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TESTIMONY BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE'S SUBCOMMITTEE ON EUROPEAN AFFAIRS
TUESDAY, JUNE 24, 2003

Good afternoon. My name is Karen Myers, and I am Director of Tax and Trade Policy in the EDS Office of Global Government Affairs. I am here today on behalf of the United States Council for International Business, in my capacity as Chairman of the Council's Subcommittee on the Taxation of Electronic Commerce. The U.S. Council is the American affiliate of the International Chamber of Commerce, the Business and Industry Advisory Committee to the Organization for Economic Cooperation and Development, and the International Organization of Employers. As such, it represents U.S. business in major intergovernmental bodies. USCIB brings together more than 300 corporations, professional firms and business associations to address a broad range of policy issues with the objective of promoting an open system of world trade, finance and investment.

I am here to express the Council's concern with regard to the European Union's Directive on the application of value-added tax to electronically delivered goods and services, a legislative measure adopted by the European Council of Ministers last May. For the first time, the Directive enables, indeed obligates, EU Member States to apply their VATs to electronic commerce transactions between non-EU firms and their EU consumers. The directive is effective July 1, 2003. U.S. firms will be required to register with EU authorities and to levy, collect and remit the VAT tax applicable in the customer's place of residence on a large majority of goods and services now available electronically in the global marketplace. While non-EU vendors will be required to register in only one Member State, they will be required to collect tax according to the implementation requirements in place in each state where they have a customer. In contrast, EU vendors

are required only to register and collect under the rules in place in their respective countries of residence.

USCIB has followed the development of EU tax policy in this area for many years. We understand that the Commission has been under strong pressure to remedy a situation whereby EU businesses are required to charge VAT on their EU sales, while non-EU businesses, until now, have had no such requirement. Members of my Subcommittee and I have consulted directly with representatives of the EU and participated in an OECD technical advisory group on electronic commerce taxation, and we are pleased that a number of business community recommendations were incorporated in the Directive.

Nonetheless, we strongly believe that, in trying to level the playing field, the European Commission has created a trading environment that discriminates against U.S. and other non-EU businesses. In addition to imposing a heavier compliance burden on non-EU businesses than that which is imposed on their European counterparts, the directive imposes technical and administrative challenges that may result in unwarranted liabilities for non-EU business and hinder the growth of electronic commerce.

For example, the Council is deeply concerned that the requirement for non-EU firms to collect VAT based on the location of their EU customers ignores the fact that most firms lack the technical means of verifying this information in a cost-effective manner. We are concerned that the directive is lacking in important basic definitions, leaving Member States to determine independently what actually constitutes "electronically supplied services."

Implementation of the Directive will require non-EU firms to make costly systems upgrades. Failure to do so will place businesses at risk of being unable to collect and remit taxes, thus incurring liabilities in up to 15, soon to be 25, EU jurisdictions. This requirement is particularly onerous because the Directive has been adopted inconsistently across the EU. In some jurisdictions, implementing legislation may not be in place when the Directive takes effect.

Unlike their European competitors, non-EU firms will be obligated to subject the records of transactions with their EU-based customers to audit by 15 different tax authorities and retain these records for up to 10 years. This burdensome requirement is exacerbated by the potential need to make these records available in more than a dozen official languages in the EU.

The administrative burden of verification and data retention requirements alone will create significant competitive disadvantages for non-EU suppliers operating in Europe. However, since EU suppliers will be allowed to charge VAT on the basis of country of origin, and since EU Member States charge different VAT rates ranging from 12% to 25%, the tax burden for non-EU suppliers will be higher in many situations than that of resident companies located in EU jurisdictions. This disparate tax treatment will distort the EU market and create a discriminatory environment for non-EU firms to such a degree that the EU's continued compliance with its commitments under WTO's General Agreement on Trade in Services may be in jeopardy.

We are pleased that members of Congress are taking an active interest in this issue and would like to work with you to achieve an acceptable outcome for U.S. business. Thank you for the opportunity to present our views to the Subcommittee. I will be happy to answer any questions.