25.9	16.3	9.5
U.S. Government receipts and payments.....	2.3	11.2	8.9
<b>Total.....</b>	<b>97.0</b>	<b>61.0</b>	<b>36.0</b>

The data in this table do not identify industry-by-industry performance of service trade. The account shows modest surpluses for fees and royalties and other private services; however, these two accounts include transactions of many service industries. For example, "other private services" reflects data on about 15 service industries including communications, motion pictures, computers, legal and medical services, accounting, insurance, and construction and engineering. Therefore, performance of specific services industries such as data processing, insurance, and consulting engineering cannot be accurately measured from these statistics.

In addition, these statistics can create a distorted view of overall U.S. service trade. For example, data for 1979 shows that U.S. service exports totaled about \$97 billion, imports about \$61 billion, producing a surplus of about \$35 billion—an important offset to the \$29.4 billion merchandise trade deficit. However, this export and import data in-

cludes items which are not really services. For example, the account includes earnings from direct investments (\$31.7 billion) and income from private portfolio investments (other private receipts and payments at \$9.5 billion). Thus, investment earnings, including earnings from non-service related investments, account for a major part of the surpluses in the services account in any particular year.

#### PRESIDENTIAL AUTHORITY

Section 8 of the bill gives the President the authority to limit or deny access of foreign service firms to the U.S. market if he determines that the country in question treats U.S. firms in a manner that is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce."

These are the same conditions under which the President is permitted to restrict the access of foreign businesses under section 301 of the Trade Act of 1974. However, section 8 grants the President new authority to limit the access of foreign service firms which are under the jurisdiction of independent regulatory agencies.

At the hearings almost all of the witnesses, including the Administration, emphasized that the President, not the independent regulatory agencies, must have total responsibility over all aspects of U.S. trade policy. The fact is that independent agencies have little or no expertise in trade matters and many of them lack the statutory authority needed to make decisions on the basis of trade considerations.

For example, the Interstate Commerce Commission (ICC) has taken the position that it has no authority to limit foreign motor carrier operations in the United States even though U.S. motor carriers are severely restricted in other countries. The American Trucking Association has made numerous complaints about denials of access to the Mexican and Canadian markets. At present Mexico effectively bars all U.S. trucks from crossing the border. Cargo entering Mexico must be transferred at the border to Mexican trucks.

The Departments of Commerce, State and Transportation have intervened before the ICC in separate petitions arguing that it is relevant and appropriate for the ICC to consider the issue of reciprocal treatment in deciding whether to grant operating rights to Mexican carriers. The ICC has refused to take into consideration Mexico's treatment of U.S. truckers.

An even more ominous situation exists with respect to Canadian treatment of U.S. motor carriers. Since trucking deregulation was enacted, Canadian truckers have more than quadrupled their activities in the United States. Yet, Canadian provincial governments have all but shut the door on U.S. operations in Canada. As a result, Canadian truckers are in a position now to monopolize all traffic going between the United States and Canada.

At the same time, section 8 does not require the President to take action against a foreign firm. Under this provision, the President has complete discretion to determine what, if any, action should be taken. Furthermore, section 8 grants the President authority to restrict access of only those foreign firms which are or would be subject to federal regulations. Thus, the President is not granted authority over the activities of foreign service firms, such as foreign insurance com-

panies, to the extent that the activities of such firms are subject to state regulation.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the following statement is made regarding the cost of this legislation.

This legislation authorizes \$20 million to cover expenses associated with the implementation of the act. The Committee believes this authorization is adequate and agrees with the cost estimate provided by the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., August 18, 1982.*

HONOR. JOHN D. DINGELL,  
*Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5519, the Services Industries Commerce Development Act of 1982, as ordered reported by the House Committee on Energy and Commerce, June 24, 1982.

H.R. 5519 affirms and expands existing federal programs for assisting U.S. service industries in international and interstate commerce. It designates service industry issues as a principal negotiating objective of trade agreements, and directs the U.S. Trade Representative (USTR) to develop a work program for such negotiations. The bill requires the Department of Commerce to establish a service industries program to collect and analyze data, to conduct research on services issues, and to develop policy recommendations. Major findings are to be reported to the Congress for each year after 1982. The bill also confirms that the enforcement procedures and sanctions under the 1974 Trade Act regarding unfair pricing, subsidization, and access authorizations are applicable to foreign suppliers of services. H.R. 5519 authorizes the appropriation of \$20 million to carry out the provisions of the bill.

