USCIB

UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

October 25, 2016

USCIB Comments Regarding Foreign Trade Barriers to U.S. Exports for 2016 Reporting

The United States Council for International Business (USCIB) is pleased to submit comments concerning significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the annual National Trade Estimate (NTE) report. Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1998 (19 U.S. C. Section 3106) and as requested by this notice,[1] we also include comments concerning the operation and effectiveness of U.S. telecommunications trade agreements.

USCIB is submitting combined comments regarding foreign trade barriers to U.S. exports for the following countries: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, El Salvador, European Union, Fiji, Germany, Ghana, Gulf Cooperation Council, India, Indonesia, Korea, Latin America Malaysia, Mexico, Middle East and North Africa, New Zealand, Nigeria, Pakistan, Peru, Philippines, Russia, South Africa, Thailand, Tonga, Turkey, Uganda, Uruguay, and Vietnam.

ARGENTINA

On December 29, 2015, President Macri's administration passed the Presidential Decree of Need and Urgency No. 267/2015 (the "Decree"). The unexpected Decree amended Argentina's Media Law (2009) and Telecommunications Law (2014). Although the stated purpose of the Decree is to promote competition, as discussed in greater detail below, it in fact does the opposite.

The Decree reverses the 2014 policy which eliminated the historic cross-ownership prohibition from Fixed Telephone Companies entering the Cable pay-TV market (although, the ban on Satellite TV was not lifted). The Decree primarily benefits the Argentine-owned Cable pay-TV providers by reducing the competition they face in the pay-TV and Broadband markets. It has a direct discriminatory impact on Satellite pay-TV providers (currently, a US-owned company is the only Satellite pay-TV provider in Argentina), by restricting their lines of business, and applying more stringent regulations on their operations than apply to the Cable competitors. Further, the Decree keeps in place the historic prohibition on Fixed and Wireless telephone service providers from entering the satellite pay-TV market.

In a clear arbitrary and discriminatory manner, the Decree bans Satellite providers (not Cable) from: (1) Providing broadband or any other telecommunication service, (2) Providing Video on Demand, and (3) Offering their pay-TV service in a bundle with any other telecommunication service.[2] Given such restrictions, although Cable providers maintain their ability to compete by providing bundled services, Satellite providers are restricted to only selling pay-TV.

In addition, although Satellite providers continue to be regulated by the Media Law, Cable providers are

[1] Office of the U.S. Trade Representative, *Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers*, Federal Register Vol. 81, No. 138, 46994 (2016).
2 Decree Section 17/Media Law Section 45; Decree Section 6/Telecom Law Sections 6 and 96.

expressly excluded from that law and are now covered by the Telecommunications Law. [3] This, in practice, exempts Cable providers from complying with a series of burdensome media obligations (e.g., investing in the local film industry, including offerings for low income customers, etc.) that continue to apply to Satellite providers, and it also frees Cable providers from cross-ownership restrictions.

Finally, apart from the restrictions imposed on Satellite providers, the Decree also bans Mobile and Fixed Telephone companies from entering the Cable pay-TV Market until January 1st, 2018 (extendable for 1 additional year). [4] In 2014, the historic cross-ownership prohibition from Fixed Telephone Companies entering the Cable pay-TV market was eliminated (although, the ban on Satellite TV was not lifted). Thus, the Decree was an arbitrary reversal of recent 2014 policy. Further, the Decree kept in place the historic prohibition on Fixed and Wireless telephone service providers from entering the satellite pay-TV market. Given the optimism that many U.S. investors and the U.S. Government want to have for the Macri administration, and the potential that exists for increased investment in Argentina, this Decree is a distinctly negative signal about the investment and regulatory environment.

USCIB urges USTR to request the Argentine government to reverse the asymmetric measures adopted through the Decree by issuing a new Presidential Decree that corrects the elements of discrimination, thereby re-establishing convergent free market principles, the respect for Argentine Trade commitments with the US, and the potential for Argentina to be eligible for accession negotiations on TPP. It is important that the Decree's arbitrary and discriminatory measures are removed immediately through a new Presidential Decree, and that the solution should not be deferred as part of a broader telecom legislative reform planned for 2017/2018. The promise of future regulatory reforms will serve only to protect the Argentine-owned Cable TV incumbents at the expense of an American company and its substantial investments in Argentina and to the detriment of Argentina's consumers.

In July 2013, the government of Argentina announced that it was developing new regulations for the telecommunications sector in response to a large number of mobile service outages throughout the country. Argentina's government issued a new law, Decree 681/2013, which provides for establishment of quality standards for telecom providers. The former regulatory body, the Secretaria de Comunicaciones (SeCom), attempted to satisfy the legislative requirements by enacting Resolution No. 5 /2013. The terms of this new law provide standards for quality of service and network performance for telecommunications companies in Argentina. In further support of those efforts, the former regulatory body, Comision Nacional de Comunicaciones (CNC), issued a quality manual -- "Manual de Procedimientos de Auditoría y Verificación Técnica del Reglamento de Calidad de los Servicios de Telecomunicaciones"—which outlines the requirements of the regulation. It is important to note that both of these regulatory agencies have been replaced by the Ente Nacional de Comunicaciones (ENACOM), pursuant to the enactment of the Decree of Need and Urgency No. 267/2015. Yet despite these significant changes in regulatory authority, the resolutions enacted by the former agencies remain in effect.

