

The American Institute in Taiwan (AIT) and Taipei Economic and Cultural Representative Office in the United States (TECRO) Joint Statement on Trade Principles for Information and Communication Technology Services

The American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) (“the Participants”), on behalf of their designated representatives, the Office of the United States Trade Representative and the Ministry of Economic Affairs, respectively, have jointly developed the following set of trade related principles for the information and communication technology (ICT) services sector. The Participants, through their designated representatives, plan to work to promote the implementation of these principles with respect to the bilateral economic relationship and in trade negotiations with authorities in other jurisdictions.

These principles are without prejudice to the rights and obligations of the authorities represented by each Participant 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). These principles are also without prejudice to the policy objectives and legislation of the authorities represented by each Participant in areas such as the protection of intellectual property, the protection of privacy and of the confidentiality of personal and commercial data. These principles are not intended to apply to financial services. For greater certainty, they do not create any legally binding obligations.

The Participants, through their designated representatives, intend to work towards ensuring that the authorities represented by the Participants cooperate with each other and the authorities of other jurisdictions to enhance domestic regulatory capacity and support the expansion of ICT networks and services, which are powerful tools for promoting economic development.

The Participants, through their designated representatives, intend to review these principles regularly, as appropriate, under the auspices of the AIT-TECRO Trade and Investment Framework Agreement (TIFA), with a view to discussing their implementation and use and to further refining and expanding them, as appropriate. The Participants, through their designated representatives, may share information and experiences on law, regulations, and programs in areas relevant to this document under the auspices of the AIT-TECRO TIFA Council; including those related to spectrum management, interconnection, and general promotion of ICT services.

The Participants, through their designated representatives, intend to work towards ensuring that the authorities represented by the Participants, in order to enhance the regulatory capacity in the territories of the authorities they represent respectively and to support the development of ICT networks and services, work to integrate the following principles, in a technologically neutral manner and as appropriate, into bilateral and multilateral trade disciplines:

1. Transparency: Governing authorities should ensure that all domestic 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: Governing authorities, preferably through their regulators, should promote the ability of consumers legitimately to access and distribute information and run applications and services of their choice. Governing authorities should not restrict the ability of suppliers to supply services over the Internet on a cross-jurisdiction and technologically neutral basis, and where appropriate, should promote the interoperability of services and technologies.
3. Cross-Jurisdiction Information Flows: Governing authorities should not prevent service suppliers of other jurisdictions, or customers of those suppliers located in such jurisdictions, from electronically transferring information internally or across jurisdictions, accessing publicly available information, or accessing their own information stored in other jurisdictions.
4. Local Infrastructure: Governing authorities should not require ICT service suppliers to use local infrastructure, or establish a local presence, as a condition of supplying services. In addition, governing authorities should not give priority or preferential treatment to domestic suppliers of ICT services in the use of local infrastructure, domestic spectrum, or orbital resources.
5. Foreign Ownership: Governing authorities should allow full foreign participation in their ICT services sectors, through establishment or other means.
6. Use of Spectrum: Governing authorities 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. Governing authorities are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users.
7. Regulatory Authorities: Governing authorities should ensure that their regulatory entities that oversee ICT services sectors are legally distinct and 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: Governing authorities, wherever possible, should allow the provision of ICT services supplied through the Internet without requiring licenses¹ and should not require legal establishment as a condition of supplying a service. To the extent that licenses are required for specific ICT services, they should be restricted in number only for the purpose of addressing specified regulatory issues, such as the assignment of frequencies.

9. Interconnection: Consistent with the access and use provisions of the GATS Telecommunications Annex, governing authorities 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 services,² governing authorities 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. Digital Products: Governing authorities should provide treatment no less favorable to some digital products as compared to other like digital products based on place of creation or production, and nationality of author.

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

¹ For greater certainty, licensing requirements with respect to telecommunications services are not inconsistent with this principle.

² Reference Paper, Negotiating Group on Basic Telecommunications, Job No. 2104 (24 April 1996).