Trade in Professional Services: An Overview

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Geza Feketekuty†

In recent years there has been a growing awareness of international trade in services. The growth of this trade has become an important issue in the ongoing management of U.S. trade policy, including the preparation for multilateral trade negotiations and the development of new trade legislation. In addition to dealing with trade in traditional commodity areas, such as shoes and computers, U.S. diplomats are now negotiating on a variety of trade issues involving services, such as the ability of U.S. firms to offer legal and data base services in Japan and carrier services in Argentina. Currently, trade negotiators from around the world are debating how best to treat trade in services in the multilateral trade ne-

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1 Services can be defined by enumerating the industries covered by the term. Such industries include, among others, transportation, communication, banking, insurance, data processing, computer programming, engineering, modeling, law, accounting, consulting, leasing, tourism, information services, education and entertainment. More generally, services can be defined more generally as any exchanged product of economic activity that is not a good. For balance of payments purposes, trade in services is defined as the sale of a service by residents of one country to residents of another country. See Obie G. Whichard, U.S. International Trade and Investment in Services: Data Needs and Availability 14-15 (U.S. Department of Commerce, Bureau of Economic Analysis Staff Paper 41, Sept. 1984).

This article explores some of the conceptual issues raised by trade in services generally and trade in professional services specifically. It first focuses on the role of services in the modern economy, looking at the factors responsible for the rapid expansion of trade in services and the economic rationale for analyzing international services in trade policy terms. Trade in professional services is examined next, first in a historical context, and then in terms of the major policy issues and related conceptual paradigms. The paper then analyzes barriers to trade in professional services in general terms, followed by an Appendix discussing barriers facing individual professions. Finally, the paper discusses recent policy actions on trade in services and indicates possible future policy initiatives.

I. Trade in Services

A. The Increasing Importance of Services in the World Economy

Services have become the major component of U.S. economic activity, and are increasingly important in international trade, for four basic reasons. First, a continuing shift to automated production methods has increased the demand for service inputs in production because, while automation reduces the need for assembly-line workers, it increases the need for such service sector participants as engineers and computer programmers.

Second, modern data processing and communication technologies have made services more tradable. While traditionally, many services had to be consumed where they were produced, new communication technologies allow services to be delivered through a transfer of information, enabling users to consume them far from the point of production. This change affects most services which are key inputs into the production of goods—data processing, computer programming, information services, engineering, designing,

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8 The Appendix addresses barriers to trade in certain service areas not otherwise discussed in this volume, including architecture and engineering, management and consulting, health, and education services. An earlier version of the Appendix also addressed barriers to trade in legal and accounting services (copy on file with the University of Chicago Legal Forum).

4 See Office of the United States Trade Representative, Twenty-Seventh Annual Report of the President of the United States on the Trade Agreements Program 24-25 (1983).

8 See U.S. National Study on Trade in Services, A Submission by the United States Government to the General Agreement on Tariffs and Trade 8 (1984) ("U.S. Study").
legal and financial services among others.

Third, the greater demand for services and their increased tradability have made economies of scale possible through specialization, which in turn has created the potential for gains from trading services. In the past, the production of business service inputs for manufacturing was dispersed among individual production units. Now, services are either purchased from outside vendors or produced by independent profit centers within the firms that use business services as inputs. Specialization in the provision of business services, whether by profit centers within enterprises or by separate businesses, can offer both higher levels of expertise and lower costs, making trade in such services advantageous.

Fourth, the growth of multinational enterprises has increased the demand for multinational suppliers of business services. Given the new economies of scale in services, multinational enterprises find it particularly advantageous to centralize the acquisition of business services, either within the firm or from outside vendors. When one entity provides services to all parts of a multinational enterprise, more services necessarily cross national boundaries.

Services have not only become an important item of trade in and of themselves; they have also become more important to trade in many goods, particularly high technology goods. The more sophisticated the product, the more the buyer is dependent upon engineering support, product servicing, and technical improvements.

Finally, political considerations have also contributed to the increased focus on service trade. Because in the U.S. free trade has become associated with job losses in manufacturing, support for further liberalization of trade in goods has eroded. Those seeking to regain support for the benefits of unrestrained trade in the U.S. can emphasize the job gains associated with service trade.

B. The Desirability of Liberalizing Trade in Services

When goods are traded, economic principles of comparative advantage apply. Similarly, specialization and international trade in services can lead to the same economic gains as trade in goods. When imported services can be acquired more cheaply or are of higher quality than services produced at home, both economies benefit.

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7 See Brian Hindley and Alasdair Smith, Comparative Advantage and Trade in Services, 7 World Econ. 369 (1984).
It is argued that gains from specialization on the basis of comparative advantage are not relevant in the service sector because services are essential to the functioning of a country and therefore must be under local control. Yet it is difficult to see a fundamental distinction between autos and insurance in this respect. Both are essential to the functioning of a country. Moreover, governments have regulatory means for assuring that broader social objectives are achieved. The argument for free service trade is not an argument for the non-observance of local regulations designed to protect the public against abuses by either local or foreign service providers. Just as an auto sold in a foreign market must meet that country’s safety or environmental regulations, so must an insurance policy sold in a foreign market meet domestic regulations designed to protect the interests of policy holders.

It is also argued that service industries in many countries have not been able to develop the means to compete with foreign firms. It is suggested that if they were given enough time to invest in up-to-date equipment and management techniques, they could compete effectively. Trade in such services, therefore, should not be liberalized—at least not until local firms have become competitive.

This is the same infant-industry argument that has been applied to trade in goods. As with goods, it is valid only up to a point. Some level of protection can give local industry more time to prepare itself for international competition; however, without some competition at the outset, and with no definite prospects for more competition in the future, local industry will not have sufficient incentive to become competitive. Moreover, by protecting its service industries, a country deprives itself of efficient, up-to-date, and moderately-priced service inputs for the production of its goods and other services. This deprivation will become increasingly detrimental to the country’s ability to compete internationally as service inputs become more important to production processes.

II. TRADE IN PROFESSIONAL SERVICES

For purposes of this analysis, professional services will be defined as the application of knowledge or skill by experts to meet clients’ needs. International trade in professional services is the

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* Id. at 383-86.
* Id.
sale of knowledge and skill by a resident of one country to a resident of another country.

Professional services can be "transported" from the exporting country to the importing country electronically from computer terminal to computer terminal, through the mail, or in person by either the professional travelling to meet the client, or the client travelling to meet the professional. A foreign professional who has become a resident of another country, however, no longer generates exports for his country, or a client who has become a resident of another country no longer generates imports for his home country.

International firms or partnerships serve as efficient vehicles for trade in professional services. However, only work performed by partners or associates employed in other countries counts as trade. Trade in professional services also may occur when there are no direct contacts between a foreign professional and a local client. Services delivered by a local professional to a local client could involve trade in professional services if the local professional obtains advice from foreign specialists or reads professional journals written abroad.

International transfer of professional services is not a recent development. Throughout history, professional experts have traveled from country to country. What is new is the speed and low cost with which information pertinent to a particular client's needs can now be transferred. This development has two causes: (1) international travel has become faster and more convenient; (2) more importantly, large amounts of information can now be transferred electronically to almost any place in the world.

A. Information Technology and Trade in Professional Services

The introduction of new computer and communications technology has opened up new trade opportunities in services, making it possible to trade almost any type of service that can be delivered electronically. Such developments have occurred in all types of service industries. For example, in late 1984, an electronic hook-up was established between the Chicago Mercantile Exchange and the Singapore Stock Exchange to permit global commodities trading around the clock. A worldwide network of computers and communications channels also enables the Bechtel Group to coordinate

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11 This includes such services as data processing, computer programming, video and audio entertainment, training and education, legal services, accounting, engineering, banking, insurance, research and development, publishing, advertising and public relations, and communication and information services.
the activities of its engineers in India, project managers in San Francisco, and on-site construction supervisors in Saudi Arabia.

With the advent of computer-to-computer communications technology, traditional concepts of time and distance have less meaning. Satellite and fiber-optic cable technologies allow nearly instantaneous transmission of information. It is now possible to produce information-based services in one place and consume them somewhere else. The large increase in data-storage capacities has also increased the capacity to store information-based services—to produce information-based services at one point in time (during working hours in Dallas) and to consume them at a later time (during working hours in Riyadh). Indeed, any service product that can be reduced to electronically coded bits of information can be delivered to any point in the world that has adequate communication facilities, at relatively little cost, with great reliability and virtually no time lag.

As it has become cheaper, faster, and more efficient to store and transmit information electronically, both manufacturing and service industries have taken advantage of the economies of scale made possible by the centralized production of some services, such as data processing, research and development, and legal services. General Motors purchased an electronic data processing firm, EDS, to take over not only the data processing activities at General Motors, but also the design of new automated factories. In banking, modern information technology has made it possible for banks to operate with branches around the world, while developing centralized information centers for foreign currency trading and economic forecasting. The ability to collect in one place information from a wide variety of sources, and then to transmit this information to any place it is needed, allows banks to provide a broad range of financial information to customers around the world.

It has become more efficient to distribute the production of specialized services, while centralizing access to the total pool of services. For example, data base vendors have distributed the maintenance of data bases covering individual areas of expertise to hundreds of locations around the world, while offering users centralized access to them.