The quality manual contains seven indicators that evaluate customer service and nine indicators that measure network quality. Telecom providers are required to provide the regulator with a memorandum that outlines the measurement systems (equipment and internal processing), procedures for recording the information, and the internal process for calculating a response for each indicator. There are 16 indicators outlined in the regulators' quality manual that relate to claims, complaints, response times, service delays, and compliance and transfer rates, among others. The addendum of the regulators' quality manual contains sample charts for gathering the

3 Decree Section 7/Telecom Law Section 10.
4 Decree Section 10/Telecom Law Section 94.

information related to the indicators. Telecommunications service providers subject to these new regulations have faced significant challenges in doing so. Many of the questions are applicable solely to consumer-based businesses and not enterprise based businesses. The stated purpose of the regulation was to address the large number of mobile service outages throughout the country. By enacting the current legislation, the Argentine government has broadly grouped enterprise service providers with consumer service providers in an unnecessary manner. USTR should encourage the government to clear out rules that are not applicable to enterprise services or necessary to protect enterprise customers.

USCIB fully supports the importance of delivering and maintaining quality telecom services, and this is best accomplished through competitive market mechanisms. This regulatory requirement contains questions that are applicable in large part to consumer-based telecom operators. Business customers do not need the protections intended for Argentina's consumers through this legislation. The terms governing the provision of telecommunications services to business customers are negotiated between sophisticated parties and contain service level agreements that ensure quality of service. As a result, provisions such as those contained in the aforementioned laws are unnecessary. This law, as currently written, fails to achieve the desired end in as narrow a manner as possible, something that all nations will agree is important. The requirements and processes set forth in the associated manual unnecessarily overburden telecom providers.

The requirements involve a substantial amount of internal labor on the part of telecom providers, which comes at a high cost for business and, in turn, absorbs resources that would be better spent on network enhancement, customer support and technological advancements for Argentina's residents. We therefore ask USTR to urge the Government of Argentina to revisit the legislation that imposes these and consider modifications that narrowly tailor its terms to achieve the desired end, considering more business-friendly methods for obtaining customer service benchmarks and ensuring network quality. These modifications should include, at minimum, an exemption for businesses that serve the enterprise segment of the Argentine population pursuant to fully negotiated written agreements that contain service level commitments that meet customer need.

In addition, much legislative work is yet to be undertaken despite the enactment of comprehensive telecommunications regulatory laws, these laws have failed to provide timelines for the review and issuance of rulings on telecommunications filings. This leaves local operators without recourse in the event of unreasonable delays or suspension of activity. Local operators are left without any guidance on how long concessions and matters as innocuous as corporate share transfer preapproval could take. As a result of these delays and regulatory practices, operators are reluctant to enter the Argentine market to provide services. Consequently, foreign investment by telecommunications companies seeking to establish a presence locally will be hindered and Argentine residents will unfortunately bear the burden of having fewer options in the purchase of telecommunications services.

Technical barriers

Argentina enacted Resolution 75/2016 in April 2016, intended to return the practice of recognition of international certificate on safety tests. However, implementation of the regulation has been delayed as currently Argentine organizations are not accepting overseas reports because the Ministry of Production agency, *Lealtad Comercial*, has not authorized the extension of mutual recognition agreements.

Acceptance of the international certificates would benefit laboratories in the United States, Argentina, and other countries by permitting the in-country labs to test to the other country's specifications. This arrangement would benefit suppliers seeking to sell telecommunications equipment globally, and consumers who would have access to new technologies and products more quickly. With respect to the United States, implementation of those practices would benefit U.S. suppliers seeking to sell telecommunications equipment in the Argentine market by allowing them to have their products tested in the United States to Argentina's technical requirements, eliminating the need for redundant testing at laboratories in Argentina.

OTT regulations

In Argentina, the telecommunications reform commission recently issued seventeen principles that would inform a "convergence" bill, aimed at unifying the telecommunications and audiovisual content laws that were enacted by the previous government. These principles do not explicitly leave information services, content services, and apps out of the scope of the bill, and may include new obligations both to register applications and satisfy intermediary liability requirements. In particular, the obligation to register an application would entail a set of complex administrative procedures that developers would need to follow before making their app widely available. Such obligations could create clear market access barriers for Internet services that do not face registration requirements in other markets. We urge USTR to monitor the development of this bill and engage with counterparts in Argentina to promote a light-touch framework for regulating information services.

AUSTRALIA

On March 14, 2014, Australia amended the Personally Controlled Electronic Health Records Act of 2012. In part 5, section 77 of this Act, it requires that a registered repository operator, a registered portal operator or a registered Contracted Service Provider that holds or has access to eHealth records must not hold or take the records outside Australia or process or handle the information relating to the records outside Australia, as required in Section 77. The System Operator is only authorized to hold, take, process or handle records outside Australia for the purposes of the operation or administration of the eHealth record system and only where the records do not contain any personal or identifying information of participants in the eHealth record system. The Act requires local data centers for the personally controlled e-health record system. No electronic health information can be held or processed outside of Australia by an authorized service provider (or third-party contracted by the provider).

In addition, the biopharmaceutical sector is concerned by the Australia Department of Health's actions to seek damages from biopharmaceutical innovators that pursue unsuccessful patent claims. Biopharmaceutical innovators must be able to rely on and enforce patents issued by competent government authorities. Laws or policies that allow governments or other non-parties to a patent dispute to collect "market-size damages" after the fact from innovators that pursue unsuccessful patent claims unfairly penalize and discourage the use of provisional enforcement measures as part of well-functioning early resolution mechanisms. They undermine legal certainty, predictability and the incentive patents provide to invest in new treatments and cures. Australia's Department of Health is seeking damages from biopharmaceutical innovators that pursue unsuccessful patent claims. Those damages are designed to compensate Australia's pharmaceutical reimbursement scheme (PBS) for any higher price paid for a patented medicine during the period of a provisional enforcement measure. The PBS imposes automatic price cuts on medicines as soon as competing versions enter the market, but the policy entails no corresponding mechanism to compensate innovators for losses if an infringing product is launched prematurely.

