



Global Industry Position Paper on the WTO E-Commerce Initiative

Digital trade is critical to the prosperity of all economies and the ability of companies of all sizes and in all sectors to produce, move, market, and sell products and services around the world. In order to provide countries with the tools necessary to ensure that companies can continue to grow, innovate, and create jobs, global industry strongly supports efforts to secure a World Trade Organization (WTO) Agreement on E-Commerce that is inclusive, high-standard, and commercially meaningful. To that end, our associations recommend that a WTO E-Commerce Agreement:

1. Prohibit internet tariffs and customs formalities on electronic transmissions;
2. Facilitate the flow of data across borders;
3. Prohibit requirements to localize the storage and processing of data;
4. Ensure the protection of personal data;
5. Prohibit requirements to disclose source code, algorithms, or encryption keys;
6. Promote government cooperation and regulatory best practices for cybersecurity;
7. Promote state-of-the-art good regulatory practices in the regulation of digital services;
8. Pursue “TFA-plus” provisions that facilitate e-commerce, including through increasing de minimis levels and simplifying customs clearance for low-value shipments;
9. Promote acceptance of electronic contracts, signatures and authentication;
10. Ensure the adoption of non-IP intermediary liability protections;
11. Expand market access for services;
12. Expand market access for ICT goods through accession to the WTO Information Technology Agreement; and,
13. Facilitate access to and use of government data.

In an effort to provide substantive support to the continuation of the talks, we further describe each of these priority subject areas in the following pages. We look forward to continuing to work with governments toward an agreement that reflects principles of good governance, provides governments with the ability to counter digital protectionism while protecting and promoting consumer trust, fosters inclusivity in digital trade, and generates real commercial value for the global economy.

Priority Provisions

1. Prohibit Internet Tariffs and Customs Formalities on Electronic Transmissions

The Moratorium on Customs Duties on Electronic Transmissions (the Moratorium) is critical to the growth of digital trade and a shining success of the WTO. Its successive renewal has created predictability for companies around the world and prevented the emergence of a new class of trade barrier. Recent research has demonstrated that governments seeking to maximize GDP gains and tax collection should refrain from adopting duties on electronic transmissions, which would raise prices, slow consumption, and limit the ability of individuals to freely access the internet.¹ Beyond economic benefits, a transparent, tariff-free, and non-discriminatory environment for trade in digital products affords consumer benefits, such as reduced cost of digitally delivered goods and the ability to communicate globally, and reduces corruption. Current WTO negotiations should seek to increase certainty and the use of digital goods and services by making the Moratorium permanent while also ensuring electronic transmissions are not subjected to burdensome customs documentation and formalities.

2. Facilitate Cross-Border Data Flows

For consumers and companies of all sizes and across all industries, data flows and reliance on digital technologies have fundamentally changed how domestic commerce and international trade are conducted. Notwithstanding broad recognition of the importance of data flows to the global economy, economies are increasingly pursuing measures that inhibit the ability of companies and individuals to transfer data across borders, with no demonstrable justification for doing so. Current negotiations provide an opportunity to reach global agreement on provisions that meaningfully combat barriers to data flows, including those affecting financial data, without challenging regulatory frameworks that allow for the transparent and non-discriminatory transfer of data across borders. Existing provisions in regional free trade agreements that prohibit unnecessary and discriminatory restrictions on data flows provide governments with examples of tools to enable the flow of data across borders. A strong provision on data flows ought to be accompanied by commitments ensuring strong protections for personal information.

3. Prohibit Data Localization Requirements

The ability of companies to locate data storage and processing centers where it makes the most technical and commercial sense has been an enabling factor in the growth in digital trade and technologies, and in the corresponding benefits across all sectors of the economy. Companies take advantage of the economies of scale that the internet provides to serve large customer groups around the world in a seamless, secure and cost-effective manner. The forced local storage and/or processing of data minimizes the ability of companies to do this by significantly increasing the cost of doing business, without improving – and in some cases jeopardizing – data security and service reliability. Specific analysis undertaken with respect to cloud services found that data-localization policies restrict access to the most cost-competitive global cloud providers, and significantly raise costs for local companies purchasing cloud-computing services.² Current negotiations provide a key opportunity to broaden the acceptance of trade rules that prohibit requirements that data centers be located in the territory of a country as a condition for doing business.

