



WITSA's Statement of Policy on International Trade in ICT Goods and Services: April 2016

Document Purpose

This document has been prepared to provide policy guidance to WITSA members and other interested stakeholders on complex issues regarding international trade in ICT products and services. It can be used as background for the development of policy by WITSA members and to create opportunities for discussions with government officials and policy influencers. It represents an extension to WITSA's 2011 publication: [Policy Actions to Deliver the Promise of the Digital Age](#)

Synopsis

There is a compelling economic case to support ongoing efforts that enable continuing global trade liberalization. Progress to-date has resulted in significant increases in the global distribution of income with substantial benefits accruing to all nations – developed countries, emerging economies and especially to some of the poorest nations, for whom trade is demonstrably more beneficial, economically and socially, than aid.

Information and communication technology goods and services (ICTs) are vital building blocks – the infrastructure, real and virtual – for development, and themselves enable trade in a wide range of new digitized information services, contributing to global income growth. WITSA thus has a strong interest in liberalization of trade and making new modernized rules to facilitate business development.

Reducing and removing trade barriers that limit the availability, or increase the cost of these ICTs to end-users is a necessary requirement in fulfilling the promise of the Digital Age.

WITSA urges all its members and their governments to redouble their efforts to establish and implement multilateral trade liberalization under the auspices of the World Trade Organization (WTO). *Long-established WTO principles and processes enable trade liberalization to be achieved on an open, competitive, non-discriminatory, predictable and transparent basis.*

WITSA calls for immediate actions to be taken by all WTO member nations to accede to, and expand the scope and coverage of the Information Technology Agreement (ITA), and to participate in the recently commenced Trade in Services Agreement (TISA) negotiations. TISA should provide a comprehensive, business-friendly framework that eliminates unnecessary barriers. To create new market opportunities, all nations must avoid enacting discriminatory policy measures, performance requests, or local regulations that have unclear objectives and limit supply. Technical standards or security requirements that restrict trade and investment should be eliminated.

Context

About WITSA

[WITSA](#) is a global consortium of leading ICT industry association members from about 80 countries/economies.

As the leading recognized voice of the global ICT industry, WITSA aims to drive transformation and grow the industry, given that ICT is the key driver of the global economy:

WITSA's members and stakeholders comprise national associations, multinational corporations, institutions and organizations, researchers, developers, manufacturers, software developers, telecommunication companies, suppliers, trainers and integrators of ICT goods and services. As such, they represent a large and obviously critical constituent group for whom international trade in ICT products and services underpins business development and economic activity.

Information Technology, International Trade and the Global Economy

Information and communication technology products and services (ICTs) are fundamental for economic development and growth. On the one hand, ICTs are intermediate goods and services that create efficiencies and capabilities underpinning the comparative advantage of businesses, industries and nations, with which nations generate income through exports, and address their needs through imports. On the other hand, ICTs are also important in their own right, as tools of trade, consumer electronics, audio-visual services, productivity generators, and freedom of expression. ICTs enable digitized information to flow across borders, as part of personal communications, for social and cultural exchange, supporting innovation in all sectors, and as an essential commercial and economic activity. For these very sound economic reasons, nations should avoid introducing any regulations that inhibit the development, sale, and application of ICTs, and give strong consideration to unilateral actions to remove inhibiting regulations where they exist, due to national legislation.

Thus, barriers and restrictions affecting trade in ICTs and the information trade they enable have twofold negative effects on nations, governments, industries, businesses, individuals, as well as the global economy: trade barriers and restraints limit not just access to ICTs, but also disable or limit the information services trade subsequently enabled by these ICTs. Thus, ICT trade barriers should be avoided if planned or, removed urgently if in place. These actions, where they arise, must be addressed on a global basis as central action in fulfilling the promise of the Digital Age.

Why a country should make commitments to fully liberalize trade in IT services

- Application of information technology (IT) can help businesses and governments to:
 - Enhance productivity
 - Improve efficiency
 - Provide better service
 - Increase competitiveness
 - Reduce costs
 - Transform organizations.
- Facilitating access to information technology is an important way for countries to promote economic development and growth.
- Providing market access to IT and IT services can help attract Foreign Direct Investment (FDI).
- Many countries recognized this when they signed the Information Technology Agreement (ITA) to eliminate customs duties on IT products, which increase the cost of this important technology to businesses, government and consumers.
- IT services enable organizations to obtain the benefits of information technology quickly and without making major investments to purchase, install, and operate its own computer equipment and without having to hire and retain a full IT staff.
- There is a growing trend for organizations to purchase IT services instead of owning and maintaining their own IT infrastructure, to ensure access to the latest technology and applications and to concentrate on the operation of their core business.
- Granting full market access and national treatment to IT services provides businesses in all industry sectors access to the best IT services from around the world so that they can become competitive on a global basis.