Australia's market-size damages policy unfairly tips the scales in commercial patent disputes encouraging competitors to launch at risk and discouraging innovators from enforcing their patents. It creates an inappropriate conflict of interest by permitting the same government that examined and granted a patent to seek damages if that patent is later ruled invalid or not infringed. It exposes innovators to additional, unquantifiable and significant compensation claims that were not agreed at the time provisional enforcement measures were granted. The size of these additional claims equates legitimate patent enforcement with patent abuse. Laws or policies that allow governments or other non-parties to a patent dispute to collect market-size damages undermine legal certainty, predictability and the incentives patents provide for investment in new treatments and cures. They appear to be inconsistent with WTO intellectual property rules, including with respect to provisional measures.

The Australian Competition and Consumer Commission (ACCC) initiated in 2016 a market study to examine a range of interrelated issues that may affect the development of competition in the Australian communication market. Rapidly evolving technology trends, product innovation, and changing consumer preferences are some of the drivers of the study, which will examine how these changes affect competition and what implications they have for the regulator. USCIB is monitoring developments of this effort to ensure that the ACCC enables a flexible regulatory framework that drives competition and economically efficient outcomes, including:

1. Carefully weighing whether additional regulation is necessary beyond existing law, and balancing regulatory protections and flexibility for deployment of services.
2. Enabling delivery of digital services in a seamless manner by embracing innovation with light-touch regulatory approaches.
3. Technology neutral policy frameworks.
4. When deemed necessary, regulations should be light-touch and horizontal in nature to recognize the cross-sectoral employment of digital services.

Australia maintains a variety of protectionist measures in the TV industry. Australia maintains a broadcast quota requiring 55 percent of all free to air television programming between 6 am and midnight to be of Australian origin and has genre-specific sub-quotas, as well. A recent government report recommended eventually phasing the quotas out at some indefinite time in the future, but in the meantime to expand the quotas for drama, documentaries, and children’s programming. Additionally, Australia requires pay television channels with more than 50 percent drama programming to spend a specified percentage of program funds on Australian/New Zealand content.

BRAZIL

Telecommunications – Conformity Assessment Requirements

Pursuant to Resolution 323 of November 2002, the Brazilian National Telecommunications Agency (ANATEL) requires testing of telecommunications products and equipment by designated testing facilities in Brazil, rather than allowing testing by a facility certified by an independent certification body. The only exception is in cases where the equipment is too large or too costly to transport. As a result of these requirements, U.S. manufacturers and exporters must present virtually all of their information technology and telecommunications equipment for testing at laboratories located in Brazil before that equipment can be placed on the Brazilian market, which causes redundant testing, reduced product choice, higher costs and delayed time to market. This advance testing and review process can take several months and severely delay or possibly impede market entry.

The United States has urged Brazil to implement the Inter-American Telecommunication Commission (CITEL) Mutual Recognition Agreement (MRA) with respect to the United States. Under the CITEL MRA, two or more CITEL participants may agree to provide for the mutual recognition of conformity assessment bodies and mutual acceptance of the results of testing and equipment certification procedures undertaken by those bodies in assessing the conformity of telecommunications equipment to the importing country’s technical regulations. The United States and Brazil are both participants in CITEL. If Brazil implemented the CITEL MRA as requested by the United States, it would benefit laboratories in both countries that could test the other country's specifications, suppliers seeking to sell telecommunications equipment globally, and consumers who would have access to new technologies and products more quickly. With respect to the United States, implementation of the MRA would benefit U.S. suppliers seeking to sell telecommunications equipment in the Brazilian market by allowing them to have their products tested in the United States to Brazil's technical requirements, eliminating the need for such testing at laboratories in Brazil.

Further, we urge USTR to raise this issue during other appropriate opportunities and consider alternatives that are available to achieve Anatel's desired outcome. One noteworthy example of regional governments working efficiently with the U.S. Government to achieve desired outcomes is the negotiation of Mexican Mutual Recognition Agreements (MRAs). One such agreement, the North American Free Trade Agreement (NAFTA) that was signed in May 2011, among other terms, reduces redundant and expensive testing by providing for each country's recognition of testing laboratories (and acceptance of test reports). USCIB should encourage the Brazilian and U.S. governments to consider negotiation of a similar agreement to streamline the testing process.

Local Content Requirements

Various countries – including Brazil -- have proposed or adopted policies that require the use of local content in their telecommunications sector infrastructure. Governments often pursue such policies as a way to boost their respective domestic manufacturing sectors, despite the fact that these policies undermine that long-term objective. Building a globally competitive and sustainable manufacturing sector, and ensuring world-class service suppliers in telecommunications and in sectors that use such services, are key goals of most countries. International experience demonstrates that, to achieve these goals, countries should adopt open, market-oriented policies that encourage the establishment of manufacturing facilities that can be incorporated into global supply chains. Policies that discriminate against imported products, in contrast, discourage firms from establishing new manufacturing facilities, because such facilities would be outside global supply chains.

Policies requiring the use of local content also raise serious questions of consistency with multilateral and bilateral trade rules, including provisions of the GATT and the WTO Agreement on Trade-Related Investment Measures (TRIMs).

Localization Barriers

Past Brazilian governments' interventionist policies have prevented innovation and technological progress. In order to ensure access to innovation and to modern technology, Brazil should be open to the provision of products and services from other nations. In addition to removing the local content requirements detailed above, Brazil should repeal the following laws that serve as barriers to trade:

- The Basic Production Process, which offers government procurement preferences for local ICT hardware and software (Law No. 8248 from October 23, 1991);
- CERTICS Decree (Decree No. 8186, of January 17, 2014), which stands at odds with the global nature of the software industry;
- The Margin of Preferences Decrees (Decree No. 8184, January, 17 2014, Decree No. 8194, February 12, 2014 and Decree No. 7903, from February 12, 2013), which grant ICT Equipment and Information Technology and Communication Equipment preference margins in government procurement;
- And the Presidential Decree 8135 of November 5, 2013 and subsequent Ordinances (No. 141 of May 2, 2014, and No. 54 of May 6, 2014), which requires that federal agencies procure e-mail, file sharing, teleconferencing, and VoIP services from Brazilian "federal public entities" such as SERPRO, Brazil's Federal Data Processing Agency. Decree 8135 required that Federal government communications be

> provided only by Federal agencies, an apparent localization requirement. Other issues of concern include requirements related to sharing of source code, and standards that appear to deviate from global norms. The uncertainty created by the Decree discouraged foreign investment in the IT sector in Brazil, and risked preventing the Government of Brazil from accessing best-in-class, cloud-based communication and information technology services, with significant costs to the Brazilian government in terms of lost efficiencies and lower productivity. In August 2016, the Ministry of Planning announced that Decree 8135 would be revoked. USCIB urges Brazil to ensure that any new measures avoid provisions that would hinder Brazilians' access to best-in-class cloud-based communication services.