Modern information technology has also facilitated efficient delivery of many services to smaller businesses and households, which now may be supplied with extensive information about financial transactions, transportation options and current events. Individual consumers are also buying more entertainment services through cable television and video cassettes. Although interna-
tional trade in some of these areas has expanded more rapidly than in others, the potential for growth is uniformly substantial.

B. New Production Processes and Trade in Professional Services

The introduction of modern communications and information technology has revolutionized manufacturing processes. Automated forms of production require less physical labor and fewer materials, but more information and knowledge. This has resulted in a substantially increased demand for the services of scientists, engineers, designers, computer programmers and managers, relative to the need for blue-collar labor.

Information technology also plays a key role in the marketing and delivery of products. Many technologically sophisticated products can only be sold “bundled” together with the necessary supporting services which information technology makes possible. The concept of “bundling” is clearly illustrated by the sale of computers. Twenty years ago, 80 percent of the cost of producing a computer was the cost of producing “hardware” and 20 percent went to associated services. Today, this ratio is reversed: 80 percent or more of the cost of producing a computer is tied to software elements that make the computer work; engineering services that demonstrate its use or integrate it into an existing communications/information structure, consultant services that ensure that the software suits the customer’s needs and is appropriate to existing hardware, training services that explain how to operate the system, and to ongoing information services that alert the purchaser to new developments in technology and maintenance. Similarly, sophisticated industrial machinery and robots cannot be sold without engineering support, software, maintenance and other supporting services.

The new production processes made possible by applications of information technology create new demands for international trade in services. With the growing importance of business services to modern manufacturing processes, a globally competitive manufacturing company must have access to the best service inputs available, whether produced at home or abroad. This development has sharply increased international trade in professional services.

C. Multinationals and Trade in Professional Services

The growing number of multinational corporations and the increasing scope of their activities have also prompted a sharp rise in the demand for services that can be delivered on a global basis.
Rather than contracting with numerous suppliers around the world, multinational firms find it more efficient to purchase services such as insurance, accounting and advertising from global suppliers that can assure uniform quality. U.S. service firms initially established themselves abroad to meet the demand of American multinational manufacturing corporations for support services, and once established, many of these firms expanded the scope of their activities to foreign clients. International trade by U.S. service firms is thus a natural outgrowth of the establishment of U.S. manufacturing subsidiaries abroad.

Multinational corporations make significant use of information technology on a global basis. According to a 1982-1983 survey by the Organisation for Economic Co-operation and Development (OECD),\textsuperscript{12} international manufacturing and service firms depend upon information technology to carry out seven aspects of production: (1) production control, illustrated by the growth of robotics and computer-assisted manufacturing; (2) research, in particular the coordination of functions among research divisions; (3) design/engineering, where it makes possible, for example, computer-aided design; (4) marketing, where it is particularly valuable in the transmission of information about local conditions, direct ordering, and the formulation of credit arrangements; (5) distributing, facilitating export documentation and the scheduling, routing and production of required transport; (6) order processing, helping producers tie together interdependent production facilities and eliminate duplication; and (7) maintenance, allowing producers to track after-sales defects and maintenance and to provide useful information to product designers.\textsuperscript{13}

Firms have also improved their internal management processes by using information technology to centralize certain managerial support functions, most importantly financial reporting and consolidation, financial management, data processing, and administration/clerical work. This centralization has led to economies of scale, and in turn to the sale of these managerial services to outsiders. Citibank, for instance, sells access to its global information management system, enabling corporate treasurers to keep track of their balances in Citibank branches around the world. Ci-


\textsuperscript{13} Id.
tibank also processes payrolls and sells firms access to financial data.

Multinationals have used advances in information technology to improve global management and establish uniform production procedures around the world. IBM's worldwide communications network, for example, enables it to introduce design changes in all of its manufacturing facilities around the world on the same day. Relying on similar networks, RCA and other firms design products in one country, produce parts in other countries, assemble them in third countries, and sell the finished products worldwide.

Multinational companies thus use communication channels to "trade" services internationally in two distinct ways. First, the parent and its subsidiaries rely on communication channels to export and import, to and from one another, internal managerial services such as accounting, financial reporting, and legal services. Second, many multinational companies use the same communication system to sell services to outside purchasers located in other countries.

D. Networks: A New Channel for Trade in Professional Services

The new information technology has given rise to new systems which link together users and providers of information. Through these so-called value-added communication networks, composed of computers, communication circuits, and input/output terminals, individuals at widely scattered locations can put information into the network and take information out of it. Such networks are at the heart of the post-industrial revolution: they have fundamentally affected the way the U.S. economy functions and, by extension, the way the international economy will function in the future.

While their common purpose is to share information, networks take different forms. Some are interactive, allowing the party accessing the information to change or add to the existing data base, while other networks operate only as one-way information streams. Networks also vary in the degree of public access they permit.

First, a number of multinational firms maintain private international communication networks for internal use. Private networks have several advantages: (1) price, particularly if the volume of transactions surpasses a certain level and economies of scale can be achieved; (2) availability of service, often an important factor for firms doing business in parts of the world where communications facilities are substandard; (3) control over a system, ensuring faster response time or greater security than would be available through an industry or public network; and (4) direct access to in-
formation and related services not otherwise available locally. Private networks also serve a variety of non-internal purposes, such as providing credit authorizations. Companies providing credit card services rely heavily on private networks to authorize purchases, to prevent the use of lost or stolen cards, and to prevent users from exceeding their credit limits.

Second, networks can be formed among a limited number of participants. Where it is economic to pool resources and cut the costs of generating information of common interest, firms have grouped together on a global basis to develop industry-wide networks. Because access is frequently limited to members of the network, however, benefits are often restricted to companies in the particular industry.

Limited participation networks are widely used by firms involved in technical services, such as oil exploration, where the cost of producing a data base is extremely high. Providers of other services have also benefited from limited participation networks. For example, in the late 1940's, the commercial airline industry began using information technology to coordinate flight information. Through the Societe Internationale de Telecommunications Aeronautiques, established in 1947, over 240 airlines now participate in a network enabling them to share information about diverse matters such as seat assignments, identification of special dietary needs, credit card authorization, departure control and meteorological information.

A similar network has been developed for the banking industry to meet its need for rapid access to accurate information. No one bank, on its own, could acquire all the international financial information it needs to respond quickly to changing market conditions. In 1973, this incentive to work together resulted in the creation of the Society for Worldwide Interbank Financial Telecommunications, an organization whose initial membership of 239 banks in fifteen countries grew within a decade to 1,017 banks in forty-four countries.

Finally, networks are used in the public sphere. Public data networks have proliferated at an astounding rate in recent years: current estimates suggest that 2,400 on-line data bases exist today, with hundreds more being added each month. At a cost between five and seventy-five dollars an hour, an individual located in a country with an up-to-date communication system and an appropriate regulatory policy can connect his or her personal computer to telephone lines and access information stored in any of these data bases.
Professionals and business executives have replaced research libraries as the major users of on-line data bases. By providing immediate access to everything from the latest medical research on parasitic diseases to commodity futures quotations, these computerized data bases are useful to many professionals in the course of their daily work.

It is possible to foresee the establishment of communications networks that will provide an international marketplace for trade in information and professional services. Such a network could electronically tie together thousands of independent information specialists, consultants, and users of information located throughout the world.

The emergence of international networks and global access to wide-ranging information resources is part of the increasing integration of worldwide economic activity. From an international trade perspective, these networks are important because they provide efficient channels for trade in information-based services, and indeed for trade in any service that can be transmitted electronically.

III. Barriers To Trade In Professional Services

Although trade in services has increased dramatically in recent years, a wide variety of obstacles imposed by national governments still prevent trade in professional services from growing as quickly as it otherwise might. This section provides an overview of the forms such legal impediments can take.

A. Licensing Issues

Many professional services are regulated to assure an acceptable degree of quality in the service provided to clients. Such regulations are administered either by governmental authorities or by professional associations to which the government has given enforcement powers. Restrictions on trade in professional services are often embedded in such regulations. While the regulation of certain professional services must be considered a legitimate governmental activity, not all regulations can be fully justified as necessary to protect the welfare of consumers. Much of the debate over barriers to trade in professional services centers on whether or not certain regulations are necessary to protect consumers and whether

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such regulations unnecessarily discriminate against foreigners.

The regulation of professional services takes place at two levels: that of the firm or partnership and that of the individual professional. At the level of the firm, the barrier most frequently mentioned by exporters of professional services is the requirement that local affiliates advertise their services under their own names, rather than under the internationally recognized name of the firm or partnership that employs them. Defenders of this regulation argue that because professionals are licensed to practice on the basis of their individual know-how, the consumers of such services must know the identities and thus the reputations of those individual professionals. However, the reputation of the firm or partnership can be an equally important indicator of the skills of individual practitioners or the extent of the resources available to them. Moreover, allowing advertising under the firm or partnership name does not prevent the client from identifying the individual responsible for the advice provided. Indeed, most countries will give legal effect to professionally prepared documents only if signed by a licensed professional, who thus takes responsibility for the services rendered. Historical research is also likely to show that such advertising regulations were generally imposed for protectionist reasons.

