

February 26, 2013

Mr. Douglas Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: International Services Agreement – USTR-2013-0001

Dear Mr. Bell:

The Software & Information Industry Association (SIIA) is pleased to provide the following comments in response to the Federal Register notice of January 24, 2013 regarding an International Services Agreement (ISA).¹ We also seek to participate in the March 12, 2013 hearing on the U.S. interests and priorities for these negotiations. SIIA is the principal trade association of the software and digital content industry representing more than 500 software publishers, developers, and service providers from around the world.

There are many issues that an ISA could profitably address but we want to emphasize two: the importance of lowering trade barriers to trade in digital services and the need to maintain a high degree of intellectual property protection and enforcement.

The importance of lowering barriers to trade in digital services

SIIA strongly supports proposals being considered in the Trans-Pacific Partnership (TPP) that address the flow of data across borders and the abolition of mandates that require servers to be located in every country in which companies do business. We urge the Administration to seek similar provisions in the ISA.

These proposals relating to cross border data flow and forced localization are necessary for businesses large and small to harness the full benefits of the Internet and for countries to prepare all its citizens and enterprises for the global 21st Century economy that relies upon the unrestricted flow of information and data.

¹ United States Trade Representative, Request for Comments on an International Services Agreement, January 24, 2013 at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-24/pdf/2013-01497.pdf>

The worldwide software and information companies in SIIA provide online digital information services and Internet-based services such as search and cloud computing services. For them, the ability to move information and data across borders is crucial to the success of their businesses around the world and the ability to locate computer facilities where it makes the most economic sense allows them to take advantage of the efficiencies in technology-based services.

Benefits for all countries from a lowering of barriers to trade in digital services include:

- Unimpeded flow of digital commerce is a precondition for enhancing domestic economic performance.
- Domestic productivity increases when firms are able to import the best quality computing and information services at the lowest prices.
- Online information services, Internet-based services and computer services supply strategically important inputs for all sectors, goods and services.
- A country that wants to excel in the provision of banking and financial services, education, tourism, construction, and health care needs to allow its businesses and citizens to obtain the best possible inputs from information and computer service providers regardless of location
- Worldwide suppliers of online and computer services provide the spur of competition to ensure that all service sectors excel.
- They help domestic exporting and manufacturing companies.
- Unimpeded flow of information and flexible location of servers leads to competitive prices, better quality and wider choice for consumers.
- Lower price and wider availability of information services and computer services lead to greater product and process innovation throughout a domestic economy.
- These proposals provide producers, investors, workers and users with a clear idea of the rules of the game, thereby encouraging long-term investment and commitment to local markets.

Some have argued that localization rules promote local employment, economic growth and indigenous innovation. But this misses the point. Localization rules restrict the opportunities for economic gain within local economies. Cloud computing, for example, is valuable to a local economy primarily because it increases the efficiency and decreases the cost of computing services. Local businesses, especially small and medium sized businesses, are then able to grow, increase productivity and innovation and employment.

Removing barriers to the establishment and delivery of digital information services also brings great benefits. Digital information products and services can reach far broader audiences to spur further innovation, prepare workers for 21st century jobs, and bring greater understanding that fosters better decision-making.

Dissipating these advantages by imposing inefficient localization requirements will hurt the very businesses and enterprises that this misguided requirement is supposed to help. In fact, it would curtail the cross-border activity from industries that depend on enhanced computer and digital information services to flourish and provide jobs.

In April 2011, the United States and the European Union reached an agreement on Trade Principles for Information and Communication Technology Services. Contained in this agreement were two principles that could usefully serve as models for the ISA negotiations in this area. We urge the Administration to build on the successful agreement on these principles.

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. In addition, governments should not give priority or preferential treatment to national suppliers of ICT services in the use of local infrastructure, national spectrum, or orbital resources.²

Digital trade requires strong IP laws and enforcement

The protection and effective enforcement of intellectual property (IP) rights is critically important to the economic growth and prosperity of all fast growing economies and to the innovative software and digital content companies that rely on copyright, patent, trademark and trade secret protection to secure investments in their valuable innovations. It is essential that U.S. trade policy and the negotiations for an ISA maintain high standards for the protection and enforcement of the intellectual property rights that reside in software and digital content. 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.

