



International Chamber of Commerce

*The world business organization*

## Policy statement

### **ICC policy recommendations applied to the issue of mandatory certification requirements for Information Technology (IT) products and services**

*Prepared by the Commission on E-Business IT and Telecoms*

#### ***Introduction***

The International Chamber of Commerce (ICC) is the voice of world business, with members in over 130 countries and from all sectors. ICC's Commission on E-Business, IT and Telecoms (EBITT) has developed this statement based on existing ICC policy positions created through a rigorous consensus building process, with the expertise of business from around the world and the views of users, producers, and service providers.

#### ***Issue***

ICC's mission is to promote trade and investment across frontiers, including through the reduction of barriers to trade, and by fostering policy and regulatory environments that encourage innovation, entrepreneurship and competition. Mandatory certification requirements that impose overly burdensome requirements risk restricting market access, creating barriers to trade, and imposing untenable data privacy and security requirements. Such certification requirements place an undue burden on business, may create disincentives for local investment in plants and operations, and can negatively impact the global economy. Mandatory certification requirements for IT products and services at national level should be consistent with international norms and regulations, based on voluntary international standards such as those of the International Organization for Standardization (ISO).

An overall objective of business and government trade policy should be to reduce or eliminate non-tariff barriers, where these reductions would contribute to further liberalization.<sup>1</sup> National regulatory regimes should avoid creating unintended trade barriers which can lead to a fragmented global market and protectionism.

#### **ICC policy positions on laws that go beyond borders<sup>2</sup>**

The increasing globalization of business and expanding regulation of commerce by states have led to a significant rise in the extraterritorial application of national laws, with states

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<sup>1</sup> "ICC recommendations for completing the Doha Round" : <http://www.iccwbo.org/policy/trade/id6711/index.html>

<sup>2</sup> ICC policy statement on "Extraterritoriality and business", July 2006 (which defines extraterritoriality as laws with extraterritorial effects) <http://www.iccwbo.org/uploadedFiles/ICC/policy/trade/Statements/103-33%205%20Final.pdf>



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frequently applying or seeking to apply their laws and regulations to persons or conduct outside national borders. Although in some instances this extraterritoriality is an outgrowth of states' efforts to combat terrorism, crime, corruption, cartels, and other concerns on a cross-border basis, ICC believes that the extraterritorial application of national laws and attempts by states to exercise jurisdiction extraterritorially can and does have significant negative effects on international trade and investment.

### ICC policy recommendations applied to the issue of mandatory certification requirements for IT products and services

- **Predictability** -- ICC is strongly committed to promoting cross-border investment and trade as indispensable elements of sustainable economic development and world growth. Clear and predictable rules of law are essential to achieve these objectives. Extraterritoriality, such as mandatory certification requirements for IT products and services that are not consistent with international standards, also creates considerable commercial and legal uncertainty. This uncertainty discourages international business from engaging in trade and investment and distorts its trade and investment decisions. Extraterritoriality may encourage forum shopping, duplicative legal proceedings, and potentially divergent outcomes.
- **Conflicting requirements** -- The extraterritorial application of national laws, such as the product and services certification requirements referred to in this statement, frequently subjects companies to conflicting or overlapping legal requirements, fosters unpredictability, increases the risks involved in commercial activities, exposes companies to overly burdensome litigation in foreign jurisdictions, and inflates legal and other transaction costs. Extraterritoriality of this kind also increases tensions among governments, stemming both from disagreements by states on the means of regulating activity or the policies underlying extraterritorial measures and from discord in addressing such conflicts. In some instances, governments have enacted blocking statutes to prevent the application of another state's laws from having extraterritorial effect, which can leave companies in an impossible quandary where compliance with one state's laws constitutes a violation of another's.
- **Increased economic costs** -- The extraterritorial application of national laws affects companies of all sizes and across industries. Multinational companies frequently face extraterritoriality problems and bear heavy costs. However, small and medium-sized businesses too are affected and are often the least able to bear the costs that these measures create. By imposing a considerable burden on international business, extraterritoriality, in the form of these mandatory certification requirements, has a significant negative impact on economic growth and development. It increases international transaction costs for companies and may result in steep compliance and regulatory costs.
- **Innovation** -- Product certification initiatives that go beyond international standards may damage the competitiveness and opportunities for countries that adopt them if

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new and innovative products and technologies will not be made available in such markets.

- **Competitiveness** -- National certification programmes require constant evaluation; an effort which should not be underestimated. Without such updating, certification requirements are likely to stifle the adoption of new technologies and therefore may negatively impact a country's competitiveness, in particular when such requirements are designed to prevent foreign companies from competing in the local marketplace. The more precise and technology specific the requirements are, the greater the risk that future technical and technological developments will be incompatible with such requirements, if they are not regularly updated. On the other hand, if the requirements are expressed in language that is too general they will only result in uncertainty and interpretation issues, adding to risk and cost for business, but at the same time providing local companies a competitive advantage. Maintaining a host of different product versions to comply with different local regimes will add to the cost of doing business and it will make products more expensive for consumers and less available in local markets.
- **Intellectual Property (IP) Rights and Innovation--**  
Business is concerned about mandatory certification requirements to disclose information that jeopardizes confidential company information and that could lead to industrial espionage and information leaks. Such requirements could also directly impact companies by imposing substantial cost burdens to produce products for the global market and separate product lines for a specific market.
- **Forced Intellectual Property Rights Transfer** -- This is a real concern for business, and requirements to disclose confidential source code, for example, and other documentation to comply with national certification initiatives create technical barriers to trade. Harmonized control processes should be encouraged.

In conclusion, many of these mandatory certification programmes that are not aligned with international standards often create more problems than they resolve and do not take into account the wealth of international consensus-based information security standards that exist to address these issues. Thus, information technology (IT) product and services certification programmes/initiatives should be based on and consistent with internationally accepted voluntary standards and norms. Foreign companies may otherwise be disadvantaged in obtaining the required algorithms and documentation to make products comply with the nationally based regulation not based on international standards. Local requirements should be recognized in international standards fora, where they can be properly vetted, and – if adopted- where the requirements will be publicly available on an equal basis. Compliance assessment can then take many forms and when implemented consistently will not become a barrier.

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### **ICC Commission on E-Business, IT and Telecoms (EBITT)**

Business leaders and experts drawn from the ICC membership establish the key business positions, policies and practices on e-business, information technologies and telecommunications through the EBITT Commission. With members who are users and providers of information technology and electronic services from both developed and developing countries, ICC provides the ideal platform to develop global voluntary rules and best practices for these areas. Dedicated to the expansion of cross-border trade, ICC champions liberalization of telecoms and development of infrastructures that support global online trade. ICC has also led and coordinated the input of business around the world to the World Summit on the Information Society, Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda through its initiative, Business Action to Support the Information Society (BASIS <http://www.iccwbo.org/basis>)