ADDENDUM-3

E - COMMERCE

MAIN ISSUES ON E-COMMERCE

E-commerce has prompted WTO discussions regarding its relationship with existing WTO agreements because it is a new form of trade that frequently involves cross-border transactions. Specific areas being discussed with respect to e-commerce are as follows[1].

(1) DIGITAL CONTENT UNDER CURRENT WTO AGREEMENTS

E-commerce has brought substantial changes to the distribution structures for goods and services, but consensus has not been reached yet as to how to regulate this type of transaction within the context of the WTO.

First, there is the discussion on how to classify digital contents. Depending on whether consideration for exchanged digital contents are classified, whether as goods prices, services fees, or fees relating intellectual property rights, the rules that apply regulating the digital contents differ. It also has been pointed out that trade distorting effects may occur if there is discriminatory treatment between physical distribution and network distribution.

The EU asserts that provision of digital contents is a service activity and should be disciplined only by the GATS. It also asserts that, from the standpoint of technical neutrality, digital contents should not be treated differently depending on whether they are provided through broadcasting services or through electronic commerce.

Japan's position is that where recording and cross-border transactions of digital contents through carrier media, fall within the coverage of GATT disciplines, it is appropriate that the same digital contents transmitted through the Internet should also be granted unconditional application of MFN and national treatment as under the GATT. The U.S. similarly argues that the discussion regarding digital contents should not be limited to discussions on whether digital contents should be regulated under the GATT or the GATS. Rather, it is essential to keep in mind that the discussion contributes to develop electronic commerce and that the disciplines on digital content should not reduce the level of market access currently enjoyed. Japan is wary of the EU's position that electronic commerce should be governed entirely by the GATS, because by making such argument, the EU may be trying to make the e-commerce field subject to the most-favored-nation exemptions and reservations of market access and national treatment obligations that the EU has invoked for the 155 service sectors (particularly visual content and broadcasting), primarily for cultural reasons. Although the concepts of digital contents still need to be examined, it is essential to assure basic WTO principles, such as most-favored-nation and national treatment, to apply to digital contents in order to foster the growth of e-commerce.

[1] * See also the "electronic commerce" section in Part III, Chapter 7 for general rules on e-commerce (including chapters on e-commerce in EPAs).

(2) Custom Duties on Electronic Transmissions

Digital content that used to be delivered physically, for example on floppy disks and CD-ROMs, is increasingly being delivered on-line. The main problem in attempting to tax these transactions is that it is almost impossible for customs agencies to capture them. If one attempts to tax electronic transmission of digital contents (for example, capturing the transmission log) as a substitute, one runs the risk of imposing taxes far in excess of or short of the value of the content because the value of digital content itself is not always proportionate to the transmission volume.

In addition to these technical difficulties in collecting customs duties on electronic transmissions, there is also the need to ensure a free trading environment to foster the growth of e-commerce. This has led many to support the establishment of an international agreement not to impose customs duties on on-line transactions.

At the Second WTO Ministerial Conference in 1998, Members agreed to a "Ministerial Declaration on Global Electronic Commerce" that promised to maintain the current practice of not imposing customs duties on electronic transmissions until the next Ministerial Conference (1999) (moratorium on payment of customs duties). However, when physical goods are moved along with e-commerce transactions, tariffs apply as with ordinary transactions.

The impasse at the Third Ministerial Conference in 1999 delayed agreement on the handling of the moratorium on payment of customs duties. The Fourth Ministerial Conference in Doha, Qatar in November 2001, however, officially announced that the moratorium would be extended until the Fifth Ministerial Conference. Although the September, 2003 Fifth Ministerial Conference in Cancun collapsed and the taxation moratorium was not extended, Members agreed in the General Council at the end of July 2004 that the moratorium would be extended until the Ministerial Conference in Hong Kong scheduled for the end of 2005. Afterward, Members agreed to extend the moratorium until the next Ministerial Conference, at the Sixth WTO Ministerial Conference in Hong Kong (December 2005), the Seventh Ministerial Conference (December 2009), the Eighth Ministerial Conference (December 2011), the Ninth Ministerial Conference (December 2013) and the Tenth Ministerial Conference (December 2015).