CBO estimates that the enactment of H.R. 5519 will result in outlays of at least \$1 million in each of the fiscal years 1983 through 1987. An additional \$4 to \$8 million could be disbursed over the 1983 through 1987 period if the Department of Commerce undertakes special studies of the service industries to support policy development and negotiations.

This estimate assumes that the new data collection activities required under Section 5 would cost approximately \$1 million a year. The costs of implementing the administrative, negotiation, and enforcement provisions are not expected to be substantial because the Department of Commerce and the USTR currently perform many of these functions. The costs associated with the research and other discretionary activities are uncertain because the bill does not specify the extent of such efforts. Prior department experience suggests, however, that trade-related studies may cost another \$4 to \$8 million.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause (2) (1) (4) of Rule X of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill.

The Committee believes that the bill will have an anti-inflationary impact. By promoting U.S. service exports, the bill will improve productivity and lead to long-term stable growth of U.S. service industries.

## SECTION-BY-SECTION ANALYSIS OF THE "SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1982"

H.R. 5519

*Section 1*

This section provides that this act may be cited as the "Service Industries Commerce Development Act of 1982."

*Section 2*

This section contains findings which establish the importance of service industries to our economy.

*Section 3*

This section identifies the purposes of the act.

*Section 4*

This section provides that it shall be a principal negotiating objective of the U.S. to develop agreements under the auspices of the General Agreement on Tariffs and Trade covering trade in services. This section provides that the U.S. Trade Representative shall consult with the states prior to entering into such negotiations concerning service industry activities which are under the jurisdiction of the states. In addition, this section provides that the U.S. Trade Representative shall consult with the service sector advisory committees established under subsections 135 (b) and 135 (c) of the Trade Act of 1974 and the appropriate committees of the Congress prior to entering into negotiations on service trade agreements.

Finally, this section provides that not later than 45 days after the date of enactment of this legislation, the U.S. Trade Representative shall present the appropriate committees of Congress with a proposed work program concerning international negotiations on services for the following 12 month period and a detailed analysis of the U.S. interests in specific service sectors.

*Section 5*

This section directs the Secretary of Commerce to develop a service industries development program within the Department of Commerce. The Secretary would be required under this program to collect information regarding the activities of both American and foreign service firms, to conduct research and analysis of issues and problems facing service industries, to provide state and local governments information on service industries, and to report to Congress annually concerning the activities of foreign service firms in the U.S. market and U.S. service firms abroad, and the effect of Federal, State and Local regulation on U.S. trade relationships and negotiations. In addition, the Secretary would be required to submit to Congress annually a report

identifying the impact on trade in service of laws and policies of our trading partners.

As under other laws which require the Secretary to collect information, this section provides a penalty for failure to respond to an information request of the Secretary of Commerce. Under this section, the Secretary may issue a subpoena to force a party to submit the information requested. Such subpoena would be enforced by the appropriate U.S. court. In addition, this section provides that a party which willfully violates a request for information by the Secretary may be fined \$10,000.

At the same time, this section contains protections for businesses which must report information. This section provides that all information submitted to the Secretary shall be held confidentially, and only released under court order. Under this provision, the Secretary may release information only in aggregate or summary form so that the identity and business operations of the party submitting the information are not revealed.

#### *Section 6*

This section extends to service industries the subsidization and unfair pricing provisions of the Trade Act of 1974. These provisions currently apply only to goods.

#### *Section 7*

This section amends section 301 (b) of the Trade Act of 1974 to cover suppliers of services.

This section also provides that before the President imposes fees or other restrictions under the authority of section 301 (b) of the Trade Act of 1974 on foreign service firms which are under the jurisdiction of a federal regulatory agency or of any State, the U.S. Trade Representative shall consult with the head of the agency involved. The section provides that fees or restrictions imposed by the President under the authority of section 301 (b) of the Trade Act of 1974 may be of any amount or kind he determines to be appropriate.

#### *Section 8*

This section provides that the President may restrict, to the extent he deems appropriate, the terms and conditions, or deny the issuance of licenses, permits or other service sector access authorization, issued under the authority of federal law, to service firms of foreign nations if he determines that such foreign nations limit the access of U.S. service firms in a manner that is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

Thus under this section, a process is established by which the President alone decides whether foreign services firms' access to the U.S. market should be denied or limited on the basis of trade considerations. This process provides that any interested party may petition the President requesting that he take action to limit the access of a foreign service firm on the grounds that the foreign country in question discriminates against U.S. service firms.

On the basis of the petition, the Secretary of Commerce is required to determine within 45 days whether to initiate an investigation. In addition, this section provides that by majority vote certain congressional committees may direct the Secretary to initiate an investigation.

Furthermore, the Secretary may also decide to initiate an investigation on his own.

