



December 08, 2008

Q&A

Information Technology Agreement (and mobile phone customs classification)

General about the ITA

1. What is the Information Technology Agreement (ITA)?

The ITA is a global trade agreement, signed by 71 WTO Members (soon to be 72). Together the signatories account for approximately 97% of world trade in technology products, which represents about 20% of world trade in manufactured goods. The ITA is intended to increase trade and competition through the promotion of free trade principles for information technology products. Though its only binding commitments are the elimination of tariffs on products covered, the agreement also provides for a review of non-tariff barriers (NTBs).

Signatories of the agreement are granted an extended implementation period for sensitive products. Further, the ITA is based on the Most Favored Nation (MFN) principle, implying that all WTO members are granted the same benefits.

The Information Technology Agreement was concluded during the Singapore WTO Ministerial Conference of December 1996. After sufficient countries signed up to the ITA to reach the 90 percent global trade in technology threshold, the agreement eventually entered into force on 1 July 1997.

General about EICTA

2. Who/What is EICTA?

EICTA represents the European Digital Technology Industry which accounts for 6 million jobs in 10,000 small and large companies in the information and communications technology and consumer electronics industries in the EU.

EICTA is dedicated to improving the business environment for the European information and communications technology and consumer electronics (ICT and CE) sector, and to promoting the industry's contribution to economic growth and social progress in the European Union.

Company Members: Adobe, Agilent, Alcatel-Lucent, AMD, Apple, Bang & Olufsen, Bose, Brother, Canon, Cisco, Corning, Dell, EADS, Elcoteq, Epson, Ericsson, Fujitsu, Hitachi, HP, IBM, Infineon, Ingram Micro, Intel, JVC, Kenwood, Kodak, Konica Minolta, Lexmark, LG Electronics, Loewe, Micronas, Microsoft, Motorola, NEC, Nokia, Nokia Siemens

Networks, Nortel, NXP, Océ, Oki, Oracle, Panasonic, Philips, Pioneer, Qualcomm, Research In Motion, Samsung, Sanyo, SAP, Sharp, Siemens, Sony, Sony Ericsson, STMicroelectronics, Sun Microsystems, Texas Instruments, Thales, Thomson, Toshiba, UMC, Xerox.

National Trade Associations: **Austria:** FEEL; **Belarus:** INFOPARK; **Belgium:** AGORIA; **Bulgaria:** BAIT; **Cyprus:** CITEA; **Czech Republic:** ASE, SPIS; **Denmark:** DI ITEK, IT-Branchen; **Estonia:** ITL; **Finland:** FFTI; **France:** ALLIANCE TICS, SIMAVELEC; **Germany:** BITKOM, ZVEI; **Greece:** SEPE; **Hungary:** IVSZ; **Ireland:** ICT Ireland; **Italy:** ANIE, AITech-ASSINFORM; **Malta:** ITTS; **Netherlands:** ICT~Office, FIAR; **Norway:** ABELIA, IKT Norge; **Poland:** KIGeIT, PIIT; **Portugal:** AGEFE; **Romania:** APDETIC; **Slovakia:** ITAS; **Slovenia:** GZS; **Spain:** AETIC, ASIMELEC; **Sweden:** IT&Telekomföretagen; **Switzerland:** SWICO, SWISSMEM; **Turkey:** ECID, TESID, TÜBISAD; **Ukraine:** IT Ukraine; **United Kingdom:** INTELLECT.

Concerning international trade, EICTA's goal is to secure a level playing field for the European digital technology industry and to improve the framework conditions for global trade in high-tech products and services. EICTA's general objective is further to achieve free, balanced, open and fair trade. This is critical to our industry as it provides increased market access worldwide, promotes innovation, promotes efficiency and productivity gains, encourages the free flow of ideas, and enables Europe to attract innovators from around the world.