(Reference: Value Added Tax (VAT) on Electronically Distributed Services)

Where consumers receive digital contents and other services electronically, such as via the Internet from abroad, if no value added tax (VAT) is levied on such services whereas VAT is levied on similar services provided electronically by domestic companies, this could lead to distortion of competition between domestic and foreign companies. At the Ottawa Conference on Electronic Commerce in 1998, the OECD Committee on Fiscal Affairs presented a basic framework for making cross-border transactions of services subject to the levying of VAT in the countries where services were consumed. Recommendations based on this framework is published in 2003.

Under European Council Directive (2006/112/EC), for transactions of digital contents between non-EU businesses and EU consumers, non-EU businesses will be required to levy a VAT in the member state where the consumer of the service resides and pay it in the state where they register for VAT. Non-EU businesses may register for VAT in all member states where they provide services and file VAT returns in these states, or may choose to register in only one member state and pay VAT via that state using the Mini One Stop Shop (MOSS) scheme.

In Japan, a consumption tax had been imposed on services provided electronically by domestic companies, whereas similar services provided by foreign companies had been exempt from taxation. However, under the amended Consumption Tax Act put into effect in October 2015, Japan imposes

the consumption tax in the latter case as well. Accordingly, foreign companies that electronically provide services to consumers in Japan now are required to file consumption tax returns with Japanese tax offices.

(3) Fiscal Implications of E-Commerce

It is difficult in electronic commerce to identify where production and consummation were undertaken. This raises the question of how to harmonize the traditional concept of state taxation and its practices. Developing countries have expressed concern that the expansion of e- commerce will lead to a reduction in state tax revenues. In order to convince developing countries otherwise, it is necessary to study the positive effects that the promotion of e- commerce will have on national economies as a whole and on the negative impacts that may be seen in state tax revenues.

History of WTO Discussion on E-Commerce

The history of WTO discussions on e- commerce is as follows:

(1) Decision to Create a Work Programme at the Second WTO Ministerial Conference (May 1998)

At the second WTO Ministerial Conference (the Geneva Ministerial Conference) in May 1998, ministers adopted a "Ministerial Declaration on Global Electronic Commerce." The Declaration paved the way for the formulation of a work programme for the consideration of all trade-related aspects of e-commerce and instituted a moratorium on payment of custom duties on electronic transmissions.

(2) Creation of Work Programme and Discussion in Subsidiary Bodies (October 1998 to July 1999)

The electronic commerce work programme was created in October 1998 in response to the May 1998 declaration adopted at the Second WTO Ministerial Conference. Subsidiary bodies (the Council for Trade in Goods, Council for Trade in Services, Council for TRIPS, and Committee on Trade and Development) discussed these issues until July 1999 and reported their findings to the General Council.

(3) Suspension and Re-Opening of the E-Commerce Work Programme (December 1999 to December 2000)

The E-Commerce Work Programme had been suspended since the collapse of the Seattle Ministerial Conference in October of 1999. However, strong demands for liberalization and rule formulation for rapidly developing e-commerce-related sectors spurred the General Council to announce the resumption of the Work Programme in July 2000, nearly six months after its suspension at the Seattle Ministerial. While various WTO subsidiary bodies are addressed e-commerce issues, Japan and other WTO Members have come to recognize that many issues regarding the e-commerce and WTO disciplines require crosscutting consideration beyond individual agreements. As such, the WTO established a taskforce to study e-commerce issues in an inter-disciplinary manner so as to develop a broad understanding of the impact that it will have on WTO disciplines (the impact on trade in goods, services and intellectual property).

Subsequently, it was decided to hold a dedicated discussion on e-commerce in June 2001 as an arena for intensive discussion among experts on crosscutting issues.

