

Promoting U.S.-EC Regulatory Compatibility
Comments of the Information Technology Industry Council
Docket Number: USTR–2012–0028

Introduction

In response to the above referenced September 28, 2012 Federal Register Notice, the Information Technology Industry Council (ITI) welcomes the opportunity to offer the following comments to the Office of the U.S. Trade Representative on Promoting U.S.-EC Regulatory Compatibility.

ITI applauds the efforts of the U.S. Government and European Commission to promote greater transatlantic regulatory compatibility. We believe that the U.S.-EU High Level Working Group on Jobs and Growth (HLWG) can provide a solid basis for further cooperative efforts in this area. Minimizing regulatory differences and unnecessary costs will increase trade, investment and innovation—the keys to economic growth for both economies. This collaboration may also provide a means to address common U.S. and EU regulatory concerns with additional countries.

The following is not an exhaustive set of topics, but rather is intended to serve as a starting point for further discussion on where greater U.S-EC regulatory compatibility would be helpful. ITI looks forward to discussing these issues in greater detail with the Office of the U.S. Trade Representative and with other relevant U.S. agencies.

Cybersecurity

ITI commends the U.S. Government and EC for undertaking the challenging task of developing policies and strategies for cybersecurity. In January 2011, ITI published a comprehensive set of cybersecurity principles for industry and government.¹ ITI believes that to be effective, efforts to enhance cybersecurity must:

- Leverage public-private partnerships and build upon existing initiatives and resource commitments;
- Reflect the borderless, interconnected, and global nature of today’s cyber environment;
- Be able to adapt rapidly to emerging threats, technologies, and business models;
- Be based on effective risk management;
- Focus on raising public awareness; and
- More directly focus on bad actors and their threats.

Subsequently, in June 2012, ITI, DIGITAL EUROPE, and the Japan Electronics & Information Technology Industries Association (JEITA) issued a “Global ICT Industry Statement: Recommended Government Approaches to Cybersecurity.”² The statement provides governments worldwide with a common foundation for policymaking in the area of cybersecurity. The twelve recommendations represent a

¹ The IT Industry’s Cybersecurity Principles for Industry and Government, found at <http://www.itic.org/clientuploads/ITI - Cybersecurity Principles for Industry and Government - Final1.31.11.pdf>

² <http://www.itic.org/dotAsset/51ad6069-9f1b-4505-b2ff-b03140484586.pdf>

cooperative approach between government and industry that meets security needs while preserving interoperability, openness, and a global market while permitting industry to innovate and compete. We urge both the U.S. Government and European Commission to incorporate the approaches set forth in both of these documents into their own cybersecurity policies to ensure compatible policies across the Atlantic that will promote innovation, trade, and security. We also urge the U.S. Government and European Commission to promote the use of such approaches to governments globally.

Forced Localization

The trend towards policies that mandate localization is a growing concern for governments globally, including the U.S. Government and the European Commission (and EU Member States). Governments around the world are turning to investments and policy incentives to promote the growth of local information communications technology (ICT) industries. Some governments have begun implementing a number of “forced localization” policies designed to boost their domestic manufacturing, high-technology and R&D capabilities, and services by discriminating against foreign companies. Such policies were once limited to China and, to a lesser extent, Brazil, but have more recently been adopted in India, Russia, Indonesia, Nigeria, and Argentina.

Some of these policies include troubling provisions, including mandatory technology transfer requirements, local sourcing requirements in government and private sector procurements, the escrow of source code and other sensitive design elements, import restrictions, and restrictions on the flow of data. Not only do such policies conflict with international norms, but they also jeopardize growth of the global ICT and other industries, reversing decades of global growth and innovation and threatening quality jobs tied to the global technology industry. The ability to access foreign markets and compete on equal terms has been critical to the health of the ICT and other sectors. As the global economy recovers from a severe recession, it is critical that global ICT companies be able to access the consumers in both developing and developed markets. ITI recommends that the EU and US governments work together to promote regulatory compatibility in a way that serves as a model for other nations that are looking to adopt policies to promote innovation and manufacturing free of trade-distorting discrimination.

Internet Governance

By 2016, it is projected that 3 billion people worldwide will be connected to the Internet, almost half the world’s population, with the “Internet economy” reaching \$4.2 trillion in the G-20 economies. Over the past five years, the Internet has accounted for roughly 21 percent of GDP growth in “mature” economies. Leveraging the World Wide Web is not merely the domain of developed countries, however. Developing countries that have embraced ICT and the Internet have benefited from acceleration in economic development beyond what would otherwise be achievable relying solely on more traditional telecommunication investments. A 2009 study by the World Bank concluded that broadband contributed equally to the growth in developed and developing economies, producing roughly a 1.38 percentage point increase in GDP for each 10 percent increase in Internet penetration.

Free of encumbering regulation, the Internet has transformed the world. Even so, it is important to bear in mind that, as a technology and platform, the Internet is still in its infancy. It continues to evolve in unexpected ways. The current approach to Internet governance has produced a stable, predictable environment that has helped facilitate innovation and investment, spreading economic benefits around

the globe. Several proposals have been introduced in advance of the upcoming ITU World Conference on International Telecommunications (WCIT) premised on the notion that the current governance model is not “fair,” that it is concentrated in too few hands and too few countries and, therefore, governments should support proposals to change the governance model. These proposals fail to analyze the potential impact on the Internet as a driver of growth.