Countries may consider creating market access barriers for IT services in an attempt to protect and foster the development of a domestic IT services industry. However, this would be counterproductive, increasing the cost of IT services to users while creating a domestic IT services industry that may not be competitive on a global basis.

Why a country should request other countries to fully liberalize trade in IT services, as part of multilateral trade liberalization

- Liberalization of IT services globally will ensure access to export markets for countries that are making an investment in developing a local IT services capability.
 - The availability of export markets will reinforce the development of this important sector, which can enhance productivity and economic growth of the local economy and create desirable, high-skill, high-wage jobs.
 - Access to local IT support services may make it easier for companies to incorporate IT into their businesses, thus facilitating the realization of the many benefits of IT.
- Benefits can be gained even if a country does not make the strategic decision to develop its own software and IT services industry. Liberalization of IT services globally will foster the development of a highly competitive IT services industry. This will lower prices and encourage innovation, benefiting businesses and governments that use these services and ultimately translating into benefits for consumers.

Why keeping a Multilateral Approach is Important

WITSA is concerned about the very real risk that the significant achievements in multilateral trade liberalization since 1948 might begin to erode, as nations become introspective and protective in the face of global financial and economic challenges. This is a serious and complex issue for the global business community, affecting not just the future of multilateral negotiations, but – equally important – the future of global trade rule making and dispute settlement.

The [World Trade Organization \(WTO\)](#), along with the World Bank and the [International Monetary Fund \(IMF\)](#), are the major multilateral institutions dedicated to international economic cooperation. The WTO was established by its member countries to supervise the rules developed that govern international trade, to liberalize trade on an open, competitive, non-discriminatory, predictable and transparent basis via multilateral trade agreements (MTAs), and to provide an impartial and binding mechanism for adjudicating and enforcing contractual obligations defined by the WTO and accepted by its members. It gives all members, regardless of size or level of development, a platform and a voice. WTO agreements provide the legal ground-rules for global commerce and for trade policy.

Two fundamental principles run throughout all the WTO agreements: the “most-favored-nation” (MFN) principle, which means countries cannot discriminate between their trading partners; and the “national treatment” (NT) principle, which means imported and locally produced goods and services must be treated equally. These provide an equal and neutral foundation for negotiations and ultimately, trade rules, which ensure trade can occur between nations without any bias or preference.

The WTO and the multilateral trading system must secure the trade benefits presented by the Internet. Parties to regional trade agreements (such as the Trans Pacific Partnership or the Transatlantic Trade and Investment Partnership) are increasingly seeking to address digital protectionism, through preventing and eliminating forced localization measures, including data localization requirements, restrictions on cross-border data flows, and discriminatory treatment of digital products. In so doing, such negotiations must resist attempts to “export” the regulations of one nation to the group or region, as is attempted in relation to IP issues. To attract the participation of the ICT sector and remain relevant to the global business community the new WTO agenda should address and tackle these 21st century challenges to digital trade and e-commerce.

However, considering the several years of WTO stalemate, WITSA also welcomes the progress in negotiations on plurilateral and bilateral agreements such as the Trade in Services Agreement (TiSA) and the Environmental Goods Agreement and hails the recent agreement on the Expansion of the Information Technology Agreement (ITA), and advocates for the participation of additional WTO members in these important agreements. For example, fewer developing and transition economies signed up to the expanded ITA, with no member from the Commonwealth of Independent States, only one from Africa (Mauritius) and three from Latin America (Colombia, Costa Rica and Guatemala).

Bilateral and plurilateral agreements are indeed important contributors to healthy and sustainable multilateral trade agreements. The plurilateral negotiations for the TiSA demonstrate how building leading-edge disciplines on digital trade, e-commerce and regulatory cooperation through a group of like-minded WTO members can lead to a broader discussion of new norms at the WTO.