There is often a misperception that intellectual property laws, and in particular copyright laws, solely benefit the movie and music industries. That is simply not the case. The innovative and creative software

²European Union-United States Trade Principles for Information and Communication Technology Services, April 4, 2011 at http://ec.europa.eu/information_society/activities/internationalrel/docs/eu-us-tradeprinciples.pdf

and digital content companies represented by SIIA play a leading role in driving economic growth, jobs and competitiveness and rely on a global foundation of strong intellectual property protection that appropriately balances the legitimate interests of copyright owners and users.

Strong IP protections for software and digital content have been an essential element in fostering the explosive growth in new innovative technologies and a wider variety of educational materials and information products that increase productivity, effectiveness and knowledge. However, as online theft of software and content becomes more sophisticated and widespread throughout the world these innovative new products and services are increasingly at risk and the companies that invest in them are finding it more difficult to continue investing in existing products and to fund the creation of new ones. Because online piracy has become a global epidemic that is not limited to just one or two countries it is important for nations across the globe to join together to create a strong foundation of adequate and effective copyright protection and enforcement.

The adoption of strong IP protections by all countries will more widely promote widespread benefits for all nations, especially those that seek to develop their own indigenous software and digital content industries. History has shown that laws that affording strong copyright and patent protection for software and digital content, coupled with effective enforcement tools, are:

1. A precondition for large scale investment by worldwide content and software companies, since these companies focus their investment in countries where they are confident they can protect the integrity of the products and services they offer, and
2. A necessary ingredient for the successful growth of indigenous software and content companies, since their sustained growth can only take place when the local and foreign distribution of these products and services is secure.

For countries seeking to make the transition to their own indigenous software and content industries that can supply their local markets and compete in global markets strong copyright enforcement measures throughout the world are essential. Trade agreements must not take any steps backward from high standards for the protection and enforcement of intellectual property rights

Digital Products

The U.S. Korea Free Trade Agreement “ensures non-discriminatory and duty-free treatment of all digital products (e.g., software, audio-visual products, etc.), whether imported in physical form or over the

Internet.”³ This includes freedom from “customs duties, fees, or other charges on or in connection with the importation or exportation of” digital products.⁴

Digital products are defined as “computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically”⁵

The US 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 trade agreements, and urges the Administration to include this objective among the goals for a successful 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: “We decide that Members will maintain the current practice of not imposing customs duties on electronic transmissions until our next session...”⁶ SIIA supports the continuation of this moratorium and urges the Administration to seek to make it permanent as part of the ISA.

SIIA appreciates this opportunity to comment as the Administration develops its priorities for the ISA negotiations. We would also like to participate in the hearing on these matters scheduled for March 12, 2013. If you have any questions, do not hesitate to contact me or Mark MacCarthy, Vice President of Public Policy, at mmacCarthy@siia.net.

Sincerely yours,



Ken Wasch
President

³ USTR, Summary of the US Korea Free Trade Agreement at <http://www.ustr.gov/about-us/press-office/fact-sheets/2009/april/summary-us-korea-fta>. This agreement specifically avoids making a commitment as to whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods.

⁴ USTR, Text of the US- Korea Trade Agreement, p. 15-1 at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file816_12714.pdf

⁵ USTR, Text of the US- Korea Trade Agreement, p. 15-4 at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file816_12714.pdf. This definition specifically avoids making a commitment as to whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods.

⁶ WTO, Decisions Adopted at the Ministerial, December 2011, Work Program on Electronic Commerce, WT/L/843 http://www.wto.org/english/thewto_e/minist_e/min11_e/official_doc_e.htm This moratorium was initially adopted in 1998, dropped in 1999 and re-adopted in 2002