The U.S. and European Union should insist that any revision of the International Telecommunication Regulations build on the successes of the last 24 years and codify the guiding principles that have transformed global communications over the past two decades, including the liberalization of incumbent telecommunication infrastructures through privatization, and continued reliance on market-based agreements for telecommunications services. In addition, the governments should insist that the ITU conduct a comprehensive risk assessment on how any proposed changes will affect developing countries that have made significant investments in ICT and digital infrastructure.

ICT Accessibility

The global ICT response to the accessibility needs of people with disabilities and age-related limitations has been accelerating in the past decade, spurred in part by the U.S. “Section 508” ICT accessibility guidelines and the recent updating of web accessibility guidelines published by the World Wide Web Consortium. Governments are paying greater attention to the issue due to the growing role of ICT in national economies and the movement of government services and data to the Internet. Government awareness has also been heightened by commitments to adhere to the UN Convention on the Rights of Persons with Disabilities. As both Europe and the U.S. proceed with efforts to identify and update technical and policy criteria to advance ICT accessibility, industry is encouraged by the commitment of both governments to work together to harmonize their respective approaches. This will expand the market for accessible solutions and create incentives to design and deliver solutions. It is equally important, however, that both governments harmonize not only accessibility standards, but also conformity assessment requirements.

With Section 508, the U.S. government has adopted the supplier’s declaration of conformity (SDoC) model, allowing manufacturers to demonstrate conformance through such tools as the Voluntary Product Accessibility Template® and other similar means. As a result, numerous small and medium enterprises, many of which are run by or employ people with disabilities, have stepped forward to assist manufacturers and government agencies to evaluate the accessibility features of ICT products and Internet web sites. Under this “light touch” approach, the market for accessible ICT has thrived. We urge both governments to multiply the benefits of technical harmonization by adopting similar approaches to conformity assessment that is based on principles of SDoC.

Standardization

Technology standards are developed in a diverse ecosystem of standards-setting organizations (SSOs). They are created through collaborative efforts that often have a global reach, are voluntary and are widely adopted by the marketplace across national borders. Such standards are developed not only by formal, national member-based international standards bodies such as ISO, IEC and ITU, but also by consortia, trade associations and other industry groups. Ultimately, the test of success and relevance of a standard is the extent to which it gets used in the marketplace.

ICT manufacturers in particular rely on a variety of voluntary, market-led SSOs with global reach to help spur innovation. While ISO, IEC and ITU are important SSOs, they alone are not sufficient to meet the current and increasing demands of a connected world with rapidly changing needs. Indeed, no single SSO, structure or process necessarily produces better technology standards, or can be relied upon exclusively for the development of such standards.

Given the extraordinary success of the current system, the ICT industry would strongly oppose any effort to limit such diversity in SSOs or to effectively mandate global use of specific standards. Accordingly, we have serious concerns regarding proposals to revise the International Telecommunication Regulations in such a way as to make Recommendations (standards) of the International Telecommunication Union Telecommunication Standardization Sector (ITU-T) mandatory for all ITU Member States. Such an initiative is unnecessary and counterproductive, and would drive up the cost of technology while significantly restricting access to innovations that may best meet the needs of citizens. We urge the U.S. and EU to insist that ITU-T standards retain the status implied by their name, i.e., recommendations, and oppose any effort to create or recognize a single, global organization for ICT standardization.

Regulatory Product Marks & Labeling

Today, countries are increasingly requiring regulatory marks and labels on ICT products. More labels for energy and environmental requirements are expected in the near future. Manufacturers are struggling to find the necessary space to accommodate these labels on devices that are manufactured for a global market. The problem is exacerbated for small products with limited surface areas for product marks and labels. As ICT products become overcrowded with marks and other information, customers are more likely to ignore what they perceive as clutter, and government surveillance for regulatory compliance is not well served.

Without a global body to govern or coordinate these national requirements, industry and regulators will have to work together to find a solution. ITI believes that the U.S. and EC should take this opportunity to address the issue. There should be a joint regulatory effort to eliminate requirements for product marks and labels to display nonessential information. Manufacturers should be allowed greater flexibility to place information deemed essential on the product, in the product manual, on packaging, or on the manufacturer's website.

The US Federal Communications Commission has recently begun to explore options for electronic labeling (e-labeling).³ Allowing products to have electronic user manuals that replace or supplement paper versions is already helping to reduce the cost and impact on the environment. Displaying regulatory information via a product's electronic display (screen) is just one option we believe the U.S. and EU should further explore. Other e-labeling options (e.g. via use of RFID tag, QR Code or Smart Tags) may also deliver enhanced product regulatory content without the need to power on the device and read the display. The development of standards for such options would lead to more consistent and effective adoption. ITI believes that greater regulatory alignment between the U.S. and EU on product marks and labeling will provide needed global leadership on this issue of importance to the ICT industry.

³ See Petition for FCC Rulemaking no. 11673, *Request for the Allowance of Optional Electronic Labeling for Wireless Devices*, 8/6/2012.

About ITI

The Information Technology Industry Council represents the leading providers of information technology (IT) products and services. ITI is the voice of the high tech community, advocating policies that advance industry leadership in technology and innovation; open access to new and emerging markets; promote e-commerce expansion; protect consumer choice; and enhance the global competitiveness of its member companies.