These core principles, together with the multilateral negotiating platform and legal mechanisms, are being threatened as pairs and groups of nations turn away from the WTO, and seek to negotiate restrictive, preferential trade agreements (PTAs), either bilateral, or regional. Unless these PTAs are open and transparent, clearly enabling the entry of other nations and regions over time, the WTO is weakened because these PTAs undermine existing MTAs. In particular, where these PTAs embody exclusive rule making and dispute settlement, they undermine the basis for future multilateral trade rule making under the WTO, and – of serious concern – the well-established WTO dispute settlement mechanism. The inevitable result is fragmentation that leads to inequality, and thus more, not less, trade barriers.

[As of June 2013](#), some ten major regional or bilateral PTAs are being negotiated. Many others are already in place, most negotiated while the Doha Round of WTO negotiations stalled over the last decade. These involve major blocs, such as the EU with India and Canada, or significant bilateral relationships. Two recent regional agreements are the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP). The TPP, signed on 5 October 2015, involves twelve Pacific Rim

countries¹. The RCEP comprises of the ten ASEAN member states² and the six nations with which ASEAN has existing FTAs³. RCEP members conducted their 10th round of discussions during 12-16 October 2015.

The problem is the negotiating positions are rarely equal, and there are clear asymmetries of power once agreements are in place, and disputes need to be settled. Unless limited in scope of coverage, or limited in time to enable open entry after a period, these PTAs by definition undermine the core concepts of MFN and NT. Even worse, many of these PTAs contain provisions extending well beyond core trade issues, such as labor standards, environmental rules, policies on expropriation and the imposition of financial controls, allowing extra-territorial application of one nation's laws over another, conflicting with the core principle of national sovereignty.

This affects the ICT industries because of the pervasiveness of ICT goods and services in all trade sectors. It affects all nations, developed and emerging, because of the way digital information and ICTs underpin trade and development.

Economic Benefits of Trade Liberalization

There have been many economic studies over the past decade, all offering unambiguous evidence of the substantial, tangible benefits of multilateral trade liberalization, especially for developing nations:

- In 2010, [a joint report](#) prepared for the G-20 Summit in Seoul by the WTO, OECD, ILO and the World Bank predicted further trade liberalization leading to long-term employment growth worldwide, with lower-skilled employment rising from 0.9 - 3.9% and that of skilled workers rising by 0.1 – 4.0%.
- [The Peterson Institute for International Economics](#) estimated in 2010 a final Doha Round agreement could contribute as much as \$US280 billion annually to global GDP.
- Using a range of assumptions, in 2011 [the IMF](#) estimated the direct gains from a full Doha package could add between 0.2-1.4% to global GDP, or \$US150-900 billion annually.
- The agreed product expansion of the WTO Information Technology Agreement (ITA) -- and expansion of its geographic scope -- will yield immediate and substantial economic benefits upon implementation. Rapid removal of tariffs on a vast array of tech products will bolster global growth, innovation, accelerate productivity, create countless jobs, lower consumer prices, and help bridge communities the world over in ways unimagined 19 years ago when the agreement came into being. An ITA expansion is estimated to add an additional \$190 billion annually to the global GDP through expanded trade in tech products. That list is estimated to eliminate tariffs on roughly \$1 trillion in global yearly sales of tech products. According to UNCTAD, the export market to be covered by the expanded ITA was estimated at more than \$3 trillion in 2013, roughly representing almost one fifth of world merchandise exports.⁴
- The landmark WTO Trade Facilitation Agreement (TFA), once ratified, has the potential to increase global merchandise exports by up to \$1 trillion per annum, according to the WTO's flagship World Trade Report released on 26 October 2015 in

⁴ See http://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d05_en.pdf

Geneva. Trade facilitation is critical to reducing trade costs and the TFA will boost world export growth up to 2.7 percent annually, increase global GDP growth by 0.5 percent and potentially increase developing country exports by as much as 20 percent and LDC exports up to 35 percent.

- [WTO studies](#) show trade liberalization significantly increases the participation of developing countries in the global economy, and that this occurs, not at the expense of developed economies, but through overall global export growth, including trade between developing economies themselves, which hitherto was low. A 2008 [study by World Bank Lead Economist Kym Anderson](#) found that global income could increase by more than \$US3 trillion per year, \$ 2.5 trillion of which would go to the developing world.

The economic modeling, combined with real data on the outcome of trade liberalization thus far, clearly underscores that *all nations gain from freer trade, and that promoting trade in emerging economies has much greater, sustained and broader developmental benefits than can be achieved through aid.*

Trade Liberalization in Services and ICT

Rapid advances in ICT have brought tremendous changes to the services sector, enabling the electronic delivery of many services to markets around the world and creating opportunities for innovative services and new business models.