Another common regulation tending to restrict trade in professional services is the prohibition against forming partnerships across jurisdictional lines for the purpose of sharing fees. Advocates of this regulation say that it is necessary to prevent the dilution of professional responsibility. This too appears to be a questionable argument. It is perfectly consistent to hold locally licensed professionals responsible for their services, while allowing them to share fees with professionals in other jurisdictions. After all, most existing regulations do not prohibit locally licensed professionals from purchasing "information" from other professionals, regardless of whether they are locally licensed.

At the level of the individual professional, the most protective regulations are those requiring citizenship. Some countries, for example, demand local citizenship as a prerequisite for obtaining a local license, on the argument that the government can exercise effective control only over its own citizens and therefore only citizens can be trusted. No analogous requirement is applied to trade in goods, and the distinction thus drawn between goods and service trade is unwarranted: there are more narrowly tailored ways of protecting local consumers, such as effective testing and bonding requirements.

The most pervasive problem facing professionals who want to
practice in another country is the difficulty of getting recognition for education and training received abroad. Most countries are reluctant to give foreigners credit for the education or training they received abroad. Although knowledge about the local environment is undoubtedly essential in many professional services, regulators should recognize that knowledge or experience obtained abroad can be relevant as well.

Another problem in most licensing regimes is that they do not recognize the separate needs of foreign professionals whose practices concern the outside world. Consider, for example, the Japanese lawyer who wishes to advise on Japanese law to clients in the U.S. While some licensing schemes explicitly cover international professional practices of this sort, the application of regulations in particular cases generally remains somewhat ambiguous and therefore prohibitive. There has been a recent trend in the U.S. to license foreign legal consultants, though there has been a considerable resistance to this trend in many states. The reluctance to license foreign lawyers as foreign legal consultants (i.e., to give legal advice concerning their own countries' laws) is that they might also offer legal opinions on local laws, not that they will give inadequate advice regarding their own laws, about which they are likely to be the most knowledgeable. The argument is made, therefore, that a distinction between advice on local law and advice on foreign law is likely to be difficult to make, and therefore regulations based on this distinction are prone to abuse.

Even more interesting questions about the licensing of professionals arise when the professional is not located in the same jurisdiction as the client, and the service is delivered through international communication channels. While it would be feasible for local regulatory authorities to limit the ability of such professionals to advertise their services, it is difficult to see how they could enforce limitations on the actual delivery of such services. Of course, when the signature of a locally licensed professional is needed to satisfy a regulatory requirement, governments have the means effectively to enforce licensing requirements.16

16 The licensing of foreign legal consultants, for example, is specifically regulated in the U.S. and other countries. See Sydney M. Cone, III, Government Trade Policy and the Professional Regulation of Foreign Lawyers, 1986 U. Chi. Legal F. 169, 169-73.

16 It is also sometimes unclear which country's regulations apply to the sale of professional services provided to a consumer in one jurisdiction by a service provider from another. This situation can arise when a client expects to travel to another country, or when a client has investments or other interests in a jurisdiction not his own. It is generally assumed that such a transaction would come under the regulatory regime of the country in
B. Immigration Issues

The treatment of immigration and visa issues related to international trade has traditionally been divorced from the establishment of trade policy. Yet, trade would be significantly handicapped without extensive travel by representatives of both exporting and importing firms. Most countries have therefore negotiated bilateral agreements providing mutual access to individuals engaged in international trade. While visa rules vary widely among countries, the relevant issues are covered by the following discussion of U.S. visa regulations.

Movement of professionals into the U.S. is regulated by the Immigration and Nationality Act. Currently, if they are to perform almost any professional service in this country, most non-immigrants would be required to obtain one of the following types of non-immigrant visas:

1. *L Visas.* L visas are intra-company transfer visas available to executives and key personnel who have worked for their firms outside of the U.S. for at least one year, and who then are sent to the U.S. by their employers. L visas are available only to those performing executive or managerial services, or those with specialized knowledge which makes their services necessary in the U.S. A petition for an L visa can take up to six months to be approved.

2. *H-1 and H-2 Visas.* H-1 and H-2 visas are both temporary workers' visas. The H-1 is for a person of distinguished merit and ability coming to the U.S. to perform services requiring capabilities of an exceptional nature. Generally one must have professional status to be eligible for an H-1 visa. For this purpose, a profession is defined as an occupational field for which a baccalaureate degree is the minimum requirement, though having such a degree does not guarantee that one will be considered a professional. Some fields, such as law and medicine, require more advanced degrees. In occupations not qualifying as professions, the category of persons of "distinguished merit or ability" has been fairly narrowly defined.

Issuance of an H-2 visa is contingent upon certification from which the service is to be delivered.

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19 8 C.F.R. § 214.2(l)(iii).
21 8 C.F.R. § 214.2(h).
the Labor Department that equivalent labor is unavailable in the U.S. Visas of this type can be difficult or impossible to obtain for some occupations. Both types of H visas are strictly temporary and can be quite difficult to renew.

3. **E-1 and E-2 Visas.** These are, respectively, the treaty trader and treaty investor visas, which are available to nationals of countries with which the U.S. has Friendship, Commerce and Navigation (FCN) treaties that include provisions for the establishment of such visa categories. E visas are for persons coming to the U.S. to carry on substantial trade or to develop and direct the operations of an enterprise in which they have invested or are investing a substantial amount of capital. While treaty trader status has on occasion been granted to persons engaged in trade of professional services, the Immigration and Naturalization Service has at times refused to recognize “trade” in professional services and has therefore refused to grant professionals engaged in such trade E-1 status.

4. **B-1 Visas.** B-1 visas are business visas reserved to those who do not qualify under any of the other visa categories. It covers aliens coming to the U.S. to engage in commercial transactions—contract and sales negotiations, consultation, and litigation, for example—or to attend conventions or conferences. Holders of this type of visa may not be employed in the U.S., and their remuneration must come from abroad.

The time period for which each of these visas is valid depends on the alien's country of origin, and the ease with which each can be extended turns on its type. Generally, B-1 visas may be valid for up to one year, L visas and H visas for only as long as need can be shown. Because renewal of E visas is generally more flexible, and because E visas neither entail the considerable paperwork nor impose the restrictive requirements that accompany some of the other kinds of visas, most professionals traveling in order to trade should seek to obtain E-1 visas.

The need to travel in order to trade has not been as widely recognized with respect to trade in services as it has with respect to trade in goods. E-1 visas are commonly issued for individuals

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**Footnotes:**

1. 8 U.S.C. § 1101(a)(15)(E)(i) and (ii). A list of treaties that include provisions for E-1 and E-2 visas is provided in exhibits in U.S. Dept. of State, 9 Foreign Affairs Manual, in the notes to 22 C.F.R. §§ 41.40 and 41.41 (internal working document) (copy on file with the University of Chicago Legal Forum).


travelling for the purpose of trading goods, but less commonly for persons engaged in trade of professional services. A Finnish architect coming to the U.S. to complete work for an American client was given an E-1 visa based on the argument that his work constituted trade since over 50 percent of it had been done in Finland. Yet in other cases E-1 visas have been denied to professionals engaged in trade. For example, a Canadian firm which sold a wood-pulp treatment process to a U.S. company was unable to obtain E-1 visas for personnel to come into the country to help build the plant. H-2 visas were used instead.

C. Networking Issues

Because professional services will be increasingly available through international data and video networks, the use of such networks for professional services could become a key policy issue in the future. Governments may be tempted to control the use of international communication channels for the sale or purchase of professional services. Even if they do not do so directly, policies regarding the establishment, operation, and pricing of value-added communication networks will have a major impact on the ability of professionals to distribute their services internationally.

IV. TREATMENT OF PROFESSIONAL SERVICE TRADE IN EXISTING INTERNATIONAL AGREEMENTS

A. Friendship, Commerce and Navigation Treaties

The U.S. is presently party to forty-three Friendship, Commerce and Navigation (FCN) treaties. FCNs are the broadest type of agreement covering trade in services, generally guaranteeing either most-favored-nation treatment or national treatment to nationals.
and companies of the signatories.\textsuperscript{27} The State Department's Standard Draft FCN treaty covers professional services in Articles VII and VIII. The first paragraph of Article VII\textsuperscript{28} generally gives nationals and companies of the contracting parties rights of entry and national treatment for the establishment and operation of a service providing entity. However, Article VII also contains a proviso stating that:

The provisions of paragraph 1 of the present Article shall not prevent either Party from prescribing special formalities in connection with the establishment of alien-controlled enterprises within its territories; but such formalities may not impair the substance of the rights set forth in said paragraph.\textsuperscript{29}

In many of the later FCN treaties, this paragraph has been interpreted to exclude professional services from coverage. Originally, the intent was to obtain national treatment for professionals, by eliminating alienage restrictions but not exempting professionals from requirements concerning "qualifications, residence and competence." This approach was later replaced, however, by one in which specific professions were excluded from coverage, such as the 1950 FCN between the U.S. and Ireland, a provision of which prevented national treatment from applying to the legal profession.\textsuperscript{30} The 1951 U.S.-Denmark FCN, provides exemption for "public officials" and for all professions which, "because they involve the performance of public functions or are in the interest of

\textsuperscript{27} U.S. Study at 40 (cited in note 5).
\textsuperscript{28} Article VII

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 activity for gain (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. Accordingly, such nationals and companies shall be permitted within such territories: (a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business; (b) to organize companies under the general company law of such other Party, and to acquire majority interests in companies of such other Party; and (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other Party.