EICTA promotes the reduction and elimination of both tariff and non-tariff barriers, both in the EU and world-wide, to trade in order to achieve an open beneficial international market. To this end, EICTA fully supports the expansion of the WTO's rules-based multilateral trade and investment system affording maximum access to markets with a minimum of barriers.

EICTA's views on the ITA

3. What are EICTA's views on the ITA?

EICTA believes that free trade and deregulated markets are an essential prerequisite for a competitive industry and European leadership. It allows innovation to flourish, encourages the free flow of ideas and enables Europe to attract innovators from around the world. Therefore, EICTA advocates for a multilateral, rules-based trading system affording maximum access to markets with a minimum of barriers. The ITA is a well-conceived, functional and remarkably effective multilateral trade agreement, an increasingly rare enabler of growth that should be responsibly maintained by the signatory countries. For those reasons EICTA strongly supports the ITA and wants to ensure its continued success.

4. What are the benefits of the ITA?

The ITA promotes free trade and competition. It promotes innovation and strengthens economic growth of the digital technology industry and related sectors, through the elimination of customs duties on telecommunication and information technology products. In addition, it provides for an ongoing review and the elimination of Non-Tariff Barriers, which continue to restrict access to many markets, in particular in Asia, but also the USA. It

is in the end the consumers that benefit from the ITA. The benefits can be felt across the societies of participating states as they spill over to the consumers, through reduced prices, increasing availability of technology and timely delivery of modern and innovative developments, translated into ever more sophisticated devices.

5. Has the ITA contributed to economic growth of the digital technology sector?

Absolutely. The ITA has been critically important to the global high-tech community. Since entering into force in 1997, it has promoted innovation, productivity, economic growth and prosperity. World exports of ITA products over the past decade have more than doubled in euro terms, reaching €1.2 trillion in 2006, with annual average growth of roughly 8.5%.

6. What does the Digital Technology industry stand to lose from a failure to maintain the ITA?

The success of our products, our industry, and our economy are not guaranteed – they stem from one source – a vibrant free market that encourages trade in innovative goods and services. Innovation can be slowed, products can be priced out of reach, competition can be choked and services can be restricted, as a result of barriers to trade – both tariff and non-tariff. And in the end the one who will suffer most are the consumers.

7. What is EICTA's outlook for future developments of the ITA?

Irrespective of the outcome of the Dispute Settlement Procedure in the WTO, EICTA remains a prime advocate of the ITA. The continued implementation and maintenance of the Agreement is crucial. On top of that, any effort of getting parties to the negotiation table is an opportunity that should not be missed, as this can pave the way for the inclusion of new technologies and to provide adequately for future trends and developments in the Information Technology sector.

8. What is EICTA's position on the review of the ITA as proposed by the European Commission?

Although the initiative goes into the right direction, the timing of the Commission's Communication to review the ITA is unfortunate. In light of the recent classification trend eroding the product scope of the ITA, uncertainties about the proposal remain dominant. Especially in current times, the proposal should be crystal clear. Failure to take such an initiative sooner has caused the situation to deteriorate significantly.

Notwithstanding these concerns, EICTA is a strong advocate of the ITA. It is absolutely crucial that the ITA remains an effective tool for trade liberalization for digital technology products. To this end the ITA needs to be responsibly maintained. EICTA's overall trade objectives are to ensure a level playing field for all European companies, to maximize the trade flow of digital technology products and to ensure that consumers have access to the top array of products at the best price. Hence, EICTA urges all parties to the ITA to consider all possible means to contribute to the maintenance of the ITA's goals and effectiveness in order to draw fully on its potential.

Finally, EICTA believes that once the European Commission takes positive steps or at least desists from changing the classification of products that are covered by the ITA, the other important elements of the Communication may be more readily supported, which can only help the prospect of a successful outcome.