(4) Fourth WTO Ministerial Conference in Doha (November 2001)

The Fourth WTO Ministerial Conference adopted a Ministerial Declaration in which it was agreed to continue the moratorium on payment of customs duties until the Fifth Ministerial Conference. Members also agreed to continue the Work Programme on e-commerce and instructed the General Council to consider the most appropriate institutional arrangements for handling the Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference.

(5) Discussions after the Doha Ministerial Conference

After the Doha Ministerial Conference, e-commerce issues continued to be examined principally in the dedicated discussion under the General Council. At the second meeting (May 2002) and thereafter, discussions on classification issues and fiscal implications have continued. Along with other countries, Japan actively contributes and has submitted a paper outlining its cooperation in IT areas from the perspective of development. Since a seminar under the auspices of the Committee on Trade and Development was held in April 2002, developing countries were interested in these issues. As a result of Members' efforts and intensive discussions, developing countries gradually increasingly understand the importance of promoting electronic commerce.

The United States proposed that Members seek to reach an agreement on basic principles (assurance of free trading environment, expansion of market access, permanent moratorium on customs duties, etc.)for the further development of e-commerce. This idea was broadly supported by developed countries.

Moreover, parties agreed during the July 2004 General Council meeting that the moratorium on payment of customs duties, which was scheduled to be agreed on in the Fifth WTO Ministerial Conference, would be extended until the Sixth WTO Ministerial Conference.

(6) Sixth WTO Ministerial Conference in Hong Kong (December 2005)

The Sixth WTO Ministerial Conference declared that Members would maintain their current practice of not imposing customs duties on electronic transmissions until the next Session of the Ministerial Conference. Members took note that the examination of issues under the Work Programme on Electronic Commerce was not yet complete, and they agreed to reinvigorate that work, including development-related issues and discussions on the trade treatment of electronically delivered software.

(7) Seventh WTO Ministerial Conference in Geneva (December 2009)

Since no regular WTO Ministerial Conference was held between the Hong Kong Ministerial Conference and the December 2009 Conference in Geneva, the moratorium on payment of customs duties had been ongoing. At the 2009 Ministerial Conference, however, Cuba, among others, said that developing nations were not experiencing sufficient benefits from Electronic Commerce, and opposed maintaining the moratorium. However, since there were some developing countries pressing for the extension of the moratorium, claiming they benefited from it, it was agreed to extend the moratorium until the next Ministerial Conference in 2011. Concerning the Work Programme on Electronic Commerce, it was agreed: a) to revitalize the work energetically; b) for

the General Council to conduct regular reviews on the progress of the Work Programme: and c) for the Work Programme to include discussions on the fundamental WTO principles and the handling of software sent electronically during trade.

(8) Eighth WTO Ministerial Conference in Geneva (December 2011)

At the eighth WTO Ministerial Conference, WTO Members agreed to extend their current practice of not imposing customs duties on electronic transmissions until the ninth Ministerial Conference. Concerning the Work Programme on Electronic Commerce, from the perspective of enhancing access to public internet sites, it was agreed to: (a) continue the reinvigoration of the Work Programme, with special consideration toward developing countries, and particularly least developed country Members; (b) to examine access to e-commerce by micro-, small and medium-sized enterprises; and (c) for the General Council to hold periodic reviews (during sessions of the Work Programme in July and December 2012 and July 2013) to assess the progress of the Work Programme and consider any recommendations on possible measures related to electronic commerce to be adopted at the next Ministerial Conference.

(9) Ninth WTO Ministerial Conference in Bali (December 2013)

At the ninth WTO Ministerial Conference, Members agreed to extend their current practice of not imposing customs duties on electronic transmissions until the next Ministerial Conference. Concerning the Work Programme on Electronic Commerce, it was agreed to continue active work, comply with the basic principles of the WTO (including non-discrimination, predictability, and transparency), expand application of e-commerce while giving special considerations to developing countries (in particular, least developed countries) and countries with limited access to e-commerce is not widely used, continue investigations of access to electronic commerce by micro-, small and medium-sized enterprises, and hold periodic reviews on the progress status of the Work Programme by the General Council.