¹ Makiyama, Hosuk-Lee, “The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions,” *The European Centre for International Political Economy*, August 2019, <https://ecipe.org/publications/moratorium/>

² “Quantifying the Cost of Forced Localization,” *Leviathan Security Group*, February 2015, <https://static1.squarespace.com/static/556340ece4b0869396f21099/t/559dad76e4b0899d97726a8b/1436396918881/Quantifying+the+Cost+of+Forced+Localization.pdf>

4. Promote Strong Privacy Protection to Enable Digital Trade

Strong data protection must go hand in hand with the flow, storage, and processing of data. Recognizing there is no one-size-fits-all approach to privacy, we support a trade policy approach that ensures high-standard protection and facilitates regulatory compatibility, without detracting from a government's ability to pursue the public interest. To this end, countries should commit to adopting or maintaining a legal framework that provides for the protection of personal information, taking into account relevant international principles and guidelines such as the *OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013)*.

5. Prohibit Requirements to Disclose Source Code, Algorithms or Encryption Keys

Innovation depends on the ability to develop and use proprietary software, and to secure products and systems with private encryption keys. Some economies have unfairly advantaged their domestic industry by demanding that foreign companies transfer source code, algorithms, or encryption keys as a condition for doing business in their territory. In other scenarios, concerns around government access to encrypted data have led to requirements that firms build “back doors” to digital products that can put intellectual property at risk. These kinds of measures reduce competition and close markets, and often undermine key government policy objectives in cybersecurity and other areas without meaningfully advancing legitimate law enforcement actions. To incentivize continued private-sector innovation and ensure a level playing field, governments should prohibit the transfer of source code as a condition of market entry.

6. Promote Cooperation and Risk-based Approaches to Cybersecurity

Cybersecurity threats undermine confidence in digital trade, and current negotiations provide an opportunity to foster compatibility in the way governments approach these threats. Provisions agreed to as part of WTO E-Commerce negotiations should align with good regulatory practices in affirming that risk-based and interoperable approaches to cybersecurity are more effective means to combat digital threats than prescriptive, mandatory, and sometimes conflicting regulatory measures emerging throughout the world. Building on existing commitments from the WTO Agreement on Technical Barriers to Trade (TBT), governments should further commit to basing regulatory approaches to cybersecurity on global, consensus-based, industry-led standards. Industry encourages governments to cooperate in the exchange of information on regulations, policies, enforcement, and compliance regarding digital trade, including security of electronic communications and personal information protection. We further recommend that governments deepen regulatory cooperation with a view to ensuring reasonable law enforcement access to data, without requiring its localization.

7. Promote Good Regulatory Practices in the Regulation of Digital Services

In adopting regulatory approaches for new and innovative services, some governments have relied on legacy regulatory frameworks and opaque regulatory processes that have limited market access of foreign-based internet services providers that are key to facilitating digital trade and the domestic economic growth that results from such trade. Particularly for value-added services,³ current negotiations provide an opportunity to complement state-of-the-art good regulatory practices in ensuring that regulatory approaches are fit-to-purpose and do not stifle innovation or productivity. Building on existing regional FTA commitments, governments should commit to transparent and evidence-based decision-

³ The term value-added services broadly refers to telecommunications services employing computer processing applications that satisfy several key technical criteria.

making in the regulation of digital services, including through the use of impact assessments and cost-benefit analyses.

8. Secure Customs and Trade Facilitation Provisions that Build on the WTO Trade Facilitation Agreement (TFA).

Global industry recognizes the laudable achievements of the TFA, and believes any new commitments on customs and trade facilitation measures must strengthen or otherwise build upon existing commitments. One area where there remains significant room for improvement is in further simplifying customs processes for low-value shipments, including by raising de minimis levels and establishing informal clearance thresholds. In addition, enhanced trade facilitation provisions should focus on enabling low-value shipments by promoting expedited clearance, reducing the number of declaration elements, and allowing for the electronic submission of documents. To truly realize the benefits of e-commerce, especially for micro-, small-, and medium-sized enterprises (MSMEs), governments should leverage technology at the border to ensure customs processes are faster and more efficient by cutting unnecessary red tape. Governments should also agree to strengthen softer (i.e., “best-endeavor”) TFA commitments on a most-favored nation basis to simplify customs clearance for low-value shipments.