Standard Draft Treaty at 129 (cited in note 26).

\textsuperscript{29} Id. at 152 (art. VII(3)).
public health and safety, are state-licensed and reserved by statute exclusively to citizens of the country". The 1948 U.S.-Italy FCN includes a similar reservation limiting the grant of national treatment to professional activities.

In 1952, the Senate expressed concern about the preservation of state prerogatives regarding regulation of professionals. The State Department thus included in its Standard Draft FCN treaty a clause excepting professional practice from national treatment. This reservation was attached to the FCN Treaty with the Netherlands, and the practice since then has been to include a reservation about professions in all FCN treaties.

Article VIII grants nationals and companies of the contracting parties the right to hire certain professionals of either nation while in the foreign territory. This provision is neither an immigration provision nor an exemption from the occupational requirements of the foreign nation: an employee must be both present in the country and legally qualified to practice there. The goal is to prevent the treaty partner from restricting or controlling whom the foreign employer may hire.

Article VIII leaves room for confusion, however, by stating that the above right exists “regardless of the extent to which [such professionals] may have qualified for the practice of a profession within the territories of such other party.” This statement in fact requires professionals desiring to establish any kind of general

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33 Standard Draft Treaty at 155 (cited in note 26).
34 “The activities referred to in Article VII, paragraph 1, do not include the practice of professions.” Id. (Protocol, para. 3).
36 Article VIII

1. Nationals and companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice. Moreover, such nationals and companies shall be permitted to engage accountants and other technical experts regardless of the extent to which they may have qualified for the practice of a profession within the territories of such other Party, for the particular purpose of making examinations, audits and technical investigations for, and rendering reports to, such nationals and companies in connection with the planning and operation of their enterprises, and enterprises in which they have a financial interest, within such territories.
2. Nationals and companies of either Party shall be accorded national treatment with respect to engaging in scientific, educational, religious and philanthropic activities within the territories of the other Party.

practice in the territory of the treaty partner to qualify under the laws of that country. The intent is to allow a foreign company to engage experts temporarily to perform special services: surveys of investment opportunities and business conditions, financial and accounting reports, and studies conducted by technical experts on particular aspects of investments, such as on production processes. In cases where professional qualification requirements preclude such activities by uncertified individuals, however, this provision does not grant any special rights. Nor does it guarantee that the alien technician will be granted a visa, work permit, or other authorization necessary to enter the country.

Nevertheless, because rigid application of such controls would frustrate the intent of the provision, countries often agree that such controls will not be applied to prevent or impede trade. These agreements have been either included in the records of treaty negotiations or explicitly stated in protocol provisions. The U.S. practice has been to grant Article VIII qualified persons admission under a variety of visa classes including those discussed above.

Bilateral investment treaties (BITs) are also relevant insofar as trade in services is facilitated by foreign investment. The U.S. has signed ten BITs and other OECD countries have signed 150 such agreements. The U.S. agreements include national and most-favored-nation treatment for investors, standards for compensation in the event of expropriation, provisions for the transfer of profits and other funds associated with investments, and procedures for the settlement of disputes.

B. The OECD Invisibles Code and Professional Services

The Organisation for Economic Co-operation and Development (OECD) Code of Liberalisation of Current Invisible Operations also has some bearing on trade in professional services.
Under the Invisibles Code, OECD members agree to eliminate, as between one another, restrictions on current invisible transactions and transfers. Four separate paragraphs of the "List of Current Invisible Operations," which detail the invisible transactions covered by the Code, appear to make the Code applicable to transactions in professional services:

- Reference No. K/6 refers specifically to "Professional services (including services of accountants, artists, consultants, doctors, engineers, experts, lawyers, etc.)."

- Reference No. A/3 refers to "technical assistance (assistance relating to the production and distribution of goods and services at all stages, given over a period limited according to the specific purpose of such assistance, and including, e.g., advice or visits by experts, preparation of plans and blueprints, supervision of manufacture, market research, [and] training of personnel)." This paragraph could apply to engineers, architects and some consultants.

- Reference No. A/4 refers to "Contracting (construction and maintenance of buildings, roads, bridges, ports, etc.)" This could apply to some of the professional service aspects of construction projects, such as engineering and perhaps architecture.

- Reference No. A/6, which discusses the repatriation of "Salaries and wages (of frontier or seasonal workers and of other non-residents)," could encompass the salaries of professionals performing permitted services.

Because the Code's wording is extremely broad, questions have been raised about its applicability to services. It appears that the Code establishes a right to import freely professional services produced in another country. The Code does not, however, cover such issues as the international movement of professionals, the establishment of foreign professionals, or the licensing of foreign professionals. It is uncertain, therefore, whether the Code covers any professional services that require a local presence.

The intent of the Code at the time it was drafted in 1960 was to assure that restrictions on foreign exchange then in effect in several OECD countries would not impede transborder sales of services that were otherwise permitted. At the time, there was little

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42 Id. at 11. Current invisible transactions and transfers are listed in id. at Annex A.
44 Id. at Annex A, Ref. No. A/3.
46 Id. at Annex A, Ref. No. A/6.
concern with the issue of whether the service itself could be provided from one country to another.

C. Professional Services in the European Community Treaty

The Treaty of Rome, establishing the European Economic Community, provides that "restrictions on freedom to provide services within the Community shall be progressively abolished . . . in respect of nationals of Member States. . . ." In addition to provisions granting rights of establishment and national treatment, the treaty also contains provisions which specifically serve to facilitate trade in professional services. It provides for the issuance of directives for the "mutual recognition of diplomas, certificates and other evidence of formal qualification," and for "the coordination of the provisions laid down by law, regulation or administrative action in member states concerning the taking up and pursuit of activities of self-employed persons."

These provisions have affected a number of professions. Because of relatively uniform training in the European Communities member states, there is now mutual recognition of the qualifications of doctors, nurses, dental practitioners, veterinary surgeons and midwives. Lawyers qualified in one member state are allowed to practice in another under their professional title or an equivalent designation. Engineers are also apparently covered in a directive on construction which is designed to help construction professionals established in one member state to pursue their activities in another. Finally, the treaty has provisions designed to facilitate the movement of capital and labor among member states, which would clearly facilitate trade in those professional services requiring commercial presence.

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47 Treaty Establishing the European Economic Community, art. 59 (signed March 25, 1957) ("EEC Treaty"), in European Communities, Treaties Establishing the European Communities 203, 208 (1978). "The right of establishment and the freedom to provide services (i.e. the freedom to provide services in another Community Member State without being established there) are among the principal freedoms guaranteed by the EEC Treaty. . . ." European Communities, Study on International Trade in Services 88 (undated) (copy on file with the University of Chicago Legal Forum).

48 See EEC Treaty, art. 57(1) (cited in note 47).

49 Id. art. 57(2). The European Communities reports that "[e]xtensive use has been made of these provisions." European Communities, Study on International Trade in Services at 89 (cited in note 47).


D. Private Intra-Professional Agreements

There is a significant degree of international contact among the members of some professions, and efforts have at times been made by organizations of professionals to ease the movement of practitioners from one country to another. For example, some professional licensing bodies allow foreign professionals to satisfy education requirements by presenting diplomas from certain foreign institutes.

The National Council of Architectural Registration Boards, a national federation of state boards responsible for the registration or licensing of architects in the U.S. has established a national system for registering architects seeking to practice outside their own states. Twelve years ago, the Council met with the official registration authority of the United Kingdom and agreed to an "Inter-Recognition Agreement," which establishes an expedited licensing procedure for American architects who want to practice in the U.K. and vice-versa. A similar agreement has been reached with the Australian Accreditation Council, and serious discussions are underway with authorities in Canada. In addition, the U.S. Council has recently organized an international meeting with accreditation agencies from around the world, to discuss means of improving cooperation on the licensing of architects outside of their home jurisdictions.

E. Bilateral Trade Negotiations on Service Issues

U.S. trade negotiators now spend a significant portion of their time seeking to expand foreign market access for U.S. service industries.

Bilateral negotiations on trade in services have focused primarily on individual issues, usually brought to the attention of U.S. trade negotiators by a private party seeking relaxation of a particular restraint. Negotiations have covered such issues as

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52 National Council of Architectural Registration Boards and Architects Registration Council of the United Kingdom, Inter-Recognition Agreement (December 1983) (copy on file with the University of Chicago Legal Forum).

53 See letter from Carl M. Sapers, Counsel to the National Council of Architectural Registration Boards, to Geza Fekete, Asst. USTR (August 1, 1984) (copy on file with the University of Chicago Legal Forum).

54 See letter from the National Council of Architectural Registration Boards to the Provincial Architect Registration Board (Aug. 23, 1984) (copy on file with the University of Chicago Legal Forum).

55 See, for example, Office of the United States Trade Representative, Initiation of Investigation under Section 301, Korea's Restrictions on Insurance Services, 50 Fed. Reg.
banking in Canada, Korea, Taiwan, Japan, and Sweden; insurance in Japan, Korea, Malaysia, the Philippines, and Argentina; shipping and aviation in Japan and Korea; communication and computer services in Japan, Brazil, and Germany; courier services in Argentina, Brazil, Egypt, and China; advertising in Canada; modeling services in Germany and legal services in Japan. In most of these cases bilateral discussions have resulted in improved treatment of U.S. suppliers of the services involved, though the degree of improvement has varied widely.

