

WORLD TRADE ORGANIZATION

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Council for Trade in Services

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COMMUNICATION FROM THE EUROPEAN UNION AND THE UNITED STATES

Contribution to the Work Programme on Electronic Commerce

The following communication, dated 13 July 2011, from the delegations of European Union and the United States, is being circulated to the Members of the Council for Trade in Services.

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1. The European Union (EU) and the United States have jointly developed the attached set of trade-related principles designed to support the expansion of information and communication technology (ICT) networks and services, and enhance the development of electronic commerce. The ICT services sector – a rapidly growing source of employment and exports in its own right – is an increasingly important part of the infrastructure for a host of other industries and sectors. The EU and the United States share the view that broader implementation of these principles in policy and regulation will promote the development and spread of network-based services while stimulating economic growth and expanding opportunities for consumers and workers. The implementation of these principles will also create conditions for the development and growth of electronic commerce.
 2. To encourage broader understanding of these principles among WTO members, the EU and the United States submit them for consideration to the Council for Trade in Services (CTS) and as an additional contribution to the work programme on e-commerce.
 3. In presenting the principles, the EU and the United States seek to stimulate discussion at the next meeting of the Council for Trade in Services by proposing topics for consideration by Members, such as:
 - (a) Technical questions relating to the content of the principles;
 - (b) Sharing of Members' experiences regarding the topics that the principles address; and
 - (c) Consideration of whether any additional principles should be explored to address topics that are not reflected in the current set of principles.
 4. We welcome additional suggestions for topics that could be discussed.

Trade Principles for Information and Communication Technology Services

These principles have been endorsed by the EU and the United States and are without prejudice to their rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO), and to the exceptions contained in the WTO General Agreement on Trade in Services (GATS). They are also without prejudice to the policy objectives and legislation of the European Union and the United States in areas such as the protection of intellectual property, the protection of privacy and of the confidentiality of personal and commercial data, and the enhancement of cultural diversity (including through public funding and assistance). These principles are not intended to apply to financial services.

Governments seeking to enhance their national regulatory capacity and support the development of Information and Communications Technology (ICT) networks and services should embrace the following principles and, as appropriate, work to integrate them, in a technologically neutral manner, into bilateral and multilateral trade disciplines:

1. Transparency: Governments should ensure that all laws, regulations, procedures, and administrative rulings of general application affecting ICT and trade in ICT services are published or otherwise made available, and, to the extent practicable, are subject to public notice and comment procedures.
2. Open Networks, Network Access and Use: Governments, preferably through their regulators, should promote the ability of consumers legitimately to access and distribute information and run applications and services of their choice. Governments should not restrict the ability of suppliers to supply services over the Internet on a cross-border and technologically neutral basis, and should promote the interoperability of services and technologies, where appropriate.
3. Cross-Border Information Flows: Governments should not prevent service suppliers of other countries, or customers of those suppliers, from electronically transferring information internally or across borders, accessing publicly available information, or accessing their own information stored in other countries.
4. Local Infrastructure: Governments should not require ICT service suppliers to use local infrastructure, or establish a local presence, as a condition of supplying services. In addition, governments should not give priority or preferential treatment to national suppliers of ICT services in the use of local infrastructure, national spectrum, or orbital resources.
5. Foreign Ownership: Governments should allow full foreign participation in their ICT services sectors, through establishment or other means.
6. Use of Spectrum: Governments should maximize the availability and use of spectrum by working to ensure that it is managed effectively and efficiently, and, where appropriate, in accordance with applicable International Telecommunication Union Radiocommunication Sector (ITU-R) recommendations. The allocation of spectrum for commercial purposes should be carried out in an objective, timely, transparent, and non-discriminatory manner, with the aim of fostering competition and innovation. Governments are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users.

7. Regulatory Authorities: Governments should ensure that the regulatory authorities that oversee ICT services sectors are legally distinct and functionally independent from all service providers, and have sufficient legal authority and adequate resources to perform their functions effectively. Regulatory decisions and procedures should be impartial with respect to all market participants. Regulatory decisions regarding ICT services, and the results of appellate proceedings regarding such decisions, should be publicly available.

8. Authorizations and Licenses: Governments should authorize the provision of competitive telecommunications services, wherever possible, on simple notification by a service provider, and should not require legal establishment as a condition of supplying a service. Licenses should be restricted in number only for the purpose of addressing a limited set of specified regulatory issues, such as the assignment of frequencies.

9. Interconnection: Consistent with the GATS Telecommunications Annex's access and use provisions, governments should ensure that public telecommunications service suppliers have the right and the obligation to negotiate and to provide interconnection on commercial terms with other providers for access to publicly available telecommunications networks and services. In addition, in accordance with the GATS Reference Paper on Basic Telecommunications, countries should ensure that public telecommunications service suppliers are able to negotiate and obtain interconnection with major suppliers at cost-oriented, non-discriminatory, and transparent rates.

10. International Cooperation: Governments should cooperate with each other to increase the level of digital literacy globally and reduce the "digital divide".