9. Promote Acceptance of Electronic Contracts, Signatures and Authentication

According to the OECD-WTO Global Review 2017 Aid for Trade Monitoring Exercise, e-signatures were ranked 4th among the top ten challenges facing firms and consumers when accessing and using Internet Services. The World Economic Forum has further shown that divergent rules between economies can create additional costs that can be particularly difficult for MSMEs. Current negotiations provide an opportunity to enshrine broad consensus among governments regarding the commercial and developmental benefits from increased acceptance of e-signatures. Similarly, governments should undertake commitments ensuring that contracts may be concluded by electronic means.

10. Promote Non-IP Intermediary Liability Protections

Internet services have transformed communications and enabled MSMEs to reach global audiences in ways never before possible. Businesses are building trust with customers through user reviews, feedback, and other e-commerce content. A fundamental reason that services have been able to play this role is their open nature: internet services, including intermediaries, can facilitate communications and transactions among millions of businesses and people, enabling them to connect directly on a global basis. Governments should secure an agreement ensuring that intermediaries can continue to enable engagement and transactions without exposure to non-IP legal liability for the vast amounts of content that their services may host.

11. Expand Services Market Access

According to World Bank data, global services exports have grown in value from \$1.29 trillion in 1995 to over \$5.4 trillion in 2017. Services export revenue has become increasingly important for developing economies, where the services sector registered 9.2 percent annual export growth rate between 2005-2015, compared with 4.8 percent in developed countries during the same period.⁴ Despite this enormous growth, we have not seen a concurrent expansion in services market access commitments at the WTO. As part of current negotiations, governments should commit to providing full market access and national treatment commitments for a broad range of services and refrain from discriminating against services

⁴ “Trade in Services and Employment,” *United Nations Conference on Trade in Development (UNCTAD)*, 2015, https://unctad.org/en/PublicationsLibrary/ditctncd2018d1_en.pdf.

that have yet to be classified. While digital trade spans virtually all services sectors, some of the sectors where further market liberalization would be most impactful include computer and computer-related services, electronic payment services, advertising services, telecommunication services, audiovisual services, and postal and express delivery services.

12. Expand Participation in the WTO Information Technology Agreement (ITA)

The ITA has played a pivotal role in facilitating global trade by eliminating duties on a wide range of productivity-enhancing Information and Communication Technology (ICT) products. ICT products are one of the most important drivers of economic growth in developing countries, and joining the ITA has had a demonstrable impact in spurring the adoption of ICT products across all sectors of the economy. 82 countries have already undertaken commitments under the ITA, and 54 have signed on to its expansion in 2015. Broader membership will more quickly intensify the benefits of the ITA for all members. The WTO E-Commerce Negotiations provide a ready-made avenue for further tariff reductions through a commitment by non-signatory countries to sign-on to ITA and its 2015 expansion and to fully implement their commitments under these agreements.

13. Facilitate Access to and Use of Government Data

By making government data available in an open, machine-readable format, governments spur the inclusive adoption of artificial intelligence (AI) and other emerging technologies and encourage innovative new uses that bring about positive economic and social impacts. As part of current negotiations, we urge countries to leverage the benefits of emerging technology by committing to facilitate public access to government data.

ACT | The App Association
Allied for Startups
Asia Internet Coalition
Australian Services Roundtable
BritishAmerican Business
BSA | The Software Alliance
Cámara de Informática y Comunicaciones de la República de Argentina
Computer and Communications Industry Association
Computing Technology Industry Association
Consumer Technology Association
DIGITALEUROPE
Global Innovation Forum
Information Technology Association of Canada
Information Technology Industry Council
Internet Association
Japan Business Council in Europe
Japan Electronics and Information Technology Industries Association
Japan Information Technology Services Industry Association
National Foreign Trade Council
Nigeria Private Sector Alliance
Semiconductor Industry Association
Semiconductor Industry Association in Japan
Taiwan Semiconductor Industry Association
Telecommunications Industry Association
techUK
Technology Ireland
U.S. Chamber of Commerce