(10) Tenth WTO Ministerial Conference in Nairobi (December 2015)

At the tenth WTO Ministerial Conference, Members agreed to extend their current practice of not imposing customs duties on electronic transmissions until the next Ministerial Conference. They also agreed to continue the Work Programme on Electronic Commerce and hold a periodic review on the progress status of the Work Programme in meetings of the General Council, etc. by the next Ministerial Conference.

Column

New Trend in Rule-Making for E-Commerce

1. Introduction

The necessity of rule-making for e-commerce has been widely recognised by various WTO members. Since the first e-commerce working programme was formulated in 1998, WTO and other various fora, including EPA/FTA negotiations, OECD, and APEC, have continuously been discussing rulemaking for e-commerce.

Since then, e-commerce market continued to expand and transform as the market transcends the originally-expected framework of distribution of goods, through online shopping, but extended to

such various services as platform services and infrastructure services including cloud. E-commerce market has been expanding and transforming in parallel to the expansion of various businesses that accompany technological advancement and data movement. Furthermore, as the digitalisation in wide socio-economic sphere advances, such as IoT, the society is witnessing the world which was unimaginable two decades ago. The demand to actively utilise digital trade by further promote cross-border data transfer is increasing. However, at the same time, as the national boundary of e-commerce is unclear, the regulation of e-commerce by each country has limitations. It is necessary to continue consider the means of regulations.

This column attempts to consider future development of rule-making for e-commerce based upon the previous related discussions, and pays attentions to the points which need considerations.

2. WTO Rules on E-Commerce

The consideration of trade-related issues in relation to e-commerce in the WTO was commenced when "Ministerial Declaration on Global Electronic Commerce" was adopted at the MC2 in 1998 and "E-Commerce Work Programme" was formulated in the same year. Since then, the discussion has been advanced in a way that four WTO bodies (Services Council, Trade Negotiation Committee, TRIPS Council, and Committee on Trade and Development) separately discuss the e-commerce and report the outcomes of such discussions to the General Council and Special Session on E-Commerce, which is established as a subsidiary body of the General Council. Despite the fact that there have been certain outcomes achieved[2], including the Moratorium on Customs Duties, the rule-making on e-commerce is yet to be completed.[3]

The main point of discussions that have been negotiated over the years are the concept of e-commerce (more specifically, its definition) and the classification of "digital contents" (whether it is a good, a service, or a use of intellectual property). However, WTO members have not reached consensus yet. Specifically, with respect to the classification of digital contents, different classification will result in different agreement to be applied, which as a consequence brings different non-discriminatory obligations (MFN and NT). This is the important point of the discussion. By having competitive software industries, the United States is in the position to classify e-commerce as a "good" which the general principle of non-discriminatory obligation applies on digital contents. On contrary, taking into account that the need of cultural protection such as audio-visual industry, the EU is in the position to classify e-commerce as a "service" which each member has a discretion to make reservation on the commitment. Japan places itself in the middle, which it does consider e-commerce as neither "goods" nor "services", but advocating the assurance of general principle of non-discriminatory treatment from the perspective of promotion of trade liberalization.

When the issue arises concerning the market access or non-discriminatory treatment relating to e-commerce, it is in need to assess each case individually to how the measure is classified and determine which WTO agreement to apply to settle the issue.[4]

3. Rule-Makings in Other Fora

Both private and public bodies other than WTO are making efforts in rule-making for

[2] The international agreement on non-imposition of customs duties on cross-border electronic transmission has been created. Please see p. for details.

[3] Please see pp. for history of WTO discussions on e-commerce.

