



Business Software Alliance

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May 10, 2001

Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th St. NW
Washington D.C. 20508
Attention: Gloria Blue, Executive Secretary

RE: U.S. objectives and preparations for the upcoming meeting of the World Trade Organization (WTO) Ministerial Conference in Doha, Qatar, on November 9-13, 2001.
66 Fed. Reg. 18142 (April 5, 2001)

Dear Trade Policy Staff Committee:

The Business Software Alliance (BSA) appreciates the opportunity to comment in response to the above-referenced Federal Register notice.

As a representative of the leading software and computer companies in the United States, BSA supports all trade liberalization efforts within the context of multilateral negotiations at the World Trade Organization (WTO). With exports accounting for over half of our companies' annual revenues, with annual sales of \$40 billion out side of the U.S., free trade within the WTO is critical to the high tech industry's growth and increased contribution to the world economy.

It is our view that further trade liberalization should be one of the main U.S. objectives at the upcoming meeting of the WTO in Doha, Qatar. To that end, we have identified the following mix of existing and new issues that should be addressed in any new multilateral trade agreements.

Intellectual Property Protection and Market Access:

Intellectual property protection as required by TRIPs and WIPO treaties are critical to the continued growth of the software industry. Additionally, without greater market access for packaged and custom software products, our companies will continue to face difficult hurdles in protecting their intellectual property rights and to promote trade.

1. Trade Related Aspects of Intellectual Property (TRIPs) and WIPO Treaties:

The Trade Related Aspects of Intellectual Property (TRIPs) agreement of the WTO, by requiring our trading partners to enact and enforce copyright and other intellectual property laws, has materially improved our ability to fight piracy, and increase exports.

Software piracy continues to be a serious problem. Many WTO members have yet to fully implement their TRIPs obligations; and too many others are not taking effective enforcement actions. Efforts to encourage our trading partners to ratify the WIPO Copyright Treaties, consistent with the U.S. example, would advance international standards and could result in needed progress in the effort to address Internet piracy of software. In addition, because of our on-going problems in the area of enforcement of our intellectual property rights, especially through criminal prosecutions, we would encourage making this matter a priority.

2. Information Technology Tariffs and Non-Tariff Measures:

The Uruguay Round agreements on tariff reduction, and the subsequent Information Technology Agreement, has made significant contributions by addressing the issue of barriers to trade created by high tariffs. However, tariffs on computers and peripherals are still very high in some countries, creating a substantial impediment to U.S. exports.

In order to foster a barrier free trade environment, we believe countries should sign and immediately implement the Information Technology Agreement (ITA). Additionally, within the context of the ITA, governments and business should continually update the definition of what constitutes an "IT product" to keep pace with technological developments. Non-tariff measures, in particular redundant testing and certification procedures, should also be eliminated where they exist.

Tariffs and non-tariff measures applied to information technology products should be eliminated or phased out. Tariff and non-tariff measures act as a counterproductive burden that raises the cost of the very technology needed to be competitive in the digital economy.

Electronic Commerce:

One of the most important changes since the conclusion of the Uruguay Round Agreements is the evolution and development of the Internet, and the e-commerce opportunities it promises. Today just 13 percent of software is sold on-line. A recent survey of BSA's CEO showed that by 2005, they expect that 66 percent of all software will be distributed through the Internet. In addition, a vast array of e-commerce services has evolved since the conclusion of the Uruguay Round. These include, data storage and management, web hosting, and access to, and use of, software products on-line.

As the U.S. proceeds with formulating its trade objectives for the upcoming WTO Ministerial, we believe it is critical that e-commerce issues play a central role. In this context, we believe the following set of issues is key to achieving these objectives.

1. Classification for trade purposes of downloaded products:

It is our firmly held view that software and other products acquired through networks by means of a download, should be subject to the same trade rules as like products acquired through more traditional means. To date, some countries have argued that, for example, an anti-virus software program that is downloaded should be treated as a service, while the same product, if imported on a disk, should be treated as a good.

Adoption of such a rule in the WTO would result in substantial uncertainty and harm to our industry. Today, software products are subject to "trade in goods" rules. Thus, they receive full national treatment, MFN, and benefit from all the obligations that countries have undertaken in respect to goods. By contrast, if downloaded software were classified as a service, because the GATS do not generally apply to software products as such, our products would be open to any measure a country may want to impose, causing substantial disruptions in our ability to export.

For these reasons, we urge the U.S. to vigorously resist any efforts to classify downloaded products as a service. In addition, we believe that the WTO rules should be clarified to ensure that downloaded products generally receive treatment no less favorable than the same products imported fixed on a physical medium.

2. Services Commitments:

GATS agreement needs to be substantially updated to reflect the array of new Internet-related products and services that have evolved over the past 10 years since the conclusion of the Uruguay Round. We see this need for updating most clearly within GATS since parties to that agreement only have obligations with respect to those specifically enumerated services for which they have undertaken obligations (sometimes referred to as a "bottom up" approach). By contrast, NAFTA's services obligations apply to all products and services, including new products or services that have developed since the conclusion of NAFTA (sometimes called a "top-down" approach).

We believe a NAFTA-type approach to e-commerce services issues would best meet our industry's current and future electronic commerce needs as it is impossible to anticipate what specific e-commerce products or services will develop over time and any "bottom-up" approach will almost certainly be out of date from its inception. We believe there is a need to set the stage for such an agreement, which is more flexible with respect to future e-commerce and computer industry developments.

Thank you once again for the opportunity to comment on these important matters. We look forward to reviewing the comments of other interested parties on the U.S. objectives for the upcoming WTO Ministerial.

Respectfully Submitted,

BUSINESS SOFTWARE ALLIANCE