

# 「台美資通訊技術服務(ICT)貿易原則」共同聲明 (說明資料)

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102 年 3 月 10 日

隨著網際網路及電信技術的蓬勃發展，應用資通訊技術(ICT)所提供的整合性服務不斷擴充，已成為現代生活不可或缺的一環。目前各國均積極鼓勵發展之雲端中心，即是應用資通訊技術所提供之服務。

目前各國除積極投入各項硬軟體建設，及業務內容的創新整合外，建構一套整合資訊、通訊與技術之跨國性貿易原則，以維持一開放公平、資訊自由流通的網絡平台，亦是推動 ICT 服務持續發展的關鍵。美國自 2011 年起陸續與其他國家共同發布不具法律拘束力之「ICT 服務貿易原則共同聲明」，現階段以建立各國對 ICT 服務貿易自由化與公平競爭之共同理解為目標。此一貿易原則排除金融服務業之適用，且不影響會員基於保護智慧財產權、個人及商業資料之隱私權及機密等政策目的所採行之相關措施。

美國繼與歐盟、日本、摩里西斯、約旦、摩洛哥發布 ICT 服務貿易原則共同聲明後，本次臺美 TIFA 會議亦與我國共同發布「台美 ICT 服務貿易原則共同聲明」，目前美國與東南亞國協 (ASEAN) 所推動的「擴大經濟協議」(Expanded Economic Engagement, E3) 中，亦包括發表此一共同聲明。

「台美 ICT 服務貿易原則」共同聲明不僅彰顯雙方政府支持 ICT 服務監管法規之透明、開放的網絡環境，跨境資訊自由流通等政策目標外，台美雙方並同意未來將合作，以推動與其他第三國發布推動本原則之聲明，以建立全球就 ICT 服務貿易之典範，另將在 TIFA 架構下，就影響 ICT 服務貿易相

關管理法規及未來發展等議題進行交流合作。

我國為 ICT 產業主要國家，並擁有 ICT 產業完整的產業鏈，刻正進一步發展 ICT 服務業，未來 ICT 貿易原則進一步獲各國接受而普及化後，我業者將可在更為公平、透明及不歧視之環境經營，將有助於提升我業者競爭力，拓展海外市場。

## **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 licenses<sup>1</sup> 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,<sup>2</sup> 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".

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

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

## 美國在臺協會(AIT)台北辦事處與駐美國台北經濟文化代表處(TECRO)「資通訊技術服務(ICT)貿易原則之共同聲明」

### 摘譯

美國在臺協會(American Institute in Taiwan, 簡稱AIT)台北辦事處與駐美國台北經濟文化代表處(Taipei Economic Cultural Representative Office in the United States, 簡稱TECRO)分別代表美國貿易談判代表署以及我經濟部，發布「資通訊技術服務貿易原則共同聲明」(Joint Statement on Trade Principles for Information and Communication Technology Services)。雙方所代表之政府將於雙邊經貿關係及與第三國之貿易談判中推動並執行本原則。

本原則不影響雙方政府於世界貿易組織(World Trade Organization, WTO)協定下之權利及義務，亦不影響 WTO 服務貿易總協定(General Agreement on Trade in Services, GATS)中所列例外規定之適用。本原則不影響雙方政府有關保護智慧財產權、隱私權、個人和商業資料等領域之政策目標及法令。本原則不適用金融服務業。另雙方進一步確認，本原則不具法律拘束力。

雙方所代表之政府同意彼此合作，並與第三國政府共同推動強化國內監理能力，並支持 ICT 網路和服務之拓展，作為經濟發展之有力工具。

雙方所代表之政府同意定期檢視本原則，並適當地在台美投資暨貿易架構協定(Trade and Investment Framework Agreement, TIFA)架構下討論雙方對本原則之執行及適用，並適當地修正及拓展本原則。雙方所代表之政府同意於 TIFA 架構下成立工作小組，由雙方資訊交換及分享有關本原則相關領域之法令、規範及計畫，包括頻譜管理、互連、提升 ICT

服務一般事宜等領域。

雙方所代表之政府同意彼此合作，確保雙方政府強化領域內之監理能力，並支持 ICT 網路及服務之發展，並以技術中立之且適當之方式，於雙邊及多邊貿易原則中納入下列原則：

1. 透明化：雙方政府應確保國內所有影響 ICT 及 ICT 服務貿易一般申請之法律、規定、程序、行政命令係公開或可取得，及在可行的程度上經公眾瞭解與評論之過程。
2. 開放網路、接取與使用：雙方政府應由監理機關推動消費者正當接取和流通資訊，以及選擇申請及使用服務之能力。雙方政府不應限制服務提供者以跨境和技術中立之基礎透過網路提供服務之能力，並應在適當情形下推動服務和技術之互通。
3. 跨境資訊流通：雙方政府應避免妨礙另一方境內之服務提供者或境外之消費者，於境內或跨境傳輸電子資訊，或跨境取得公開資訊，或取得本身儲存於境外之資訊。
4. 當地基礎建設：雙方政府不應要求 ICT 服務提供者使用當地基礎建設或建立當地據點作為提供服務之條件。此外雙方政府並不應給予本國 ICT 服務提供者使用當地基礎建設或國內頻譜、軌道資源優先或較優惠之待遇。
5. 外資參與：雙方政府應允許外資充分參與 ICT 服務業，包含投資或其他方式。
6. 頻譜使用：雙方政府應透過確保頻譜管理之有效和效率，並與國際電信聯盟無線電通訊部門(International Telecommunication Union Radiocommunication Sector, 簡稱 ITU-R)之建議一致，確保頻譜取得之最大化及使用。頻譜分配用於商業用途應依據客觀、及時、透明和非歧

視性之方式，並以促進競爭和創新為目標。應鼓勵雙方政府授權監理機關以公正客觀、市場導向之方法（包括拍賣）指配地面無線頻譜予以商業使用者。

7. 監理機構：雙方政府應確保 ICT 服務之監理機關法律上明確且獨立於所有的服務提供者，並具有足夠的法律權力及適當的資源發揮有效的監理功能。管理決策和程序應對所有市場參與者公正客觀。就 ICT 服務之管理決策以及上訴程序之結果應可公開取得。
8. 核發執照：在可能的情況下，雙方政府應確保透過網際網路提供 ICT 服務不須以取得執照<sup>1</sup>以及設立據點做為提供服務之條件。有關特定 ICT 服務設有執照數量之限制，應限於為達到特定監管議題之目的，例如頻譜指配。
9. 互連：為符合 GATS 電信附件之規定，雙方政府應確保公共電信服務提供者有權利與義務與其他服務提供者進行協商，並依據商業條款提供互連，以促成公開及可用的電信網路與服務之接取。此外，依據 GATS 基本電信參考文件<sup>2</sup>，雙方政府應確保電信服務提供者與主導業者協商並以成本導向、非歧視、透明之費率取得互連。
10. 數位產品：雙方政府不應因某些數位產品之生產地、製造地、生產者之國籍而給予較其他同類數位產品較不優惠之待遇。
11. 國際合作：雙方政府應彼此合作，強化全球數位論述，並減少數位落差。

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<sup>1</sup>為確保明確，電信服務業之執照要求並未違反此原則。

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