While the list above is illustrative rather than exhaustive, it displays the variety of issues and countries covered by bilateral trade negotiations on services over the past few years. In some of these cases, negotiations have resulted in comprehensive bilateral agreements on trade in services. By necessity, these have so far been ad hoc efforts, and a considerable analytical effort is still required to sort out the issues and to establish a coherent policy framework.

Professional services have not been a dominant issue: only three sets of negotiations—those dealing with legal services in Japan, modeling in Germany, and advertising in Canada—have focused on professionals. The low number probably reflects a low level of expectations among professionals regarding their ability to practice abroad. It also results from the reluctance of small firms to invest limited time and resources in efforts to break down foreign barriers. It does not, however, reflect the significance of existing regulatory barriers to exports of professional services. Because these barriers are significant, continuing innovation in information technologies eventually will force countries to address ways to remove them.

The first comprehensive review of the regulation of foreign professionals in any area is currently taking place as the U.S. and Japan discuss the treatment of foreign lawyers. It is far easier for a foreign lawyer to meet the qualifications for admission to the bar in the U.S. and the major European legal centers than for any foreign lawyer to satisfy the requirements for admission to practice law in Japan. The key Japanese regulations and practices at issue

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37609 (Sept. 16, 1985); Office of the United States Trade Representative, Initiation of Investigation under Section 301, Japan's Practices with respect to the Manufacture, Importation and Sale of Tobacco Products, 50 Fed. Reg. 37609 (Sept. 16, 1985).


in negotiations include: the licensing of foreign lawyers as foreign legal consultants, the qualifications for obtaining such a license, and the services that such consultants can provide; the authority of the Japanese Federation of Bar Associations to supervise foreign legal consultants; the right of foreign legal consultants in Japan and law firms abroad to form partnerships with Japanese lawyers; and the right to practice under the internationally recognized name of the foreign firm. Japan, on its part, has argued that the U.S. should recognize foreign legal consultants. The Japanese have suggested that, in addition to New York, which already grants legal consultant status, California, Illinois, Delaware, Texas, Washington, D.C., Hawaii, and Massachusetts would have to change their bar rules. Because these issues are within the jurisdictions of the Bar Associations in the individual states, a question remains how to respond to Japan's reciprocity request.

F. Bilateral Free Trade Agreements on Services

When the U.S.-Israel Free Trade Area was negotiated for merchandise trade, the U.S. and Israel also negotiated a comprehensive, non-binding Declaration on Trade in Services. The Services Declaration specifically includes both those professional services that tend to be government-regulated, such as consulting in construction, engineering, accounting, medicine, education, and law, and "other professional services," which tend to be unregulated, such as management consulting.

Developed as a generic framework applicable to trade in all service sectors, the Services Declaration consists of basic trade principles intended to assure fair market access for services exported between the U.S. and Israel. The principles include national treatment in the application of regulations affecting services, fair play by monopolies in the purchase and sale of services outside the area of their reserved legal monopoly, and full transparency of do-

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58 One possible option is for the federal government to negotiate a treaty containing guidelines for regulating foreign lawyers and making implementation by the states optional, with only the states accepting the guidelines being eligible for the treatment accorded the U.S. in the treaty. There is a precedent for this sort of agreement in the International Banking Act of 1978, 12 U.S.C. § 3101. Alternatively, following the example of the patent laws, the federal government could carve out an area of federal regulation over foreign lawyers that the states, under the Supremacy Clause and the Commerce Clause, would be bound to honor.

59 The Governments of the United States of America and Israel, Declaration on Trade in Services of April 22, 1985, 24 Int'l Legal Mater. 653 (May 1985).

60 Id. at 680 (para. 1).
mestic law and regulations affecting trade in services. For those services, such as professional services, which are regulated by political subdivisions, the Declaration requires the central government to consult on a "best efforts" basis with its subdivisions to assure that their regulations are consistent with the principles of the Declaration.

The principles of the Services Declaration also serve as guidelines for a review process, in which the U.S. and Israel are to consider how the current Services Declaration may be transformed into a legally binding agreement. The two countries have begun systematically examining the application of the general principles to each service sector; professional services will be covered. The result of these sectoral reviews is to be a series of annotations for each service sector, which may eventually become part of a legally binding services agreement between the U.S. and Israel.

In the spring of 1986, the U.S. and Canada began bilateral negotiations aimed at achieving a closer and freer trade relationship. Both sides generally agree that these negotiations will include an effort to negotiate a comprehensive agreement on services. Given the close geographic and economic relationship between the two countries, they should be able to deal with a broad range of policy issues affecting individual service industries, including professional services.

In all bilateral trade negotiations on services, but particularly in the negotiations with Israel and the preliminary discussions with Canada, U.S. trade negotiators have pursued dual objectives: solving concrete problems faced by U.S. service industries and establishing useful precedents for the future. Bilateral negotiations have thus been treated as stepping stones to future, multilateral agreements. While some concern has been expressed that such bilateral agreements might prejudice future multilateral ones, their positive contributions as testing laboratories for concepts and procedures that might be incorporated in future multilateral agreements far

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61 Id. (para. 4).
62 Id. at 681 (para. 9).
63 The first step in this sectoral review process was the October 1985 consideration of the travel and tourism sector. Issues relating to professional services were indirectly addressed in discussions about extending national treatment to travel agents, who in Israel are licensed by the state. One question is whether U.S. travel agents accompanying their tours to Israel must take the necessary examination and be licensed by the Government of Israel or whether they can enter into a contractual relationship with a licensed Israeli travel agent who will then assume legal responsibility for the services rendered in Israel. Follow-up consultations were held in Washington, D.C. on July 21, 1986 and will continue throughout the fall.
outweigh those concerns.

V. MULTILATERAL TRADE NEGOTIATIONS AND POSSIBLE MULTILATERAL AGREEMENTS ON TRADE IN SERVICES

A. Negotiation of a GATT Framework for Trade in Services

The General Agreement on Tariffs and Trade (GATT) does not currently cover services except for those which are incidental to goods trade. Nevertheless, the principles and concepts underlying the GATT could form the basis for a general agreement to reduce barriers to trade in services.

The Uruguay Round of multilateral trade negotiations was launched by trade ministers of GATT member countries in September 1986. The ministers agreed that trade in services should be a major focus of the negotiations.

U.S. objectives for negotiations on trade in services were spelled out in the U.S. National Study on Trade in Services, submitted to the GATT in 1985. Briefly, U.S. objectives are to establish a legal framework of rules and procedures that would: (1) provide the basis for the negotiated reduction of existing barriers to trade in services, and (2) minimize the creation of new barriers to trade in services through the adoption of a set of principles that would govern the establishment and administration of regulations dealing with services.

The U.S. proposed that this legal framework consist of at least the following principles and procedures:

1. Transparency. Laws and regulations whose purpose is to protect domestic service industries would be clearly identified as such by the parties to the agreement.

2. National Treatment. All laws and regulations designed to achieve domestic regulatory objectives would be subject to the obligation of national treatment—they must be applied in the same manner to foreign services as to domestic ones. Where regulations limit the total number of enterprises, national treatment would have to be supplemented by commitments designed to assure reasonable market access for foreign enterprises.

3. Open Regulatory Procedures. All of the framework's rules and regulations would be publicized with an opportunity for comments by interested parties prior to their implementation.

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66 U.S. Study (cited in note 5).
4. **Public Monopolies.** Where public monopolies go beyond their sphere of monopoly activity and enter into competition with other enterprises, they would be required to adopt an arms-length relationship between their monopoly activities and their activities as an international competitor, a domestic competitor in other services, or a supplier of services.

5. **Dispute Settlement.** Procedures would be established for consultations among member countries regarding specific problems arising under the framework. Independent panels would also be established to assist in resolving disputes.

6. **Market Access.** The agreement would include provisions designed to assure an appropriate degree of initial market access as well as procedures for reducing barriers to trade in services. Market access commitments would cover the right of foreign exporters to establish a presence in the foreign market through representative offices, partnership arrangements, and other contractual relationships with local service organizations. These commitments would be supported by provisions laying out the nature of the commitments undertaken and the rights and obligations of the parties to the agreement.

It is frequently asked whether service trade liberalization can be negotiated on a unified basis, since individual services are very different from each other. As with goods, services are similar in some ways and dissimilar in others; the challenge is to negotiate common rules to the extent possible, and then to organize separate sector-by-sector, or issue-by-issue negotiations to handle critical differences. For example, if trade liberalization makes sense for all services, that concept could be agreed to on a common basis. Other concepts that could apply to a general services agreement include: the desirability of transparency in regulations and trade barriers, the notion that domestic laws aimed at achieving domestic regulatory objectives should not be misused by being employed as trade barriers, the goal of settling disputes first through bilateral consultations and eventually through an orderly dispute settlement process, and agreement that negotiated reductions in barriers should result in legal obligations and rights.