9. What are EICTA's priorities in reviewing the ITA?

EICTA stresses the need for an Agreement which reflects the reality of rapidly evolving technologies. To this end the objective should be threefold. First, the objectives and benefits of the ITA have to be reiterated. Second, parties have to agree on which new information technology products to add to the list and how to accommodate technological developments such as product multifunctionality as well as guidance for the interpretation of the HS Nomenclature. Third, parties should agree on and implement an effective mechanism that will ensure constant updating of the agreement in line with technological developments, new product introductions and HS Nomenclature interpretations.

10. Does the European Commission apply a too narrow interpretation of the ITA?

In recent years, decisions taken by EU Member States, upon proposal from the European Commission, have led to the unfair application of tariffs as high as 14% on products already covered by the ITA. Consumers and businesses then pay a higher price for products, and innovation is penalised when products are removed from the ITA's zero-tariff status simply because EICTA member companies have found ways to improve those products, through additional functionality (e.g. placing a hard drive in a set-top box; adding a GPS device in a mobile phone; making LCD monitors interface digital, instead of staying with analogue, or enabling digital still cameras to make short home movies). This can simply not be in the interest of Europe or European consumers.

11. What are EICTA's views on individual product classifications of the European Commission?

EICTA regrets that the issues have come as far as a formal Dispute Settlement in the WTO and we believe that other means of finding a compromise would have been preferable. Yet, we fully support the mechanisms put in place through the WTO to resolve such disputes between members. Notwithstanding our position on the current Dispute Settlement brought against the European Commission on three products, EICTA does not always agree with customs classification decisions resulting from the initiative of individual Member States or the European Commission. The decision, however, whether the classification decisions concerning the three products subject to the dispute are breaching WTO commitments is now a matter for the Panel. EICTA calls upon all members to the agreement to respect the provisions of the ITA.

With reference to the proposed changes in the classification of mobile phones, EICTA believes that there is no need for such change as also advanced and sophisticated mobile phones can clearly be classified as mobile phones and continue to be covered by the ITA.

Legal decision that will affect the future of the application of the ITA in the EU

12. What exactly is the WTO dispute in Geneva?

On 28 May 2008, the United States and Japan requested WTO consultations with the EC with respect to tariff treatment of certain information technology products. They were joined by Chinese Taipei on 12 June 2008. Consultations were held in June and July but did not resolve the dispute. The complainants jointly requested the establishment of a panel at the WTO Dispute Settlement Body Meeting of 29 July 2008, which the EC rejected. On 23 September after a second request by the three complainants to establish a DSB, a panel was formally established.

13. What related cases are pending before the European Court of Justice?

LCD Monitors

Kamino International Logistics B.V.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007C0376:FR:HTML>

(advocate General opinion)

The Advocate-General's opinion indicates he is suggesting that, under the legislation in force at the time the transactions in question took place, such a monitor should not be included in the description set out in Regulation 754/2004 and is not necessarily excluded from tariff heading 8471, meaning that the monitor could potentially have been classified under tariff heading 8471 at a 0% duty rate (as opposed to 8528 at a 14% duty rate)

Multifunctional devices (printer/scanner/copier)

Hewlett Packard International SARL, and Kip Europe SA, Kip UK Ltd, Caretrex Logistiek BV, Utax GmbH

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007C0362:FR:HTML>

(advocate General opinion)

The Advocate General has suggested that multi-function IT equipment, of a type at issue in the current proceedings, should be classified under heading 8471 60 of the Combined Nomenclature. (0 % tariffs)

14. With uncertainty over the Doha Development Agenda and the dispute settlement proceeding on the ITA, does EICTA see a future in open international markets for the Information Technology industry?

We continue to support the Doha initiative in any way we can, but at the same time we recognize that it is uncertain whether the Doha round will be brought to a successful conclusion any time soon and whether a sectoral in electronics will attract sufficient interest. Therefore, the Information Technology Industry considers the ITA as an alternative way to promote trade in the information and communication technology sector. The current dispute is an integral part of the rule based system put in place by the WTO and the ITA. Though EICTA regrets that the issue could not be resolved through dialogue, we support the mechanisms put in place by the WTO to ensure members adhere to the rules.