[4] For example, when the dispute concerning electronic payment aroused in China-Certain Measures Affecting Electronic Payment Services (DS413), assessment on whether GATS will apply and whether or no such services fall under the categories listed in the schedule of commitment was made.

e-commerce. For example, prior to the Iseshima Summit in May 2016, the B7 Tokyo Summit was held and during which, the importance of collection, analysis, and utilisation of cross-boundary (firms, industry, and national boundary) transfer of data was confirmed and the construction of IT infrastructure to promote such transfer was proposed. Based on the proposition, the G7 Iseshima Summit issued the document "G7 Principles and Actions on Cyber" which contained the general principle that acknowledges the contribution of free cross-border transfer of information to the economic development, resistance to unreasonable data localisation requirement, and opposition to obligatory disclosure of or access to source code of software for mass production.

Various efforts in rule-makings for e-commerce are also found in other international frameworks such as OECD and APEC. In OECD, the Ministerial Conference on Digital Economy was held in June 2016, and during which, the Ministerial Declaration that supports the free transfer of information was adopted. Furthermore, in APEC, "digital trade" has been placed on the table for future agenda of trade and investment, and the discussion is on-going with the aim to improve the business environment such as securing free cross-border transfer of data.[5] In addition, since the Australia-Singapore FTA established the e-commerce chapter as an independent chapter of the FTA for the first time, various subsequent EPA/FTAs around the world started to regulate e-commerce in independent chapters.[6]

Moreover, TPP agreement also establishes the e-commerce chapter, and within which, comprehensive yet high-standard regulations, such as codification of non-imposition of customs duties and non-discriminatory treatment of digital products, were agreed. Main regulations include: 1) cross-border transfer of information by electronic means (chapter 14.11), 2) location of computing facilities (chapter 14.13), and, 3) source code (chapter 14.17).[7]

1) Cross-border transfer of information by electronic means has the purpose to promote information flow, and it is significant to restrain Parties to impose unreasonable impediment to the cross-border transfer of information which serves as a foundation of the expansion of the e-commerce businesses. Parties are, however, not prevented from adopting or maintaining measures to achieve legitimate public policy objectives.

2)Location of computing facilities prohibits Parties to require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory. This provision also does not prevent Parties from adopting or maintaining measures to achieve legitimate public policy objectives.

Finally, with regard to 3) source code, the provision stipulates that in principle, Parties are prohibited from requiring the transfer of, or access to, source code of software owned by a person of another Party.

4. MC10 and Future Plans on E-Commerce Rule-Makings

At the MC10 held in Nairobi in December 2016, WTO Members agreed to continue the Work Programme on Electronic Commerce and hold a periodic review on the progress status of the Work Programme. During the meeting, Japan showed its continuing position to actively participate in the discussion by calling for a need to make efforts in rule-making for e-commerce that adapt to new

[5] Please see p. .

[6] Please refer pp. for the development of e-commerce chapters in EPA/FTAs. Even though it is not legally binding, "Trade Principles for Information and Communication Technology Services" has been formulated with the aim to "proliferate the concept to third parties through international trade negotiations". These Principles generalises various commitments found in e-commerce and communication technology chapters of various EPA/FTAs. Please see pp. for details of these Principles.

[7] Based on discussions in TPP, Japan introduced location of server facilities and prohibition of obligatory source code disclosure in Japan-Mongolia EPA (signed in February 2015) for the first time. Please see pp. for details.

era amid changing structure of global economy and rapid development of technological innovations.

Since July 2016, various proposals on the Work Programme on Electronic Commerce were submitted by different Members, and it could observe various points of importance from each proposal.

Japan[8] and the United States[9] submitted the proposals that envision the further development of digital trade and digital economy. Both submissions contain three main regulations of the TPP (cross-border transfer of information by electronic means, location of computing facilities, and source code) as the points of discussion.

On the other hand, the EU[10], along with Canada and other Members, mapped various issues of e-commerce, grouping such issues into several groups, notablyregulatory framework, open markets, initiatives contributing to the development and e-commerce, and enhancing transparency of multilateral trade system.