Finally, one must ask whether negotiations on “trade” in services can be divorced from issues related to investment and immigration. In dealing with this issue it is important to note that trade in goods is also related to investments in foreign markets and to the movement of people. Yet while trade in goods often entails investments in foreign markets, and while salespersons, engineers, government relations experts, and managers must be able to travel
to export markets to make successful sales, the GATT has focused on "trade" rather than on investment and visa issues. Simultaneously, the GATT Articles contain a number of provisions designed to assure that governments will not use regulations in non-trade areas as means of protecting trade. 66

B. Sectoral Agreements on Professional Services

To parallel the provisions of an overall GATT code or legal framework for trade in services, the U.S. proposed sectoral negotiations aimed at developing a series of understandings dealing with the unique problems affecting trade in individual service sectors. Such sectoral negotiations, for example, could formulate a general agreement, covering professional services as a whole, with separate appendices for the most important professions.

The U.S. objectives also include considering the application of the basic concepts and principles in some of the GATT codes dealing with non-tariff barriers to trade—standards and procurement for example—to barriers to trade in professional services. 67

Any discussion of what an agreement on professional services might look like is at this stage speculative, and the U.S. government has not taken a position on what might be covered in any future multilateral agreements covering individual service sectors. Nevertheless, preliminary analysis indicates that such an agreement on professional services would probably establish the right of professionals to form partnerships with professionals in other countries and to use the name of the international partnership. The agreement might also recognize the right of professionals to sell services performed in their home country to clients abroad. For example, a lawyer could give advice on the laws of the lawyer's own country and an architect could certify the drawings for a building to be built in the architect's own country, even if the clients in each of these transactions resided in different countries from the professionals who served them. This provision could be extended to grant foreign professionals the right to sell services that have an

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66 See, for example, GATT art. III (national treatment on internal taxation and regulation) (cited in note 64).

67 Many of the concepts in the U.S. objectives paper have been explored extensively in discussions carried out over the past five-to-six years by the Trade Committee of the Organisation for Economic Co-operation and Development (OECD). The result of these discussions has been incorporated in a conceptual framework paper prepared by the OECD Secretariat. See Organization for Economic Co-operation and Development, The Elements of a Conceptual Framework for Trade in Services, TC/WP(85)/79 (1985) (internal working document) (copy on file with the University of Chicago Legal Forum).
international character (e.g., to give advice on international law). A further extension might grant foreign professionals the right to sell services performed in or involving third countries, where the professional involved has received the permission of the local authorities of that country to practice there. An example of this would be an American architect designing a building in a foreign country for construction there or an American lawyer who has developed expertise on another country’s law.

Progress towards multilateral agreements providing for the international movement and foreign licensing of professionals is likely to be slow, and it will be necessary to experiment for some time with bilateral agreements. Mutual recognition agreements between and among accreditation bodies have proven a useful arrangement for facilitating the international movement of professionals.

C. Agreements on International Information Flows

Considerable work has been devoted to the development of multilateral agreements on international information flows, which will become increasingly important for international trade in professional services. As a first step, the U.S. proposed in 1982 that the governments of the twenty-four developed countries of the OECD commit themselves to minimize barriers to the flow of information. The proposal was patterned after the trade pledge adopted by the OECD countries in 1974, which was intended to minimize the use of trade barriers in solving trade problems created by the oil crisis. The Declaration on Transborder Data Flows was adopted by OECD ministers in April 1985 at their annual meeting. It commits OECD governments to minimize barriers to the international flow of data and to develop cooperative solutions to any problems created by the introduction of new communication and data processing technologies.

A number of GATT provisions might provide useful models for more detailed agreements regarding procurement of communication hardware and software and, more generally, regarding trade in information services. The Code on government procurement, the Standards Code, and GATT Article XVII, dealing with government monopolies, could prove particularly useful.

Several other principles might also be incorporated in future agreements.
GATT agreements. For instance, GATT agreements might deal with the operation of value-added communication networks. The GATT might also establish a "right to plug" equipment into such communication networks, provided the equipment meets agreed standards to avoid damage to the system. In addition, it might adopt the principle that fees or rates charged by communication monopolies for leasing their circuits to companies establishing value-added networks should bear a reasonable relationship to the cost of providing the circuits. Finally, a GATT agreement might establish the right of foreign companies to use international value added networks to sell a full range of information services, including professional services.

VI. Conclusion

As the transformation of the world economy to greater reliance on information continues, professional services will play an increasing role at both the national and the international level. Trade in professional services is likely to grow rapidly, as professional service inputs become an increasingly important factor in the international competitiveness of both manufacturing and service firms, and as the further development of communication networks and computer software make it increasingly easy to stay in touch electronically. The development of communication networks serving individual professions and continued improvements in transportation systems will enable competent professionals to establish a global market for their services. This article represents a modest effort to examine the economic forces behind these trends, and the policy issues that will arise as trade in professional services expands. Trade negotiations have begun to focus on these issues in individual cases, and the upcoming round of multilateral trade negotiations is likely to establish the basic foundations of a new regime for trade in such services.
Appendix

The following discussion addresses barriers to international trade in architecture and engineering, management and consulting, health and education services. Factual information is based on references supplied in the main text, and on the author's own knowledge and experience. For a discussion of the barriers to trade in legal and accounting services, see the articles in this volume by Sydney M. Cone, III, and Frank A. Rossi. An earlier version of this appendix, including sections on law and accounting, is on file with the University of Chicago Legal Forum.

I. Architecture and Engineering

Trade in architectural and engineering services can take essentially two forms. First, on a small scale, an individual professional can simply sell services to a foreign buyer, in either the home or the foreign country. The major form that trade takes in these services, however, is the international design and construction business.

Eighty to 90 percent of the competition in the international market for construction and design services occurs in the newly industrializing and less developed countries (LDCs). The Middle East has been the most lucrative market through the 1970s and early 1980s, followed by Africa and the rapidly growing Asian market. The Latin American market should also see some growth in the near future.

American companies have historically been the dominant suppliers of both design and construction services. They remain so now, with the other important suppliers coming from a wide variety of countries. However, U.S. dominance in the export market is facing some challenges. Declining oil prices and the increase in LDC debt have decreased overall demand for construction projects, and thus increased competition as suppliers fight for shares of a smaller market. Furthermore, some developing country suppliers are becoming more competitive, both in their own countries and in the export market. Finally, certain unfair trading practices are presently giving some foreign suppliers a competitive advantage.

The buyers in this market are also slowly changing. In the 1960s, most of the major projects were sponsored and financed by multinational corporations or development agencies. While these sources remain important, in recent years governments themselves have become major sponsors of projects.
Design and construction firms operate in the international market both through international divisions and export departments located in their home countries, and through affiliates, subsidiaries and joint ventures in foreign countries. In recent years, joint ventures and subsidiaries have become increasingly popular forms for conducting international business.

There are currently a number of barriers to the export of architectural and engineering services which affect both independent operators and larger firms by hindering architects and engineers in their provision of services in a foreign market. Like many other professions, the degree to which architecture and engineering are regulated varies by country, as does the degree to which there are provisions specifically pertaining to foreign practitioners.

Barriers to licensing can take several forms, including a total proscription on the licensing of foreigners; and requirements that some or all of the applicant’s professional education take place in the licensing country and that he or she pass an examination administered in the language of the licensing country.

In lieu of or in addition to licensing requirements, a country may require that the foreign professional associate with a local practitioner. (In some countries this is required even when the foreigner has a local license.) Even where no such law exists, difficulties in obtaining local licenses combined with laws forbidding unlicensed practitioners from engaging in certain activities (such as signing plans) create de facto requirements of association.

Other barriers include requirements that the professional establish a permanent local presence in order to practice, difficulties in obtaining the proper work permit or visa, and taxes and custom delays on needed materials, such as drawings, plans and special tools and equipment.

Several existing barriers pertain to design and construction firms attempting to work on foreign projects, and these are also barriers to the export of architectural and engineering services. The major problem in the industry is direct or indirect subsidization by many governments of local firms. This is effected in several ways: direct subsidization of national firms’ operations in foreign markets; the provision of guarantees against losses to state-owned or private firms; the grant of export credits; guarantees of government financing to those purchasing services from local firms; subsidization of materials and equipment; the financing of pre-bid surveys; insurance against cost inflation; and the granting of tax subsidies.

Other barriers in this category include: requirements a degree
of local ownership in a firm (sometimes a majority) and of some local participation in management; discriminatory tax treatment; preferential treatment of domestic firms in government procurement; the promotion, either by law or tradition, of employment of nationals; exchange controls; extensive and time-consuming requirements for obtaining a license to do government contract work; and a lack of standardized guidelines for bidding procedures. U.S. firms also cite a number of domestically caused disincentives, such as the inadequate information on foreign opportunities provided by Foreign Commercial Service officers; the Foreign Corrupt Practices Act; anti-boycott laws; and the uncertainty generated by the antitrust laws.

The industry itself has attempted to reduce some of these barriers. In July 1983, the U.S. National Council of Architectural Registration Boards (NCARB) and the Architects Registration Council of the United Kingdom entered into an “Inter-Recognition Agreement,” in which each agreed to certify architects registered by the other upon passage of an examination testing the applicant’s knowledge of the practice of architecture in the host country. Though the profession is state-regulated in the U.S., most jurisdictions accept the NCARB certificate as evidence of competence, and the organization has considerable influence over state procedures for licensing foreigners. This is the only such bilateral agreement in existence, although the NCARB is presently studying certification requirements in a number of countries in order to, among other things, determine whether any other such agreements might be possible. There is also an international professional organization—the International Union of Architects—comprising ninety professional architecture associations from various countries, which is currently trying to formulate an international code of ethical principles for its members. Although it is not now pursuing the formation of inter-recognition agreements or related understandings, it is conceivable, according to a U.S. delegate of the organization, that it will some day take on such issues.

