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Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Robert E. Lighthizer
Washington, D.C.
202.371.7770
robert.lighthizer@skadden.com

James C. Hecht
Washington, D.C.
202.371.7370
james.hecht@skadden.com

Jeffrey D. Gerrish
Washington, D.C.
202.371.7381
jeffrey.gerrish@skadden.com

Nathaniel B. Bolin
Washington, D.C.
202.371.7893
nathaniel.bolin@skadden.com

* * *

1440 New York Avenue, NW,
Washington, D.C. 20005
Telephone: 202.371.7000

Four Times Square, New York, NY 10036
Telephone: 212.735.3000

WWW.SKADDEN.COM

Negotiations for New International Services Trade Agreement Offer Business Opportunities

The Obama Administration has recently announced its intention to begin negotiating a new agreement aimed at promoting international trade in services.[1] These negotiations, which have received strong backing from both the Democratic and Republican leaderships in the Senate and the House of Representatives, will initially involve a total of 21 countries representing over 70 percent of total current global trade in services. The specific countries scheduled to participate in the initial negotiations are the United States, Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, the European Union (on behalf of its member states), Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland and Turkey. Additional countries are expected to join soon after negotiations begin.

The negotiations are intended to expand and build upon the existing provisions of the General Agreement on Trade in Services (GATS) — an agreement of the World Trade Organization (WTO) that currently governs trade in certain services among WTO member nations. Many observers have noted that the GATS, which entered into force nearly 20 years ago, has become less relevant as international trade in services has increased, countries with rapidly growing services markets such as China have joined the WTO, and the emergence of new technologies has expanded the scope of the services sector.

The announcement of the upcoming negotiations for a new services agreement represents a key opportunity for service providers in all areas — from telecommunications, e-commerce, cloud computing and emerging technologies, to agriculture, manufacturing services (such as product design and development, process-based intellectual property and logistics) and financial and accounting services — to expand their current markets as well as to address barriers to entry and transparency and enforcement concerns that have prevented or slowed the expansion of their business overseas. The negotiations also are likely to have an impact on companies that do business exclusively or primarily within the U.S. market by potentially allowing for new market entrants and increasing competition in certain service industries.

On January 24, 2013, the Office of the U.S. Trade Representative (USTR) formally requested comments on the upcoming services negotiations and announced plans to hold a formal hearing on March 12, 2013.[2] Among the topics on which USTR is seeking input are:

- The economic costs and benefits from the elimination of current barriers to services traded on a cross-border basis or through a foreign commercial presence;
- Existing barriers to trade in services that should be addressed;
- Rules governing the international trade in services that should be added or strengthened; and

1 Letter from Amb. Ron Kirk, U.S. Trade Representative to Rep. John Boehner (Jan. 15, 2013), available at http://tinyurl.com/kirk-letter.

2 *Request for Comments on an International Services Agreement*, 78 Fed. Reg. 5238 (Jan. 24, 2013).

- Issues related to the supply of services through various modes of supply, including new or existing technologies that may impact the cross-border trade in services.

Companies with an interest in these and other issues affecting the services sector should begin to reach out to USTR — as well as other relevant stakeholders in the Obama Administration and Congress, and key officials in governments overseas and at the WTO — and should plan to remain engaged as the negotiations progress. As the experience of past trade negotiations as well as the ongoing negotiations over the Trans-Pacific Partnership Agreement (TPP) teaches, early and consistent engagement will be critical for companies to ensure that their interests are adequately reflected in any final services agreement.