



# INTERNATIONAL TRADE NEGOTIATIONS AND ICT PRODUCTS AND SERVICES

## 5th Ministerial Conference of the WTO

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The World Information Technology And Services Alliance (WITS A) recognizes the World Trade Organization ([WTO](#)) as the international body dealing with the rules of trade between nations. WTO agreements provide the legal ground-rules for international commerce and for trade policy. These multilateral agreements have three main objectives: to help trade flow as freely as possible, to achieve further liberalization gradually through negotiation, and to set up an impartial means of settling disputes. A number of simple, fundamental principles run throughout all the WTO agreements: non-discrimination ("most-favored-nation" treatment and "national" treatment), freer trade, predictable policies, and encouraging fair competition. With stability and predictability, the multilateral trading system should encourage trade and investment flows, create jobs, and provide consumers the benefits of competition - expanded choice and lower prices.

WITSA strongly supports the WTO and its objectives in creating an open trading system free of barriers. WITSA is committed to maintaining open markets, reducing protectionism and sustaining the momentum of liberalization achieved by the General Agreement on Tariffs and Trade (GATT)/WTO over the last forty years and, more recently, the General Agreement on Trade in Services (GATS).

WITSA supports the new round of multilateral trade negotiations, which provides an opportunity to embark on further liberalization of barriers to international trade, including trade in information technology goods and services.

WITSA also recognizes and supports the WTO work [program](#) on electronic commerce, which since its inception in 1998 has included a thorough examination of issues related to electronic by the Goods, Services and TRIPS (intellectual property) Councils, and the Trade and Development Committee.

The November 2001 decision by WTO Trade Ministers to launch a comprehensive trade round adds greater urgency to the negotiations on services, which have been underway since 2000. The Doha Declaration launching the trade round called for countries to make "requests" of trading partners in the services sectors by June 30, 2002 with offers by March of 2003. Early results from these processes are promising with country offers generally extending earlier commitments to Internet and web-based services. The current schedule calls for conclusions of the negotiations on January 1, 2005. Information and communication technology (ICT) industries must work with their governments to determine how to negotiate trade commitments affecting these critical sectors over the next few months. This collaborative effort should establish the ICT industry's goals for the Doha negotiations and the negotiating methodology best suited to achieve those goals.

### ***A. Background Paper on the World Trade Organization's Negotiations and Issues Regarding Information and Communications Technology (ICT)***

The December 2002 Statement lays out the overall views on issues regarding information and communications technology (ICT) that are being discussed at the Doha Development Agenda Negotiations.

Opening markets in Computer and Related Services benefits not only companies directly engaged in these services, but also those engaged in other segments of the industry. Generally many countries made commitments in these services in the Uruguay Round. There were a number of key countries, however, that made either no commitments or only partial commitments. WITSA feels that an appropriate negotiating objective for all countries is to achieve full market access and national treatment in all Computer and Related Services. This means achieving full commitments for countries that currently have no commitments as well as for those that have only partial commitments.

The Internet represents the latest stage in the continuing evolution of computing. Like the underlying computer technology, computer services have also evolved and improved to take advantage of advances in technology. Computer and Related Services today have simply evolved from and are basically the same as the Computer and Related Services that were prevalent at the conclusion of the Uruguay

Round. The Internet has improved our ability to deliver a number of services, and new names have been developed for some services, but fundamentally they are the same services. WITSA supports countries making clear in their offers that Uruguay Round commitments for Computer and Related Services apply to the evolved Internet Services.

## ***B. WITSA Statement On Negotiating Information And Communication Technology Services***

In the May 2002 Statement, WITSA notes one very important key to achieving the ICT industry's goals for the Doha negotiations is to select an appropriate negotiating methodology. The approach taken in the Uruguay Round negotiations generated valuable commitments to provide market access and national treatment for computer and information services, value-added network services, and basic telecommunications services, as well as additional commitments to foster fair competition for basic telecommunications. But this approach needs to be updated in the Doha negotiations to achieve the ICT industry's goals. An updated negotiating methodology requires no formal change to the manner in which countries negotiate WTO commitments. Like-minded countries can agree to negotiate computer and information services, value-added network services, basic telecommunications services, and other ICT service sectors in a new way. A successful outcome of the Doha Negotiations could be expected once a critical mass of countries reaches a consensus on ICT negotiating methodologies and trade commitments