Furthermore, China[11] insists to initiate the discussions that the Members may able to achieve agreement without much difficulty. China proposes to focus on e-commerce that relates with the trade facilitation in goods that contribute to proliferation and expansion of international transactions through internet and rules relating to the development of infrastructure. China also proposes to focus on rule-makings relating to expansion of payment and settlement system.

Discussions in the WTO so far have not been able to achieve outcomes, but the Members have re-recognised the necessity to make cross-sectoral efforts through rearranging the issues submitted by each country. It is expected that by taking considerations of discussions made in other fora, WTO will be able to make progress in rule-makings that will become the foundation of the activation of the e-commerce.

COLUMN

TRADE PRINCIPLES FOR INFORMATION AND COMMUNICATION TECHNOLOGY SERVICES

These principles provide the ideas obtained through the generalization of the commitment stipulated in the chapters on electronic commerce and telecommunication services of the EPAs/FTAs (for details, see the section on electronic commerce in Part III, Chapter 7). The contents agreed upon are not legally binding, but aim to spread the principles to third-party countries through international trade negotiations. Such principles were agreed among the US and the EU in 2011, followed by amongst the US and Japan.

The first set of Trade Principles for ICT Services was the "United States-EU Trade Principles for Information and Communication Technology Services" (announced on April 4, 2011; circulated to the Members of the Council for Trade in Services in July 2011), which was agreed to by the United States Trade Representative (USTR) and the European Commission. The principles support the

[8] "Work Programme on Electronic Commerce, Non-Paper from Japan" (JOB/GC/100), submitted in July 21, 2016.
[9] "Work Programme on Electronic Commerce, Non-Paper from the United States" (JOB/GC/94), submitted in July 4, 2016.
[10] "Work Programme on Electronic Commerce, Trade Policy, the WTO, and the Digital Economy" (JOB/GC/Rev.3), submitted in August 1, 2016, by the EU, Canada, Chile, Colombia, Cote d'Ivoire, Republic of Korea, Mexico, Montenegro, Paraguay, Singapore, and Turkey.
[11] "Work Programme on Electronic Commerce, Aiming at the 11th Ministerial Conference" (JOB/GC/110/Rev.1), submitted as a communication of China and Pakistan in November 16, 2016.

global development of ICT networks and services in cooperation with other countries, and aim to enable competition in trade of the other country with service providers on equal grounds.

The Japan-United States Trade Principles for ICT Services (announced on January 27, 2012) was developed in the framework of the United States-Japan Economic Harmonization Initiative. The objective is to ensure transparency of regulations, share views on promoting trade in ICT services, and jointly disseminate the contents to other countries. Two items were added to the United States-EU principles; there are twelve all together.

Then the contents of both sets of principles are compared (refer to Figure XII-2-7), the ten common items are almost the same. However, placing importance on cultural diversity is reflected strongly in the preamble of the United States-EU principles, which state that public funds and subsidies for the enhancement of cultural diversity is an exception to the principles.

In developing the Trade Principles for ICT Services and EPAs/FTAs (the chapter on electronic commerce), conflicts between policies regarding protection of personal information and privacy applied by each country, and "cross-border information flows" and "local infrastructure and local presence" are expected to arise.

The idea of ensuring free information flow across borders is not compatible with the policy of securing the privacy level of a country by restricting the flow of personal information to nations with insufficient personal information protection measures. Similarly, to prohibit local infrastructure and presence requirements will complicate the adoption of a privacy protection policy that requires the establishment of a data center within the country for service providers that handle personal information in order to prevent personal information of its own people from being sent to another country.