The engineering field does not have any such broad inter-recognition agreements, although there is a major international organization of consulting engineers who are very active in international work. The International Federation of Consulting Engineers (FIDIC), which comprises national associations from forty-three countries, has developed a code of professional conduct, and FIDIC membership has come to signify professional competence, as evidenced by the fact that some countries require that all architects
associate with a FIDIC member firm. In both the engineering and architecture professions, then, there is still a great need for either bilateral or multilateral agreements on the regulation of foreign professionals.

Some efforts have been made within these industries to combat the broader barriers existing in the design and construction field by operating more and more frequently through joint ventures and foreign subsidiaries. Joint ventures can help reduce a firm's problems with local regulations of foreign firms, and subsidiaries may be able to obtain better project financing terms from local financial institutions and governments. However, these approaches do not in any way reduce existing barriers to the export of design services. As is the case with respect to many other professions, general agreements on trade in services are needed to help liberalize trade in engineering and architecture services.

II. MANAGEMENT AND CONSULTING SERVICES

Major providers of management and other consulting services include independent consultants or consulting firms, accounting firms which also offer what have become very lucrative management consulting services, consultants who work within non-service organizations, and academics and other experts who do consulting work on a part-time basis.

In the international market the first two types of providers are the most important, with large firms responsible for much of the international activity. As was the case in many other service industries, most consulting firms initially expanded their operations abroad in order to follow domestic clients, and much of their revenue continues to be derived from foreign branches of domestic companies. Yet consultants have significantly expanded the scope of their activities: foreign companies, governments and international development agencies are now important sources of foreign contracts. While U.S. consultants are the most active internationally, many non-U.S. firms also engage in a significant amount of foreign activity. European firms are becoming increasingly important in the developing world, while U.S. companies, though involved there, have more permanent operations in Europe than in any other area. Several foreign firms are also active in the U.S. market, and a number of them have branch offices or affiliates in this country.

The type of services sold internationally varies greatly with the type of consultant involved. Business and management consultants provide American and foreign clients abroad with such ser-
PROFESSIONAL SERVICES: AN OVERVIEW

Professional services as foreign market analysis, systems analysis, strategic planning, and management training. Additionally, U.S. firms are serving an increasing number of foreign firms which are exporting to or investing in the U.S. and need research or management assistance. Consulting firms also provide a myriad of services needed for public projects funded by governments and/or international development agencies, particularly, though not exclusively, in the developing world. These services range from general management and financial and planning consultation to more sector-specific aid in such areas as agricultural improvement and energy use and production.

Consulting firms carry out their foreign operations in a number of ways, including through foreign affiliates, branches (the most common form of operation for large consulting firms), subsidiaries, joint ventures, and franchises. In addition, some work can be done directly from a home-country office.

Though countries do not regulate consultants through licensing or education requirements, in many countries consultants themselves have developed standards of professional conduct. Management consultants in the U.S., for example, have a number of professional associations with codes of ethics and standards of professional practice to which members must subscribe. Membership in such an association, which is considered to signify adherence to the general standards, is thought to contribute to business success, and about 70 percent of management consultants belong to one of these associations. Many European nations have similar organizations, and there is some international cooperation between U.S. and European professional associations: a U.S. Council, which is composed of the six largest U.S. associations, and the Federation of European Consultants, which is made up of fourteen national associations, share information and data and have an international conference planned for 1987.

Though the market for consulting services has become quite international, members of the industry cite a number of barriers to trade in consulting services. They include: (1) discriminatory taxation; (2) restrictive foreign exchange and profit remittance regulations; (3) personnel restrictions, such as difficulties in obtaining visas and work permits; (4) requirements that nationals have a controlling interest in all consulting firms; (5) preferences, both in practice and in law, for national firms (one form of which is the requirement that a purchaser of foreign services prove that no national firm could provide the needed services); and (6) according to U.S. firms, insufficient information provided by Foreign Commer-
cial Service officers about foreign opportunities.

Unlike the restrictions faced in several other professions, none of these barriers is the result of professional licensing requirements or discriminatory regulation of the profession itself. These barriers therefore cannot be reduced by industry efforts alone; broad governmental initiatives on services trade are needed for their removal.

III. Health Services

Typically, the providers of health-care services are thought to be doctors, nurses, and dentists, who for many years have obtained work, training, and education in foreign countries. Because of the tremendous importance of insuring that such professionals are qualified, many countries have developed rigorous standards which foreign health practitioners must meet. To practice in the U.S., a foreign doctor must first obtain a certificate from the Education Committee for Foreign Graduates. Such certification may be obtained only upon the Committee’s approval of the applicant’s foreign medical school diploma and medical certificate, and his or her passage of a rigorous test of the English language, as well as tests of medical and clinical sciences. The foreign doctor must then complete a residency in the U.S. and pass a state licensing exam.

Some of the more substantial barriers now faced by foreign doctors are the immigration requirements they must meet even to enter the country. In 1976, the Labor Department declared that there was no longer a shortage of physicians in the U.S., and toughened the requirements for issuance of visas to foreign doctors. They must now qualify under H-1 or J (exchange program participants) provisions. Doctors granted H-1 visas are restricted to teaching or research activities, and any patient care provided must be incidental to this purpose. J-visas are granted to foreign medical practitioners who are part of either an exchange program for graduate medical training or another program which has been approved by the United States Information Agency.

Although U.S. health professionals rarely go abroad to establish an individual practice, they often work abroad, particularly in developing countries, as part of an aid, development or exchange project. Over 200 doctors’ organizations are involved in such projects. In such cases, arrangements are usually made which enable a U.S. doctor to obtain clearance to practice in the foreign country.

Yet because the work of health care professionals is often not dependent upon or closely tied to input from the home country,
the international movement of such professionals is in fact not the main component of trade in health care services. In the health care industry, the major trade activity takes three forms: (1) foreign ownership and operation of facilities which provide health care services; (2) the development and/or operation of part or all of such facilities for foreign entities on a contract basis; and (3) consultation provided to a foreign purchaser concerning the planning, design and operation of a health care system. Thus the professionals who are most deeply involved in the export of health care services are hospital managers and consultants.

The hospital management industry has expanded tremendously in the past two decades as hospital management companies (HMCs) introduced such cost-efficient techniques as centralized, computerized, and standardized procedures for billing, purchasing and operations. Several of the major U.S. HMCs entered the international market in the early 1970s. These companies generally dominated the export market in the following decade, largely because of the considerable comparative advantage they enjoyed as a result of sophisticated U.S. technology and U.S. hospital managers' professionalism, expertise, and experience. Most foreign activity by U.S. firms has taken place in Western Europe and Australia, but there is also considerable demand in the developing world for expertise in the development of modern health care systems.

As noted, HMCs can export a large variety of services, ranging from the design, construction and operation of major health care systems to the provision of ancillary services to a single hospital. The overseas operating structure used by HMCs varies as well; their foreign presence can be established through foreign affiliates, branches, subsidiaries, or joint ventures. Joint ventures are common in large projects which include design and construction, both because many foreign governments require it and because it is often necessary in order to finance the large, extremely expensive projects.

Although U.S. HMCs at first expanded very successfully into the world market, U.S. hospital managers still face a number of barriers, both at home and abroad. The foreign barriers take several forms. The largest single obstacle for HMCs is government subsidization of foreign competitors. Such subsidies are most frequently granted to consortia of foreign companies, assembled to work on specific projects. According to one industry source, a major project was recently awarded to a French consortium which, because it had obtained low-cost financing from its government for construction parts and equipment, could offer construction services
for a lower price than could U.S. competitors. Ownership restrictions can also be barriers, as regulations requiring national control can make large investment less attractive. Other frequently cited foreign barriers include restrictions on or prohibitions of investor-owned hospitals (such limitations are particularly troublesome in West Germany and Japan); excessive government red tape; and restrictions on the employment of U.S. nationals.

There are also domestic barriers to trade in hospital management services. The Foreign Corrupt Practices Act has often been cited as a cause of U.S. firms' failure to win a number of contracts in several LDCs. U.S. anti-boycott laws, designed to prevent U.S. companies from complying with the Arab boycott of Israel, have been a problem in some Arab countries. Finally, American antitrust laws have posed a potential problem to joint ventures, the legality of which is sometimes ambiguous under these laws.

There are also a number of political and cultural problems affecting the market for hospital management services. In some countries the idea of a for-profit private hospital is unacceptable. In others, political instability and capricious leaders have helped keep U.S. firms out. Political factors recently caused a large HMC to pull out of Saudi Arabia and are generally making the Middle East a less attractive market than it once was. The extreme poverty of many developing nations and the policies of some development organizations are also a source of difficulty: major health care projects are too expensive for most LCDs to pay for alone and at least one development organization, the Agency for International Development, has a policy or refusing to fund large HMC-style projects, instead stressing programs that focus on family planning and preventive health care.

