

**Testimony of**  
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**Before the**  
**Trade Policy Staff Committee (TPSC)**  
***International Services Agreement (ISA)***  
**March 12, 2013**

**Office of the U.S. Trade Representative**  
**1724 F Street, N.W., Washington, D.C.**

Thank you for holding this hearing, and for the opportunity to testify today on behalf of the Software & Information Industry Association (SIIA) on this very important topic.

SIIA is the principal trade association for the software and digital information industry, representing nearly 500 member companies that publish and distribute information, provide software applications and related Internet-based services.

These comments make four major points regarding the ISA and digital services trade.

- First, it is critical to lower barriers to trade in digital services.
- Second, digital trade in services is an increasingly important part of U.S. exports.
- Third, ISA should focus on making sure that digital products, regardless of classification as a good or service, should receive market access, national treatment, most favored nation treatment, and other benefits of open markets.
- Fourth, intellectual property protection is crucial element to enable digital trade in services.

**First, it is critical to lower barriers to trade in digital services.** SIIA strongly supports proposals that were part of the 2011 EU US Agreement on Trade Principles for ICT Service:

- Cross-Border Information Flows: Governments should not prevent service suppliers of other countries, or customers of those suppliers, from electronically transferring information internally or across borders, accessing publicly available information, or accessing their own information stored in other countries.
- Local Infrastructure: Governments should not require ICT service suppliers to use local infrastructure, or establish a local presence, as a condition of supplying services.

Both of these proposals are necessary for businesses large and small to harness the full benefits of the Internet, and for countries to prepare all of its citizens and enterprises for the global 21st Century economy.

The ability to move information and data across borders is crucial to the success of software and digital information businesses around the world, including ability to locate computer facilities where it makes the most economic sense, allowing them to take advantage of the efficiencies of digital products and services.

Lowering of barriers to trade in digital services presents a wide range of economic benefits for all countries around the world, including:

- Increasing domestic productivity;
- Providing strategically important inputs for all “non-IT” sectors, for instance enhancing the provision of banking and financial services, education, tourism, construction, and health care;
- Increasing consumer choice, which promises to maximize innovation and ensure price competition; and
- Encouraging long-term investment and commitment to local markets.

Software and digital information services can reach far broader audiences to spur further innovation, prepare workers for 21<sup>st</sup> century jobs, and foster better decision-making. Dissipating these advantages by imposing inefficient localization requirements and cross-border flow restrictions would curtail the cross-border activity from industries that depend on enhanced digital IT products and services to flourish and provide jobs.

**Second, digital trade in services is an increasingly important part of U.S. exports.** In 2008 SIIA's analysis of the software and information industries demonstrated that they are key drivers of the new global knowledge economy, growing and producing high-wage jobs at a rate much greater than most other industries. The recent developments in cloud computing and data driven analytics reinforce and expand upon this growth. And the continuation of global economic integration in these markets also means that a new focus on trade in these services is crucial to understanding the dynamics and policy needs of this vital market segment.

This was proven recently in the BEA 2011 study of digitally-enabled trade. These categories of trade in services are growing faster than the other categories. From 1998 to 2010, ICT-enabled services exports grew at an average annual rate of 9 percent, compared with a growth rate of 3 percent for all other services exports. The share of private services exports composed of ICT-enabled services increased from 45 to 61 percent

Although impressive, these reported statistics should be viewed as conservative estimates of the total trade in software and information services, as the data are collected predominantly through surveys or by research, rather than by the traditional method of measuring physical goods through customs.

**Third, ISA should focus on making sure that digital products, regardless of classification as a good or service, receive market access, national treatment, most favored nation treatment and other benefits of open markets.** The U.S. Korea Free Trade Agreement ensures non-discriminatory and duty-free treatment of all digital products, whether imported in physical form or delivered over the Internet. This includes freedom from “customs duties, fees, or other charges on, or in connection with, the importation or exportation of “digital products.”

The U.S. has included this provision in the E-commerce chapter of several other trade agreements and has proposed it as part of the Trans Pacific Partnership. SIIA supports this treatment of digital products in the ISA.

A related concept is the moratorium on customs duties for transactions conducted entirely through electronic transmissions. The World Trade Organization has continued this policy with respect to electronic transmissions since 1998. It was most recently affirmed at the 2011 Ministerial at Geneva. SIIA supports the continuation of this moratorium as well.

**Finally, U.S. trade policy must continue to seek high standards for the protection and enforcement of IP rights. Any attempts to weaken IP rights for these works or to exclude software or other digital products and services from protection must be strongly rejected.**