These measures disrupt the global nature of the ICT industry and disadvantage both access to technology in Brazilian and the ability of U.S. ICT companies to do business in Brazil.

450 MHz, 2.5 GHz and 700 MHz Spectrum Auction

As a condition of participation in the June 2012 auction for the 2.5 GHz and 450 MHz spectrum bands, ANATEL required wireless carriers to meet specific milestones for ensuring local content of the infrastructure, including software, installed to supply the licensed service. Specifically, wireless carriers were required to ensure 60 percent local content in 2012, 65 percent in 2015, and 70 percent after 2017. ANATEL also required wireless carriers to use a minimum percentage of technology developed in Brazil, starting with 10 percent in 2012, 15 percent in 2015, and 20 percent after 2017. ANATEL extended these requirements to the 700 MHz spectrum in an auction of that frequency in September 2014. Additionally, ANATEL imposed a condition that 50 percent of deployed technology must meet the requirements of the Basic Production Process (PPB), which provides benefits on the production and development of goods that incorporate a certain minimum amount of local content (discussed above).

Machine to Machine (M2M) permanent roaming:

Through a 2012 letter ruling, the Brazilian Telecommunications regulator ("ANATEL"), ordered local wireless carriers to prevent machine-to-Machine (M2M) permanent roaming (i.e. foreign based carriers using foreign numbering Subscriber Identity Models (SIMS) for Internet of Things (IoT) or M2M purposes within Brazil on a permanent basis) over their respective networks. ANATEL opined that FISTEL, a local regulatory tax applied to active SIMs within Brazil, may only be applied to domestic carriers utilizing domestic SIMs with corresponding local numbering. As foreign based carriers utilizing foreign SIMs are not subject to FISTEL, ANATEL concluded that these value added services may only be provided by locally licensed carriers using local SIMs. Essentially, ANATEL is relying on an aggressive interpretation of its FISTEL law to unnecessarily restrict permanent roaming options for international M2M or IoT providers, thus thwarting IoT device manufacturer's to either develop devices and establish service infrastructure solely for the Brazilian market or forego providing services in Brazil. This aggressive interpretation of local tax laws places Brazil outside global regulatory norms as other jurisdictions have consistently permitted foreign carriers to utilize foreign SIMs to provide permanent roaming for M2M or IoT services to their respective OEM customers.

USCIB urges USTR to encourage Brazil to promote an international, interoperable policy framework for IoT and M2M solutions that includes permanent roaming. Many IOT and M2M solutions will only reach their optimal scale if they can operate around the globe. Monitors on airline cargo or shipping containers must be able to operate wherever their freight travels. Automakers sell vehicles across many different countries and operators drive vehicles across national borders for commercial and personal purposes; automakers and customers alike need a single communications platform to support their connected vehicles. The Brazilian government should support providers of IoT and M2M services and devices and allow them to choose between various available options for numbering and device management, rather than imposing a single, one-size alternative for all cases. Given that restrictions on permanent roaming are intended to favor Brazil's local telecommunications industry, USCIB urges USTR to request the Brazilian government to review its approach to M2M permanent roaming in a manner that supports an international, interoperable policy framework for IoT that facilitates the global deployment of IoT products and services and is not detrimental of foreign investment and continues promoting the scale and interoperability required for the deployment of M2M services.

Various discriminatory policies in the media and entertainment sector

Brazil maintains a variety of discriminatory policies in the media and entertainment sector, primarily led by the regulator, ANCINE. Brazil imposes local content quotas in the pay television sector. In an era where cable and satellite providers have the technology to offer hundreds of channels, these quota requirements are an anachronism, restricting consumer choice. Further, in 2011, Brazil modified the definition of local content, requiring Brazilian ownership of underlying intellectual property rights – a very harmful "indigenous intellectual property" standard. Brazil also has sought to tighten its screen quotas to favor local films and limit the number of screens available to consumers for wide releases. Additionally, ANCINE has sought to impose special taxes and local content quotas on VOD distribution of films, and impose non-commercial and discriminatory requirements in the digital cinema space.

De Minimis

Brazil's *de minimis* threshold (the level below which no duty or tax is charged on imported items) of USD $50 remains applicable only to the Consumer to Consumer transaction (C2C) and does not apply for both Business to Consumer (B2C) and Business to Business (B2B) transactions. There is a legal controversy related to the way the rule is being construed; there exists some case law stating that the exemption should apply for both B2C and C2C transactions and that the *de minimis* threshold should be raised to USD $100. This differentiated treatment of the threshold between transactions and the low *de minimis* threshold for imported items into Brazil of USD $50 (contrary to the United States which is $800 USD) creates unnecessary barriers to trade through increased transaction costs for Brazilian businesses, and acts to restrict consumer choice and competition in the Brazilian market. The Brazilian Government should remove this barrier to trade by expressly extending the application of the *de minimis* threshold to both B2C and B2B transactions and to increase the *de minimis* threshold to a rate more in line with international standards and consumer shopping behavior.