American HMCs have been able to combat some of these barriers themselves. Two major companies recently launched a joint venture in order to compete with a foreign consortium. A large company recently opened a foreign health operation in Brazil similar to the health maintenance organizations (HMOs) operating in the U.S. The HMO, which is more community based and oriented to preventative care, may be a more culturally acceptable form of health service in some countries, and thus more likely to win AID support.

However, the other difficulties faced by the hospital management firms do not seem conquerable by industry efforts alone. Broader governmental agreements on services seem necessary to reduce or eliminate such barriers as government subsidization of projects and restrictions on ownership.
IV. Education

There is a substantial international market for educational services, because the quality, type and availability of such services vary widely among different countries. These services can be provided to foreign residents in a number of ways. Any activity that involves the training of a foreign national can be considered an export of educational services: such activities include the enrollment of foreign students in all levels of private and public educational institutions, and in proprietary technical, trade, and commercial schools; the enrollment of foreign students in the overseas branches of such schools; the direct provision to the foreign market of a large variety of other educational services; and training programs for foreign nationals conducted both at home and in the foreign country.

By far the most prevalent form of trade in educational services is the enrollment of foreign students in public and private degree-awarding institutions. The U.S. has traditionally had more foreign students than any other country, usually enrolling from 25 to 30 percent of the world total. In 1984-1985, there were approximately 343,000 foreign students attending U.S. schools. Next in popularity have been France, West Germany and the United Kingdom, enrolling nearly 60 percent of all foreign students. Multiplying the number of these students by the average cost per year of study reveals that this form of educational export is a significant source of income for a nation. Though a few students in the U.S. receive funding from within the country, at least 85 percent are funded by foreign sources such as families, governments and international development agencies.

Asia, Africa and South America together account for approximately 70 percent of all students studying abroad. In the U.S., Iran, Taiwan, Nigeria, Japan and Canada are among the major sources of foreign students. In France and the U.K., former colonial ties seem influential in generating trade: in France, for example, the top three suppliers of foreign students are Morocco, Algeria and Tunisia.

In the U.S. there has tended to be a fairly constant two-to-one ratio between foreign students attending public and private schools. In recent years, there has also been some increase in the enrollment of foreign students at two-year colleges. Latin American students and refugees from various countries such as Vietnam and Cuba make up a large part of this enrollment. Apparently, the curriculum of such schools, which often includes medium to low
level specialized technical training, combined with their lower costs, have particular appeal to students from some of the poorer developing nations. It also seems reasonable to believe that trade and technical schools should also be increasing their enrollments of such students, and spokesmen for the two major associations of trade schools have reported that foreign enrollment is high. However, since the large majority of such schools do not belong to any association, it is difficult to measure their foreign enrollment accurately.

Foreign schools and training institutes of various kinds are operated both by U.S. colleges and universities and by for-profit entities. Both U.S. and foreign students attend U.S.-owned colleges in Israel, Mexico and Europe and the foreign campuses of a few U.S. universities. A number of for-profit operations exist in foreign markets as well, offering subjects varying from languages to cosmetology to business and secretarial skills to electronics. The most successful of these schools are operated by large companies, many of which entered the field fairly recently as it became clear that what had been internal training programs could successfully operate independently.

Certain educational and training services are also exported directly to foreign markets. These include traditional education materials, such as packaged course work and training systems, as well as correspondence courses offered by both businesses and proprietary schools on as wide a variety of subjects as those offered by foreign branches. Because of long mailing times and language problems, firms have been unable to capitalize on what experts believe to be a large market for home study. However, many firms have tried to combat these problems by specifically gearing their programs to foreign markets, establishing foreign branches, and contracting out their courses to local affiliates.

Finally, educational services can be provided to a foreign market by professionals entering that market on an ad hoc or contract basis. Most of the training programs operated by large companies are administered in this way, often being provided in conjunction with sales of high technology equipment. Those offering educational services in this manner believe that they must do so to keep and expand overseas markets for other products; such training is not a major independent profit-making activity.

There is also a significant market abroad for teachers of English as a second language. The largest markets for these services have long been Saudi Arabia and Japan, though China has recently become a major market as well. While the majority of such teach-
ers are employed by businesses, some few work for governments, private individuals and schools. Teaching in a public school system requires certification in most countries, which creates the potential for licensing difficulties. An English teachers' group claims, however, that holders of a U.S. degree in education will generally have no difficulty in being certified abroad.

Both proprietary and traditional educational institutions are also involved in what may be termed educational consulting work. Some technical and trade schools have contracted to set up vocational and technical training systems and prepare curriculum materials for foreign institutes. They have also provided training directly to foreign nationals on a contract basis. Development agencies such as AID have in some cases provided funding assistance to foreign governments. AID has also founded cooperative programs through which U.S. nonprofit educational institutions provide assistance to foreign facilities, particularly those geared towards the development of primary instruction.

The barriers to trade in educational services vary in kind and importance in the different parts of the education industry. Given the size of the higher education segment of the industry, the most problematic barriers seem to be those preventing foreign students from obtaining post-secondary training.

Home country regulations of students studying abroad are not so much restrictions on student outflow as they are determinants of its composition. Controls are usually aimed at ensuring that foreign education will promote development goals and at avoiding a "brain drain." Barriers tend to take the form of: limitations on the students' choice of countries and/or institutions; rigorous standards which students must meet, or outright control over which groups may and may not study abroad; rules regarding the type of study which may be undertaken; and the subjection of outgoing students to rigorous exchange controls or bonding.

Countries vary significantly in the degree to which they regulate the inflow of foreign students. A number of European countries have extremely precise requirements for the validation of foreign degrees, higher admission standards and higher tuition for foreigners, and quota systems governing the admission of foreign students. Like the student outflow policies discussed above, these policies are generally not intended to reduce the number of foreign students so much as to control the composition of the foreign student population.

While no such policies on student inflow exist in the U.S., educators cite immigration difficulties as major impediments facing
foreign students trying to come to the United States. One problem stems from the U.S. immigration requirement that non-immigrant aliens prove that they intend to leave when their visa expires. Consular officers often require applicants to show proof of close family ties, significant ownership of property and/or substantial future economic ties to their home countries, although such showings can be difficult for a student-age applicant to make.

Additional problems arise from U.S. language requirements. Incoming students must show that they have been accepted at a reputable educational institute and that they have or will acquire the language skills necessary to complete their program of study. Students often seek to come to the U.S. to receive language training and then begin a degree program, but they frequently cannot get accepted to the latter without first doing the former. Therefore, U.S. requirements often prohibit students from coming to the U.S. for language training, and in some cases, from coming at all.

A third hurdle faced by potential incoming students is the requirement that they demonstrate funding for their education. Extraordinary, and sometimes prohibitive, requirements may be imposed when the political or financial system of a potential student’s country is thought to be unstable. These can include requiring the student to prove that the necessary funds will be transferable in the future, or requiring all expenses to be paid at the outset.

Potential entrants can also be denied visas on the basis of their espoused political beliefs, a problem which is particularly important for some well-known scholars. Students too may be denied visas if their espoused views lead the diplomatic officer considering their application to believe that the student is likely to seek permanent asylum in the U.S.

Visa laws and practices can restrict foreign student entry in a number of other ways as well. For example, consular officers occasionally deny visas to a student’s dependents as a means of insuring the student’s return, and this practice sometimes prevents foreign students from entering the country in the first place. In addition, the paperwork and other immigration-related requirements imposed on educational institutions can be extremely expensive. It has been estimated that one-third to one-half of the resources budgeted to foreign student affairs goes to immigration matters. This leaves significantly less for such things as foreign recruitment.

Educational experts point out that restrictive U.S. practices not only prevent the U.S. from earning education and education-
related revenues, but also prevent it from promoting important international economic relationships. It is difficult to measure the significance of the trade and investment ties that develop with foreign countries whose nationals attend U.S. institutions. But these relationships are undoubtedly important. In a 1984 study of Brazilian students, researchers Crauford Goodman and Michael Nacht report that when they asked foreign students whether there was an ascertainable relationship between U.S. training and trade, the students thought the answer was "too obvious to repeat" and supplied numerous examples of business relationships with U.S. firms that originally developed due to their U.S. education.

Other problems facing exporters of educational services include the pirating of copyrighted materials, such as curriculum or correspondence courses; occasional prejudices in foreign governments against expertise from nonprofit educational institutes rather than from private sources; misleading recruiting abroad by a few institutions; foreign exchange controls on profit remittances; and, according to U.S. sources, inadequate information provided by overseas commercial officers on foreign opportunities.

Because of the great diversity of "educational services," there is no broad organization of their producers, and efforts to reduce the barriers to international trade in education services have been fairly minimal and scattered. A group of educational organizations recently succeeded in getting the Immigration and Naturalization Service to work with them in revising the requirements imposed on educational institutions by U.S. immigration laws. Efforts have also been made by UNESCO and other groups to encourage countries to respect the rights of foreign authors. Nevertheless, governmental service agreements covering intellectual property would be useful in this area because private initiatives have not been entirely successful. U.S. educators should probably focus their efforts on problems related to U.S. visa practices, as these regulations affect the largest number of potential consumers. It has been suggested that if the U.S. is to improve its share of the international market in educational services, U.S. diplomatic officers must become more sensitive to the contribution foreign students make to the U.S. economy.