If the Secretary decides not to initiate an investigation, he must notify the party that submitted the petition and give his reasons. In addition, he must publish his reasons in the Federal Register within 10 days of his decision.

If he decides to conduct an investigation, he must publish his reasons in the Federal Register, hold a public hearing within 30 days and consult with the foreign nation involved. On the basis of the investigation, the Secretary must recommend, within 90 days, appropriate action for the President to take. Before making a recommendation to the President, the Secretary must provide for the presentation of views and consult with the appropriate federal agencies and with the congressional committee concerned.

In turn, the President must determine what, if any, action he will take within 21 days of receiving the Secretary's recommendation. The President is required to publish notice of his determination, along with reasons for it, in the Federal Register.

Totally independent of the procedure just outlined, this section also provides that the President may initiate action on his own to limit access to the U.S. market of foreign service firms. If the President chooses to do this, this section provides that he shall provide for the presentation of views at the earliest possible time.

*Section 9*

This section authorizes \$20 million to be appropriated for the purposes of this Act.

*Section 10*

This section contains the definition of terms used in the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

TRADE ACT OF 1974

\* \* \* \* \*

**TITLE III—RELIEF FROM UNFAIR  
TRADE PRACTICES**

**CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS  
UNDER TRADE AGREEMENTS AND RESPONSE TO CER-  
TAIN FOREIGN TRADE PRACTICES**

**SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.**

“(a) DETERMINATIONS REQUIRING ACTION.—If the President determines that action by the United States is appropriate—

(1) to enforce the rights of the United States under any trade agreement; or

(2) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and

(2) impose duties or other import restrictions on the products of, and fees or restrictions on the services or suppliers of services of, such foreign country or instrumentality for such time as he determines appropriate.

\* \* \* \* \*

#### SEC. 307. SUBSIDIZATION AND UNFAIR PRICING INVOLVING SERVICE SECTOR INDUSTRIES.

(a) *SUBSIDIZATION AND UNFAIR PRICING TO PROVIDE A BASIS FOR ACTION UNDER SECTION 301.*—Whenever the United States Trade Representative (USTR) determines, after an investigation initiated under this section, that—

(1) services sold by a foreign supplier to the United States market benefit from a subsidy provided, directly or indirectly, to the supplier by a foreign government or instrumentality, or are sold at prices that are below cost or are otherwise unfair, and

(2) a competing service sector industry in the United States is injured or threatened with injury by reason of such sales, such subsidization or unfair pricing shall, for purposes of section 301, be considered an unreasonable practice which burdens United States commerce and the President shall take appropriate action under section 301(b) with regard to the products, services, or suppliers of services of foreign countries or instrumentalities involved.

(b) *FILING OF PETITION WITH THE UNITED STATES TRADE REPRESENTATIVE.*—Any interested person may file a petition with the United States Trade Representative (USTR) requesting the President to initiate an investigation into subsidization or unfair prices of services setting forth facts upon which the allegations of subsidization or unfair pricing, and allegations of injury to a competing domestic service sector industry, are based. The USTR shall review the request and, not later than forty-five days after the date on which he received the petition, shall determine whether to initiate an investigation.

(c) *DETERMINATION REGARDING PETITIONS.*—

(1) *DECISION NOT TO INITIATE.*—If the USTR determines not to initiate an investigation, he shall inform the petitioner of his rea-

sons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) *DECISION TO INITIATE.*—If the USTR determines to initiate an investigation regarding the issues raised, he shall publish the text of the petition in the Federal Register and shall, as soon as possible, provide an opportunity for the presentation of views concerning the issues, including a public hearing.

(d) *DETERMINATION OF SUBSIDY OR UNFAIR PRICING: TERMINATION/SUSPENSION OF INVESTIGATIONS.*—

(1) In each investigation initiated under this subsection, the USTR shall, no later than six months after the date on which the investigation was initiated, determine whether—

(i) the services in question are benefiting from a subsidy provided, directly or indirectly, to the supplier by a foreign government or instrumentality or are being sold at prices that are below cost or are otherwise unfair; and

(ii) a competing service sector industry in the United States is being injured, or is threatened with injury, by reason of such sales:

*Provided, however, That an investigation may be terminated or suspended at any time, in whole or in part, upon withdrawal of the petition, or conclusion of a termination or suspension agreement with any foreign country or instrumentality or the foreign supplier involved in the investigation.*

(2) Whenever an investigation is terminated or suspended, the USTR shall publish in the Federal Register a notice of termination or suspension, which shall include a full statement of reasons for the action taken.

\* \* \* \* \*