CANADA

USTR should continue to encourage the Government of Canada to successfully resolve competitive issues in Canadian telecommunications. In 2012, Canada's Telecommunications Act was amended to allow foreign ownership in telecom companies with less than 10 percent of total Canadian telecom market revenue. This legislation was a positive first step; however, complete removal of Canada's foreign investment restrictions for (non-sovereign) investors and operators in both telecommunications and broadcasting would greatly increase market entry and investment in Canada, open broad access for Canadian carriers to international capital markets, and encourage greater facilities-based competition in the Canadian telecommunications industry.

In addition, USTR should urge the Canadian government to address the discriminatory policy of remaining foreign investment restrictions. Policies aimed at increasing the number of players through subsidies and mandated access may compare unfavorably with the simpler policy of opening up the market completely to direct foreign investment. We ask USTR to use every opportunity to urge the Government of Canada to prioritize the complete removal of foreign ownership restrictions as a more certain, direct, means to a more competitive and innovative market for Canadians and increased capital investment.

Other areas of concern vis-à-vis Canada include application of a heightened standard of utility for pharmaceutical patents by the Canadian judiciary, also known as the Promise Doctrine, as well as an ongoing consultation by the Patented Medicines Review Board, which could have significant implications for pharmaceutical pricing in Canada.

Intellectual Property

To date, 28 decisions invalidating pharmaceutical patents, either solely or in part, for lack of utility have been issued since 2005 when the Promise Doctrine began to emerge out of Canadian Federal Court case law. The Promise Doctrine raises concerns not only in terms of a lack of predictability for innovative companies doing business in Canada, but it is also inconsistent with Canada's international trade treaty obligations because it imposes onerous and unjustified patentability criteria, narrowing the scope of inventions that receive patent protection; and discriminates against innovative pharmaceutical companies, as this additional requirement has disproportionately impacted pharmaceutical patents.

Patented Medicines Pricing

The PMPRB is an independent quasi-judicial body, created under the Canadian Patent Act, with a mandate to ensure that prices charged for patented medicines sold in Canada are not excessive. It does so by regulating the "ceiling price" – the maximum allowable price – for a patented medicine according to established policies, regulations and guidelines. The PMPRB has proposed changes to how price ceilings are determined for patented medicines in Canada on the basis of international comparators, which may exert downward pricing pressure on innovative pharmaceutical manufacturers.

De Minimis

Canada's *de minimis* threshold (the level below which no duty or tax is charged on imported items) remains at CAD $20 (approximately USD $15), the lowest of any industrialized country and among the lowest in the entire world. For comparison, the *de minimis* threshold for items imported into the United States is $800 USD -- over 40 times higher than Canada's. This low threshold, which has not been adjusted since the 1980s, creates an unnecessary barrier to trade through increased transaction costs for Canadian businesses, and acts to restricts consumer choice and competition. Raising the *de minimis* would help Canadian small businesses participate more fully in global trade and ecommerce, growing Canada's digital economy. Recent studies have also shown that any gains realized by collecting additional duties are often outweighed by the cost of assessing and processing of the high volume of shipments that fall below the low threshold. In fact, proposals to increase the *de minimis* threshold have been shown to be revenue neutral or even positive for the Canadian Government.

CHILE

Nutrition Labeling

Chile adopted Decree No. 13 on June 26, 2015, making final amendments to its Food Health Regulations that had been previously notified to WTO members (as G/TBT/N/CHL/282). The Decree establishes limits for calories, added sugar, sodium and saturated fat, above which processed food and beverages must include front-of-package octagonal, black and white labels (resembling stop signs) warning that the product is "high in" these nutrients, and further subjects labeled products to marketing and advertising restrictions, and prohibitions on the use of images deemed appealing to children under 14 years of age, including possibly trademarked characters. The Decree entered into force in June 2016.

The United States, other WTO members, and other stakeholders, including GMA, have repeatedly raised concerns with the provisions of Decree No. 13 in the WTO Committee on Technical Barriers to Trade (TBT). Chile has not meaningfully addressed these concerns or presented scientific justification for the regulation's departure from international standards.

The regulation's nutrient limits are not based on available international standards, nor has Chile made available the methodology or risk assessment by which the limits were developed. Further, restrictions on marketing and advertising and prohibitions on the use images violate intellectual property rights and are inconsistent with Chile's international agreement. The regulation authorizes Chile's Ministry of Health (MINSAL) to prohibit marketing and advertising of labeled products "whatever the place where this is performed," if MINSAL determines the marketing material is directed at children 14 years of age or younger. For purposes of determining whether marketing and advertising is "directed at" children, MINSAL is to consider various elements including–inter alia–the use of child-like characters, children's music, animations or toys that attract the interest of children, as well as language or expressions typical of children, or situations that represent their daily lives. These provisions give MINSAL broad discretionary authority to undermine the substantial investments in intellectual property embodied in well-recognized brand identities and registered trademarks.

In contrast to Chile's international trade obligations under the WTO Agreements and in other international investment agreements, the amended provisions are not based on science or internationally-recognized standards (such as those established by the General Guidelines of Codex Alimentarius) and appear to be more trade restrictive than necessary to meet Chile's legitimate objective of reducing obesity and non-communicable diseases, thus compromising Chile's obligations under the TBT Agreement. Moreover, the marketing and advertising restrictions may contradict Chile's obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Likewise, the regulation appears to violate Chile's commitments under the investment chapter of the U.S.-Chile Free Trade Agreement, including guarantees relating to the minimum standard of treatment, national treatment, and non-expropriation.