Cross-border data flows are the fastest growing component of International trade. Worldwide cross-border online traffic grew 18-fold between 2005 and 2012, and could increase a further eightfold by 2025. Cross-border e-commerce has grown to represent more than 10% of the trade in goods in less than a decade. The United Nations Conference on Trade and Development (UNCTAD) estimated in its “Information Economy Report” that about 50% of all traded services are enabled by the technology sector.

The easiest way to understand the potential for digital trade and how the services sector has changed is to look at the amazing growth in the number of internet users over the last two decades. In 1995, the year that the General Agreement on Trade in Services (GATS) went into effect, there were only about 16 million Internet users worldwide. Now there are over 3,2 billion Internet users around the world, creating an enormous potential for global service providers. The global scene deeply evolved since the GATS established the rules under which services trade is conducted today. It is now crucial to establish new rules at the multilateral level to promote the continued growth of the global digital economy and address new trade barriers such as restrictions to the free flow of data, limitations on data storage and conformity/certification requirements.

Importance of free flow of human talent across international boundaries

Contemporary models of economic growth demonstrate the importance of human capital to knowledge-based economies. For businesses across all sector and sizes, the free movement of high skilled talent globally has become crucial for innovation, shorter production cycles, other competitive advantages, and access to new markets. This enabled companies to grow their businesses and number of employees while customers have access to better products and services, often at lower costs.

More and more nations worldwide, including developed and developing ones, are recognizing the value of freely exchanging global talent and thinking. This is part of a continuing shift towards free markets and unrestricted global trade.

Evidence of this shift in thinking can be seen in a number of multinational and bilateral agreements between nations. The General Agreement on Trade in Services (GATS) includes “Mode IV” provisions to facilitate the movement of managers, specialists, engineers and other highly skilled service providers. The European Union has adopted the “Blue Card” policy on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The North American Free Trade Agreement (NAFTA); ASEAN Free Area (AFTA); Common Market for Eastern & Southern Africa (COMESA); and Caribbean Community (CARICOM) trade agreements also contain provisions on the free movement of skilled labor and professionals. The Trade in Services (TiSA) negotiations are another opportunity to address Mode IV barriers.

Countries that place barriers opposing the global exchange of talent are risking the success of their own businesses, economies, and societies. And those that have remained wedded to protectionist measures that curb the mobility of global talent or artificially raise the costs of skilled workers are putting their businesses and other institutions at a distinct disadvantage at home and in the global economy.

Statement of Policy Principles

General Principles

In order to fulfill the promise of the Digital Age, all nations, governments, businesses, organizations and citizens need access to ICT goods and services, and to be able to access, or distribute, digitized information at world competitive prices. This means free trade in ICT goods and services, with level playing fields in all markets. As the first step in securing these critical benefits, WITSA urges all nations to carefully review their regulatory regimes, and remove any regulations within their jurisdiction that act as a barrier to the development, application and trade in ICT goods and services.

As a fundamental principle of public policy, WITSA therefore supports unilateral action, supported by continuing broad-based, multilateral trade liberalization initiatives, negotiated under the auspices of the WTO.

Key elements of this approach are its openness, transparency, and non-discriminatory underpinnings, comprising:

- *MFN*, the most-favored-nation principle, treating all trading nations equally, such that there is no discrimination between trading partners;
- *National treatment*, imported and locally produced goods are to be treated equally in a nation’s markets, especially in relation to non-tariff issues. This applies to foreign and domestic services, and to foreign and local intellectual property, such as trademarks, copyrights and patents;
- *Reciprocity*, which ensures all the gains from trade are realized by each nation reducing protection in return for similar reductions by other nations; and
- *Uniformity*, meaning these principles and treatments apply to all forms and modes of trade, and all products.

To be effective in achieving its goals and outcomes, the multilateral trade liberalization approach of the WTO depends upon nations agreeing and acceding to

- *Binding and enforceable commitments*, which are comprehensively enumerated by each country;
- *A rules-based system*, which binds nations to maintain their trade commitments as set out in the agreements to which they have acceded;
- *A discipline in new agreements against new forced localization measures* such as restrictions to free flows of data, mandatory technology transfer requirements, local content requirements in government and private sector procurements, forced local ownership of foreign firms and/or their intellectual property, discrimination against foreign online sellers, mandating local hires explicitly or implicitly – including restrictions on movement of skilled technical staff -, in-country testing and certification requirements, import restrictions ; and
- *A dispute settlement mechanism* that facilitates timely, effective and enforceable resolution of trade rule breaches, according to broad legal principles.