### **Current ICT Industry Issues**

The ICT industry confronts primarily the following trade issues:

- Inability to provide a service because a country has not committed to liberalize either the primary service, or a secondary service sector necessary to providing the primary service;
- Inability to enforce a country's commitment to liberalize a service because the commitment lacks clarity in describing the service to be liberalized or in the limitations constraining the commitment;
- Uncertainty about how a new service is covered by a country's existing services commitments due to the rapid introduction of new technologies and services; and
- Absence of effective recourse to mechanisms that require incumbent telecommunications and other service suppliers with market power to compete fairly with new entrants.

### **ICT Industry Goals**

The principal goals of the ICT industry for the Doha negotiations are expected to include:

- Further liberalization of ICT services through new market access and national treatment commitments;
- Improved enforcement and increased scope of ICT commitments through improved negotiating approaches;
- New commitments to foster fair competition between dominant incumbents and new entrants for the telecommunications services that provide the infrastructure for the ICT industry.

Specifically, WITSA supports negotiating methodologies that account for the:

- Convergence of technology and services in the ICT sector;
- Speed with which new technologies and services are being developed in the ICT sector;
- Benefits of fully liberalizing these converged services;
- Effective enforcement of liberalization commitments; and
- Additional rules to promote fair competition in basic telecommunications.

### **C. WTO and E-Commerce**

Electronic commerce is not a new form of trade but rather a new medium/ mode for conducting trade in goods and services. All forms of electronic commerce, as traditional commerce, can be categorized into either the goods or services category and therefore specific agreements governing trade in goods, trade in services, or trade-related intellectual property apply. WITSA takes note of the work which has been done in the WTO General Council and other relevant bodies since the Ministerial Declaration of 20 May 1998 and the Work Programme on Electronic Commerce. The work to date demonstrates that electronic commerce creates new challenges and opportunities for trade for members at all stages of development and the importance of creating and maintaining an environment which is favorable to the future development of electronic commerce. We applaud the Ministerial declaration that WTO members will maintain their current practice of not imposing customs duties on electronic transmissions until the next ministerial meeting in 2003.

In its December 2002 Statements, WITSA has maintained that electronic commerce does not constitute a sector in itself. Rather, it is simply a means of delivering services electronically that had previously been delivered by other means. WITSA continues to hold that position and urges all countries to resist any efforts to create a sector designated "electronic commerce".

It is also important to understand that electronic commerce implies much more than simply selling merchandise electronically. Many services that we are familiar with today can also be provided electronically. Legal services, architectural services, entertainment services including movies and music, health services, educational services, financial services and engineering services, to name a few, can all be delivered across borders electronically. To do so, however, countries must make Mode 1 commitments for all of these sectors and others that have the potential of electronic delivery.

Recognizing the many contributions electronic commerce is making to the expansion of international trade, WITSA members in the [Statement on WTO and Electronic Commerce](#) (September 1999) called on WTO to:

- Make permanent and binding the May 20, 1998 **Moratorium on Customs Duties** on Electronic Transmissions;
- Affirm the importance of the **basic telecommunications infrastructure** to the growth and development of electronic commerce and urge countries to further liberalize these markets;

- Reaffirm that existing WTO obligations, rules, disciplines and commitments, including the GATS, GATT and TRIPS agreements are **technology neutral**;
- Agree that governments should refrain from enacting any **new and unnecessary measures** that would impede the growth of international electronic commerce;
- Agree that **measures affecting e-commerce must be consistent** with the following fundamental principles of international trade law:
  - National treatment and non-discrimination
  - Most Favored Nation (MFN) treatment
  - Transparency
  - Notification, review and consultation
- Work within the General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS) and the Agreement on Trade-related Aspects of Intellectual Property Protection (TRIPS) to **identify, reduce or eliminate barriers** to international e-commerce
- Refrain from **prematurely classifying** all electronic transactions as good or services, but work toward providing the most liberal treatment to a transaction regardless of classification;
- Recognize that the development of electronic commerce depends on cross-border transactions in all industry sectors and urge negotiators to **liberalize cross-border services** during the negotiations.

