

January 27, 2012

## **Japan-United States Trade Principles for Information and Communication Technology Services**

The Government of Japan and the Government of the United States have jointly developed the following set of trade-related principles for the information and communication technology (ICT) services sector and intend to promote the implementation of these principles within their bilateral economic relationship and in their trade negotiations with third countries.

These principles are without prejudice to governments' 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 Government of Japan and the Government of the United States in areas such as the protection of intellectual property and the protection of privacy, including of health information, 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 Government of Japan and the Government of the United States intend to cooperate with third countries to enhance national regulatory capacity and support the expansion of ICT networks and services, which are powerful tools for promoting economic development. The Government of Japan and the Government of the United States intend to review these principles annually, with a view to discussing their implementation and use and to further refining and expanding them, as appropriate.

Governments seeking to enhance their national regulatory capacity and support the development of 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. **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.

3. Open Networks, Network Access and Use: Governments should promote the ability of consumers to legitimately 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. Governments recognize that Internet access providers should strive to avoid unreasonable discrimination in transmitting lawful network traffic.<sup>1</sup>

4. Interconnection: Consistent with the GATS Telecommunications Annex's access and use provisions, governments, through their regulators, should ensure that public telecommunications service suppliers in their respective territories provide directly, or indirectly within the same territory, interconnection with public telecommunications service suppliers of other countries on commercial terms. In addition, in accordance with the GATS Reference Paper on basic telecommunications services,<sup>2</sup> governments should ensure that public telecommunications service suppliers in their respective territories are able to interconnect with major suppliers at cost-oriented, non-discriminatory and transparent rates.

5. Unbundling of Network Elements: Governments, through their regulators, should have the authority to require major suppliers in their respective territories to offer public telecommunications service suppliers access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent. Regulators should seek and consider the views of interested persons before deciding which network elements should be unbundled.

6. Local Infrastructure and Local Presence: Governments should not require ICT service suppliers to use local infrastructure as a condition of supplying services. Governments should not require ICT service suppliers to establish a local presence as a condition for the cross-border supply of a service. 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.

7. Foreign Ownership: Governments should allow full foreign participation in their ICT services sectors, through establishment or other means.

8. 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 should have the authority to assign terrestrial spectrum to commercial users through impartial and market-oriented means, which can include auctions.

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<sup>1</sup> In the United States, the rule on no unreasonable discrimination only applies to fixed (wireline) broadband Internet access providers. 47 C.F.R. § 8.7. However, both fixed and mobile broadband Internet access providers are subject to "no blocking" rules. 47 C.F.R. § 8.5.

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

9. Digital Products: Governments 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.

10. 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.

11. 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.

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

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