CHINA[5]

Since its accession to the World Trade Organization (WTO) in 2001, China has conducted a comprehensive reform of its services trade policy. Nevertheless, China's WTO compliance record in services is hurt by incomplete implementation of its accession commitments; by remaining telecommunications services trade barriers; and increasingly restrictive regulations that raise market access barriers to foreign companies. With its accession, China promised to abide by the WTO's basic principles of non-discrimination, pro-trade, pro-competition and so on. However, China's narrow interpretation of value-added services, high capitalization requirements for basic telecommunications services, lack of an independent regulator, and restrictions that specifically apply to the non-Chinese companies for provision of value-added services remain key outstanding issues. Moreover, additional concerns are raised by recently announced pending changes to China's law on ICT services, including requirements for data localization, government review and approval of encryption measures and a "security" review of software by government officials. China's publication of a new Telecom Services

[5] Please also see USCIB's Comments on China's Compliance with Its WTO Commitments, submitted to USTR under Docket No. USTR-2016-0012 on September 21, 2016.

Catalog in December 2015 further expands regulation and market access barriers to a host of new services not typically regulated, including cloud computing, content delivery networks, and online platforms (under a broadly written provision entitled Information Services).

These new policies will create significant new barriers for foreign firms seeking to provide ICT services in China and continue to raise questions regarding China's commitment to open trade policies. China's indiscriminate filtering and blocking of online services for political purposes not only constitute online censorship but also a trade restriction for U.S. firms while the Chinese firms are often operating on the U.S. market. China's increasingly restrictive approach to the Internet is negatively impacting services that rely on the cross-border flow of data and, as a result, is impeding the operations of foreign companies in China that depend on online communications. Such restrictions contradict the goals of China's Internet Plus strategy that is aimed at promoting e-commerce and increasing the role of the Internet in China's economy.

China continues to restrict its telecommunications market for both Basic- and Value- added services. China continues to restrict market access through its licensing requirements, high capitalization requirements, and through the continuing absence of an independent regulator.

China should remove its joint venture requirements and FDI limits for Value Added Services. These requirements inhibit market access, competition, and innovation. Moreover, in classifying service characteristics as Basic or Value Added (VAS), China should eliminate the intentionally restrictive distinction between international and domestic services to determine whether a service is Basic. For example, China defines International Virtual Private Line service as a Basic Telecommunications Service, whereas the exact same VPN service provided domestically is defined as Value Added. This distinction is material, because foreign companies are required to partner (49 percent joint venture) with a domestic telecommunications company (that holds a Basic License), as compared to VAS licenses where foreign companies can partner (50 percent joint venture) with any Chinese company irrespective of whether it holds a Basic Telecommunications license or not. It is critical that MIIT interpret the definition of VAS in a manner that is consistent with China's explicit WTO commitment and widely accepted international standards. Replacing these conservatively applied vertical service classifications with more objective and transparent guidelines for Type I (facilities-based) and Type II (non-facilities based) services would allow more foreign carriers to invest in China which eventually would stimulate economic growth in the Chinese market.

The requirement that a foreign company select a state-owned and licensed telecom company as a joint-venture partner should be eliminated under the Basic Service license regime because the requirement is a significant market access barrier and Incumbent licensees have only limited incentive to partner with foreign competitors. China limits foreign ownership to 49 percent and 50 percent respectively for a basic service license and VAS license. These ownership limits place a significant market access barrier from an operational and economic perspective. Service Providers are unable to establish operational control, protect their brand, and deliver services in China that are seamlessly integrated in the service provider's global network offerings. Foreign entities thus established as Joint Ventures then become a horizontal competitor of their joint venture local operator, further eroding the value of the foreign investment. USCIB should urge USTR to encourage China to remove this provision and allow foreign companies to partner with any legally operating telecom entity they find suitable.

The Chinese government also imposes strict limitations on non-Chinese companies that wish to offer Voice over Internet Protocol (VoIP) services in China. No non-Chinese company may offer any kind of VoIP service in China, as VoIP requires a VAS license, which foreign companies may obtain only through a joint-venture with a Chinese company. Connection to the public switched telephone network (PSTN) requires a basic service license. Only a few small pilot VoIP projects -- involving the dominant Chinese telecom operators -- are allowed to offer PSTN-interconnected VoIP services to Chinese consumers. USTR should urge the Chinese government to remove restrictions in the efficient use of IP technologies, including voice applications.

In 2008, the Chinese government announced a reduction in the capitalization requirement for a basic service license from 2 billion RMB (approximately US$291 million) to 1 billion RMB (US$145.9 million).[6] While the reduction in the capitalization requirement for a basic service license is a step in the right direction, China's requirement is still extremely high and continues to be a significant barrier to entry. The reduced capitalization requirement is 100 times the capital requirement for value added service licensees, which is itself many times the actual level of capital investment needed to build a national, non-facilities-based value added network. The reduced capitalization requirement in basic services continues to be excessively burdensome and unjustified restriction that violates the GATS. A narrowly tailored performance bond would be sufficient to address any existing concerns. China should take additional steps to reduce the capitalization requirement to a reasonable level, and can consider other monitoring methods such as a tailored performance review to determine an enterprise's qualifications to provide telecom services.

China's revised Telecommunications Services Catalog released in 2015 expands regulatory oversight of new services not typically regulated as telecom services. China's classification of Cloud Computing, online platforms, and content delivery networks as Value Added Telecom Services, not only has far reaching consequences for market access and the development of online services in China, but also calls into question whether these classifications are consistent with China's WTO commitments. For example, Cloud computing is traditionally classified as a Computer and Related Service, not a telecommunications service. Applying licensing obligations to online platforms imposes a number of market access limitations and regulatory hurdles, making it more difficult for online companies to participate in the Chinese market. The Catalog subjects a broad set of services to cumbersome, unreasonable, and unnecessary licensing restrictions, imposes new conditions on telecommunications service suppliers with longstanding business in that country, and impedes market access to foreign suppliers of computer and related services by classifying certain computer and related services such as cloud computing as VAS. We urge the USG agencies to encourage China to remove the onerous, non-transparent licensing regime for value-added services and open the market to any company with competitive products and services in accordance with international norms, including eliminating equity caps for foreign companies.

