

ARTICLE

International Trade Commission Begins New Investigation of Digital Trade in U.S. and Global Economies

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The International Trade Commission (ITC) has announced the institution of a new investigation: *Digital Trade in the U.S. and Global Economies, Part I*, Inv. No. 332-531. [1] This investigation is the first of two instituted in response to a request received last month by the ITC from the Senate Finance Committee and seeks to accomplish the following:

- Describe digital trade as a sector of the broader U.S. and global economies;
- Explore digital trade's impact on other cross-border transactions and its ability to facilitate trade in other sectors;
- Identify barriers and impediments to digital trade; and
- Survey digital trade's relationship to and impact on other facets of the U.S. economy, including innovation, job creation, and consumer welfare.

For the purposes of this timely investigation and report, the ITC has defined "digital trade" to "encompass commerce in products and services delivered over digital networks." [2] This broad category includes such goods and services as digital media files, software, and hosting services.

The ITC investigations will be important for industry and lawmakers, particularly in light of several trade negotiations between the U.S. and its global trading partners where digital goods and services will be a primary focus:

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Practice Areas

International Trade
Trade Policy and Trade Negotiations

- **The Trans-Pacific Partnership (TPP)**

The TPP would be the largest free trade agreement ever reached by the United States. Currently, 12 countries are parties to the negotiations, with Canada and Mexico joining recently. Internet and e-commerce issues will play a pivotal role, as the TPP countries are negotiating provisions that would govern areas such as Internet liability and retransmission, market access for cross-border enforcement of digital copyright, and fair-use laws. The 16th round of TPP negotiations will take place in March 2013, with the goal of completing the entire agreement by year-end.

- **The International Services Agreement (ISA)**

About 20 countries, including the United States, are preparing to commence negotiations for a new plurilateral International Services Agreement. The ISA envisions a more liberalized marketplace for services, one in which local/domestic restrictions upon and regulation of foreign-provided services are eased to encourage increased cross-border commerce. Digital trade, as defined by the ITC, is thus implicated by the terms and subject matter of the ISA, as many of the services contemplated by the agreement – including financial, professional, data hosting, and retailing services – are either provided through electronic or digital channels or are digital services themselves.

- **The U.S.- E.U. High Level Working Group (HLWG)**

Considered by many to be the precursor to U.S.-E.U. free trade agreement negotiations, the HLWG discussions and draft reports have featured proposals to relax restrictions of commerce in services, ramp up enforcement of intellectual property rights, and facilitate growth in cross-border investment and procurement efforts. Regulation of digital trade and services has featured prominently in the negotiations. The United States is currently conducting a review of the draft report released to it by its European counterpart in December 2012.

The central role that digital trade concerns have played in these and other multilateral trading discussions highlights the potentially far-reaching impact of the ITC's investigation. The ITC has scheduled its public hearing in *Digital Trade in the U.S. and Global Economies, Part I* for March 7, 2013. Companies, industry representatives, and other members of the public who are interested in participating directly in the hearing must submit a request to appear no later than February 21, 2013, while those interested in submitting written comments are permitted to do so no later than March 14, 2013.

[1] See *Digital Trade in the U.S. and Global Economies, Part I; Institution of Investigation and Scheduling of Hearing*, 78 Fed. Reg. 2,690 (Int'l Trade Commission Jan. 14, 2013).

[2] *Id.*, 78 Fed. Reg. at 2,691.