

Testimony of

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Digital Trade in the U.S. and Global Economies, Part 1 and Part 2

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Thank you 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. SIIA represents the industries that publish and distribute information, provide software applications and related Web-based services.

In 2008, SIIA published a study, which demonstrated that these industries are among the fastest-growing and most important industries of the U.S. and global economies, and they are critical drivers of digital trade. More recent data shows this to be even more true today.

These comments make five major points regarding digital trade.

- First, barriers to cross border digital trade hurt both U.S. exporters and the countries that are maintaining the barriers.
- Second, intellectual property protection is a crucial element in making digital trade possible.
- Third, digital trade is an increasingly important part of U.S. exports.

- Fourth, the export activity in the computer software, computer services, and information services markets is an increasingly important part of the U.S. trade in services.
- Fifth, new trade agreements such as TPP and 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.

I will now highlight these points, and they are further explored in SIIA's written testimony.

First, it is critical to lower barriers to trade in digital services. SIIA strongly supports proposals being considered in the Trans-Pacific Partnership (TPP) that address the barriers to the cross-border flow of data and the abolition of mandates for servers to be located in the various countries in which companies do business.

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.

Now, 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 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 foster 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 digital IT products and services to flourish and provide jobs.

Second, strong IP laws and enforcement are critical to digital trade. Highly innovative and creative software and digital content companies rely on a global foundation of strong intellectual property protection, including copyright, patent, trademark and trade secret protection, to secure investments in their valuable innovations.

More broadly, the protection and effective enforcement of IP rights is critically important to the economic growth and prosperity of all fast growing economies, especially those that seek to develop their own indigenous software and digital content industries. History has shown that laws affording strong copyright and patent protection for software and digital content, coupled with effective enforcement tools, are both a necessary ingredients for the successful growth of indigenous software and content companies, and a precondition for large scale investment by worldwide content and software companies.

Because online piracy has become a global epidemic that is not limited to just one or two countries, nations across the globe must join together to create a strong foundation of adequate and effective IP enforcement that appropriately balances the legitimate interests of copyright owners and users. A failure to protect IP results in a limit to investment in these products and services.

Therefore, 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.

Third, digital trade is an increasingly important part of U.S. exports. In 2008 SIIA completed an analysis of the software and information industries, concluding 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 the growth we measured in our report. 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, demonstrating substantial shifts in the composition of trade in services, away from traditional categories like transportation and travel and toward the kind of services that are made possible by the dramatic growth in information and communication technologies (ICT).

The specific increases are striking. 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

As impressive as the BEA analysis is, 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. Additionally, SIIA's research in 2008 found that substantial digital trade also takes place via sales through overseas affiliates, which is often not reflected in the BEA statistics.

ITC should also look at trade in digital products, ecommerce in physical goods, and internal operations of global companies as important elements of digital trade.

Fourth, within its broader assessment of digital trade, SIIA urges the ITC to focus on the services that make up the category of software-and-information-based services, as these comprise an increasingly important dimension of US trade in services, emphasizing the importance of open trade and intellectual property protection for these services.

1. Computer Software – In 2010 the category of “other rights,” which includes payments for rights to general use software, totaled approximately \$56.6; increasing to almost \$63 billion in 2011. SIIA's experience with its member companies suggests that these business activities are increasing substantially, a trend confirmed in these statistics.

2. Computer and Data Processing – The processing and analytic services that are at the heart of the big data analytics revolution can be found in this service category. In 2010, this category accounted for approximately \$9 billion worth of exports, and rose more than one billion in 2011. SIIA members are highly investing in this fast growing sector, which is increasingly cross-border in nature.

3. Data base and other information services – This category grew to \$5.4 billion in 2011, confirming another trend among SIIA members of growth in this area.

Finally, new trade agreements such as TPP and 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 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.

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.