China also has adopted other new regulations and pending laws that will significantly limit the ability of foreign companies to provide ICT and other services in China. The now-pending draft Cyber Security Law and Counter Terrorism laws adopted in January 2016, and the National Security Law adopted in July 2015, cover a range of IT issues, including data privacy regulations, cyber-security standards, data-breach requirements, and cross-border data transfer requirements. Each of these laws is a significant obstacle to providing service in China, and their cumulative effect is to create a major barrier in competing for customers in China. For example, China's National Security Law requires foreign firms to submit to Chinese government review of their software and contains a number of other provisions that impose unnecessary cost on foreign competitors and explicitly promote Chinese companies. Likewise, the Local Data Storage provisions in the Cyber Security law discriminate against foreign ICT, financial services, and other companies. Additionally, the Draft Cyber Security law proposes registration of encryption software among other items. The broad scope and vaguely defined nature of these new restrictions will impose new restrictions on commerce, strain regulator resources, and adversely affect China's evolving innovation environment. These policies provide significant competitive

[6] State Council, Decisions on Amending the Regulations for the Administration of Foreign-invested Telecommunications Enterprises (FITEs), issued on September 10, 2008.

advantages to Chinese companies – indeed, Article 24 of the National Security Law acknowledges that the policy is intended to "strengthen indigenous innovation capabilities."

In 2016, China released a revised version of its Cybersecurity Law for public comment. While a broad cross-section of industry appreciates the opportunity to provide comment, it is disappointed that a number of concerns raised previously about an earlier draft of the law were not addressed. Unfortunately, the law retains restrictions on data flows and data localization requirements and broad obligations on content monitoring and blocking.

We urge USTR to encourage China to take the following steps to remove the bottlenecks to development of value added services in China:

- Remove all provisions of the Cyber Security Law, National Security Law and Counter Terrorism law that favor local Chinese companies and discriminate against foreign companies, including, but not limited to:
    - Data Localization;
    - Review and approval for the use of encryption; and
    - Approval for the use of ICT software used by financial services and other service providers
- Adopt approaches that enable cross border data flows, refrain from data localization requirements and enables the use of global standards in a manner that supports an international, interoperable policy framework that is not detrimental to foreign investment;
- Take an open approach to value added services, streamlining licensing requirements. Expand the list of value-added services in the Catalogue to include such services as managed International IP VPN, in conformity with international standards for categorizing basic and value added services while eliminating cloud computing, content delivery networks, and information services from the catalog and the licensing requirements;
- Lift the prohibition on resale, enabling all carriers to acquire capacity at wholesale rates and interconnect their networks to deliver services to a broader reach of the country;
- Remove remaining caps to Foreign Direct Investment (as noted above), and
- Allow full market access for resale of mobile services.

China also has not implemented its WTO Reference Paper commitment to establish an independent regulator. The Chinese Government still owns and controls all major operators in the telecommunications industry, and the MIIT still regulates the sector, and the State-owned Assets and Supervision Administration directly controls the three major operators. USCIB encourages USTR to place a high priority on working with China to establish an independent regulatory body that is separate from, and not accountable to, any basic telecoms supplier, and that is capable of issuing impartial telecom decisions and rules. Specifically, it is important that the regulatory body adopt the following: transparent procedures for drafting, finalizing, implementing and applying regulations and decisions; appropriate measures, consistent with the WTO Reference Paper to prevent dominant suppliers from engaging in, or continuing, anti-competitive practices. USTR noted several of these concerns in the 2015 Section 1377 review and USCIB encourages USTR to continue to urge China to address these issues.

Since 1999, China has tried to promote network convergence between its telecom, Internet and broadcast networks without success. Conflicts between the broadcast and cable television regulator, State Administration of Radio, Film and Television (SARFT), and the telecom regulator, MIIT, have not been resolved despite guidance from the State Council under the Three-Network Convergence plan. We encourage China to explore business models that merge resources between broadcasting and telecommunications and Internet networks that create new markets and allow end-users to realize that network's full potential. We recommend that China create a converged ICT regulator merging the functions of SARFT and MIIT to eliminate and resolve the disruptive conflicts that have occurred.

In addition, China's National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly issued a revised Catalogue for the Guidance of Foreign Investment Industries that places some Internet services under the prohibited foreign investment industries category. More specifically, the revised foreign investment catalogue indicates that foreign investment in "[n]ews websites, Internet-based video and audio program services, Internet services establishments, and Internet cultural operations" is prohibited. At this time, it is unclear to what extent the new classification of these Internet services will impact the ability of foreign investors to offer Internet services in China. What is clear is that these policies create additional barriers to market entry in the telecom sector and discourage foreign investment.

Moreover, China's indiscriminate filtering and blocking for political purposes of online services not only constitute online censorship but also a trade restriction for U.S. firms while the Chinese firms are often operating on the U.S. market. The 2016 National Trade Estimate Report, USTR's annual publication highlighting significant foreign barriers to U.S. exports, concluded that increasingly: "China's filtering of cross-border Internet traffic has posed a significant burden to foreign suppliers, hurting both Internet sites themselves, and users who often depend on them for their businesses. Outright blocking of websites appears to have worsened over the past year, with 8 of the top 25 most trafficked global sites now blocked in China. Much of the blocking appears arbitrary; for example, a major home improvement site in the United States, which would appear wholly innocuous, is typical of sites likely swept up by the Great Firewall."