WITSA supports a multilateral approach while recognizing also that bilateral and regional preferential trade agreements (PTAs) are a first pragmatic response to challenging barriers to trade and investment in absence of new WTO rules. However, unless these PTAs are carefully crafted, negotiated transparently on an equal basis between the parties, with a clear timetable for other nations to enter, they represent “second-best” policy. In many cases significant trade restraints may arise through the use of these PTAs, rather than seeking to achieve the desired multilateral approach. These flaws create inherent discrimination through the likelihood of negotiating imbalance, and the exclusion of key trading partners. PTAs are increasingly the device for compelling agreements on non-trade issues, weakening national sovereignty and the principle of self-determination. The flaws are exacerbated by the absence of any standards between the different PTAs on rule making or impartial, enforceable dispute-settlement. Many PTAs are thus undermining the non-discriminatory principles that are central to sustainable trade liberalization.

Statement of Position

WITSA seeks a recommitment by all nations of goodwill to the principles of multilateral trade liberalization, achieved by supporting, constructively and positively, the principles and processes of the WTO.

In the absence of progress towards a comprehensive agreement as proposed at the WTO Ministerial Meeting at Doha in November 2001, WITSA urges all WTO member nations to build upon existing foundation agreements, such as [GATS](#), [GPA](#) and [TRIPS](#). This can be achieved through all WTO members acceding to agreements negotiated under the auspices of, and enforced by, the WTO, such as the [Information Technology Agreement](#) (ITA), and expanding its coverage in line with technological change. Progress in extending the GATS can be achieved by convincing all WTO members to join the – plurilateral at this stage - negotiations on a GATS-compatible [Trade In Services Agreement](#) (TISA) embodying a hybrid approach with MFN and NT principles, which recently commenced. WITSA also urge WTO member countries to promptly ratify the Trade Facilitation Agreement (TFA), which was agreed at a ministerial conference in Bali in December 2013. The TFA will boost global trade and economic growth.

WITSA notes the increasing tendency of national governments to enact regulations, develop technical standards, or establish conformance requirements relating to security and network attachment, which may act as non-tariff barriers and restrict trade in ICTs and information services. WITSA urges governments to review the trade impact of these actions, and remove those that cannot be transparently justified in regards to the article XIV of the GATS. Any disconnected national strategy impacts the global economy as a whole. WITSA also encourage governments around the world to work hands in hands with businesses to identify best practices in policy formulation for the rise of the digital economy.

Nations that place barriers opposing the global exchange of talent are risking the success of their own businesses, economies, and societies. And those that have remained wedded to protectionist measures that curb the mobility of global talent or artificially raise the costs of skilled workers are putting their businesses and other institutions at a distinct disadvantage at home and in the global economy. WITSA urges support to global exchange of talent by allowing free movement of talent globally

Call to Action

WITSA calls on its members to engage with their national governments on this issue, urging them to promote the principles and practices of multilateral negotiations to achieve trade liberalization under the auspices of the WTO. As interim steps, WITSA members should support and advocate:

- *the prompt implementation of the newly expanded ITA in both scope, and in coverage among participating countries; the accession to the ITA by countries not currently participating in this landmark agreement, and the rapid development and negotiation of a modern, transparent TISA based on a hybrid approach with MFN and NT principles, enabling all the world to access globally competitive ICT services, by encouraging more nations to join these two plurilateral agreements;*
- *the prompt ratification of the WTO Trade Facilitation Agreement (TFA) by member countries in order to boost global trade and economic growth.*
- *the removal of domestic regulations and standards, the effects of which restrict trade and availability of ICTs and information services; and*
- *the making and harmonization of modernized rules for the ongoing business development of ICTs and enabled services – for instance, in areas such as cloud computing services, business intelligence services, cross border services, e-commerce, IPR, privacy, data protection, security, and taxation – that realize the promise of the Digital Age⁵.*
- *Support free global mobility of high skilled talent opposing any protectionist measures, and not to be confused with immigration issues*

⁵ *These will be separately addressed in other WITSA Policy Statements*