Although the Trade Principles for ICT Services exclude policies and legislation for privacy protection in the preamble, it is not made clear how that is balanced with the items expressed in the principles. Europe, which considers personal information as a human right and protects it by statute, adopted the EU Data Protection Directive in 1995 and restricts the transfer of personal data to countries with insufficient personal information protection measures, whereas the United States considers the protection of personal data within the framework of consumer protection. Thus, opinions on the optimum balance differ significantly between Europe and the United States. In order to eliminate the restriction on the transfer of data to the United States, which did not have a uniform law for personal data protection, the United States and the EU agreed on the Safe Harbor Framework in 2000 to permit the transfer of personal data of EU citizens to the United States. However, triggered by the incident of data leaks by Edward Snowden, an action was filed to challenge the large-scale surveillance by the United States, and the legitimacy of the Safe Harbor Framework was called into question. In October 2015, the European Court of Justice handed down a decision declaring the Safe Harbor Framework invalid. Following this, negotiations between the United States and the EU toward the revision of the framework were accelerated, and in February 2016, the parties agreed on “Privacy Shield,” a new framework for data transfer that is designed to tighten the obligation imposed on US companies to protect personal data and clarifying the necessity requirements and procedures for data access by the US government. Apart from the EU, countries such as Russia and China have introduced tighter regulations requiring personal data to be stored in servers located in the home country. Along with the enhancement of global distribution of information, personal data protection is becoming an important topic in trade negotiations.

Figure II-12-7 Comparison of Trade Principles for ICT Services

		Japan - United States Trade Principles for ICT Services	United States - EU Trade Principles for ICT Services
Announced		January 27, 2012	April 4, 2011
Preamble	Intention	Same as United States - EU.	To promote the implementation of these principles within their bilateral economic relationship and in their trade negotiations with third countries.
	Exception	These principles are without prejudice to governments' rights and obligations under the WTO and to exceptions contained in the GATS. These principles are without prejudice to policy objectives and legislation 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.	These principles are without prejudice to policy objectives and legislation in areas such as the protection of intellectual property and 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.
	Management	These principles are to be reviewed annually, with a view to discussing their implementation and use and to further refining and expanding them as appropriate.	These principles are to be reviewed biannually, with a view to discussing their implementation and use and to further refining and expanding them as appropriate.
Provisions	Transparency	Same as United States - EU. (Article 1)	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. (Article 1)
	Cross-border information flows	Same as United States - EU. (Article 2)	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. (Article 3)
	Open Networks, Network Access and Use	In addition to the United States - EU, governments recognize that Internet access providers should strive to avoid unreasonable discrimination in transmitting lawful network traffic. (Article 3)	Governments 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. (Article 2)
	Interconnection	Same as United States - EU. (Article 4)	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. In addition, in accordance with the GATS Reference Paper, countries should ensure interconnection with major suppliers at cost-oriented, non-discriminatory rates. (Article 9)

	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. (Article 5)	No provision.
	Local Infrastructure and Local Presence	Almost the same as United States - EU. (Article 6)	Governments should not require ICT service suppliers to use local infrastructure, or establish a local presence, as a condition of supplying services. (Article 4)
	Foreign Ownership	Same as United States - EU. (Article 7)	Governments should allow full foreign participation in their ICT services sectors. (Article 5)
	Use of Spectrum	Almost the same as United States - EU. (Article 8)	Governments should maximize the availability and use of spectrum by working to ensure that it is managed effectively and efficiently. Governments are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users. (Article 6)
	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. (Article 9)	No provision.
	Regulatory Authorities	Same as United States - EU. (Article 10)	Governments should ensure that the regulatory authorities that oversee ICT services sectors are legally distinct and functionally independent from all service providers, and regulatory decisions and procedures should be impartial. (Article 7)
	Authorizations and Licenses	Same as United States - EU. (Article 11)	Governments should authorize the provision of competitive telecommunications services after simple notification, and should not require legal establishment as a condition of supplying a service. Licenses should be restricted in number for specified regulatory issues, such as the assignment of frequencies. (Article 8)
	International Cooperation	Same as United States - EU. (Article 12)	Governments should cooperate with each other to increase the level of digital literacy globally and reduce the "digital divide". Article 10)