Anti-Monopoly Law (AML)

While the Chinese leadership continues to pledge that the market will play a greater role in China's economy, competition regulators continue to use the AML to intervene in the market in an effort to advance industrial policy goals. Recent developments suggest that these efforts are part of broader and coordinated effort by Chinese authorities to use a variety of policy tools – including technology standards policies, IPR enforcement practices, and licensing and investment reviews–to reduce China's perceived dependence on foreign IP while protecting and promoting domestic Chinese companies. National Development Reform Commission (NDRC) officials in particular have been publicly outspoken about the important role that industrial policy considerations should play in antitrust enforcement in China and their intention to broaden significantly the scope of their review of competitive practices in a wide range of "strategic sectors," including automobiles, telecommunications, banking and petroleum.

Admittedly, Chinese authorities have also used the AML to prevent undue concentrations of market power, combat cartels and abuse of market dominance, and pursue other legitimate antitrust goals. However, in many cases involving foreign companies, China's anti-monopoly enforcement agencies have skewed implementation of the AML and related statutes to advance China's industrial policy goals, including in cases where there is no evidence of abuse of market power or anti-competitive harm.

The Chinese companies that benefit from these policies are often national champions in industries that China considers strategic, such as commodities and high-technology. Through its AML enforcement, China seeks to strengthen such companies and, in apparent disregard of the AML, encourages them to consolidate market power, contrary to the normal purpose of competition law.[7] By contrast, the companies that suffer are

[7] NDRC, Ministry of Industry and Information Technology ("MIIT"), and other agencies have an official policy to achieve industrial concentrations in the automobile, steel, cement, shipbuilding, electrolytic aluminum, rare earths, electronic information, pharmaceuticals, and agriculture industries. *See* Guiding Opinions on Accelerating the Promotion of Mergers and Reorganizations of Enterprises in Key Industries, issued by MIIT, NDRC, Ministry of Finance; Ministry of Human Resources and Social Security, Ministry of Land and Resources, MOFCOM, People's Bank of China ("PBC"), State-

disproportionately foreign. Moreover, the curtailment of IP rights and related demands that have been imposed on U.S. and other foreign companies in several recent AML cases and settlements appear designed more to strengthen the bargaining position of domestic licensees than to address any true market distortions or anti-competitive harms. While USCIB welcomes the 2015 Strategic & Economic Dialogue (S&ED) outcome recognizing that the objective of competition policy is to promote consumer welfare and economic competition, continued U.S. government focus on this important issue is warranted.

Financial Services

China's financial services market remains relatively closed to foreign participation. China committed to allow U.S. and other foreign banks incorporated in China to broadly access the local market by eliminating barriers. These generally broad commitments have not come to pass. China maintains tight control over branch expansion and licensing for new areas of participation in the financial sector. Domestic financial services companies, however, enjoy more relaxed rules or receive licenses without the same rigorous approval process. China also limits foreign participation in its bond market. While "commitments" were made in the S&ED to open this area, those commitments appear to be largely hortatory.

China limits ownership in the securities sector whereas the right to enter a market and establish a 100 percent owned presence in a firm's corporate form of choice is the norm in today's global markets. U.S. companies seek to own 100 percent of their operations in China.

Enacted in December of 2002, the Qualified Foreign Institutional Investor (QFII) Act permits qualified foreign institutional investors to invest in the securities of Chinese companies. Implementing a Strategic & Economic Dialogue (S&ED) II commitment, China raised the quota for QFIIs from US$ 30 billion to US$ 80. Representing further efforts ostensibly aimed at attracting capital to the mainland, in June 2016, China announced that it will give a 250 billion yuan ($38 billion) investment quota to the United States, which is the largest after Hong Kong. Although this represents some progress, this area of foreign participation nevertheless continues to be limited and warrants continued monitoring.

Food Safety Law

In January, 2015, comments were submitted to the U.S. Department of Agriculture on the second reading of China's food safety law. We believe there are some crucial issues still to be resolved to achieve real advancement in food safety outcomes and to facilitate U.S. food and agricultural exports to China. In addition to other specific concerns raised in our comment, we noted: China should strengthen the Food Safety Law's overall emphasis on science-based standards and implementation; China should include a definition of risk as "a function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food," or words to that effect (per page 109 of the Codex Procedural Manual, twenty-first edition); and national food safety legislation should refer, wherever appropriate, to the international food safety standards and guidelines of the Codex Alimentarius Commission, particularly where a relevant national food safety standard has not been implemented.

---

owned Assets Supervision and Administration Commission ("SASAC"), State Administration of Taxation ("SAT"), SAIC, China Banking Regulatory Commission ("CBRC"), and China Securities Regulatory Commission ("CSRC") (Jan. 22, 2013), Gong Xin Bu Lian Chan Ye [2013] No. 16 (*hereinafter* "2013 MIIT Joint Opinions"). Indeed, all three AMEAs are among the authors of this document. Companies and local governments may oppose this policy, but there is no indication that the AML constitutes an impediment to implementing it. *See* David Stanway, "China ditches steel industry consolidation targets in new plan," Reuters (Mar. 25, 2014) (quoting Xu Leijiang, the chairman of Baoshan Iron and Steel, as stating that the policy created "huge monsters" lumbered with debt and unprofitable investments).

We remain very concerned that China has not notified its Food Safety Law to the WTO Sanitary and Phytosanitary (SPS) Committee to provide all WTO members with the opportunity to review the proposal and provide comments. It is essential that China notify proposed implementing regulations and allow sufficient time for authoritative translation and preparation of comments before final decisions are made. It is also essential that China notify (as amendments to the initial notification) each final regulation and publish the dates of implementation and enforcement. These WTO transparency obligations are necessary for exporters to fully understand China's import requirements and the effective date.

COLOMBIA

Regulatory Uncertainty Caused by Lack of a Convergent Regulator

One issue of concern for the industry of telecommunications services in Colombia is the existence of two different regulators with diverse and sometimes conflicting roles; the Comision de Regulacion de Comunicaciones (CRC) with powers to regulate telecommunication services and networks, and the Autoridad Nacional de television (ANTV) in charge of regulating television services. This confusing dual structure has led to a fragmented television regulatory framework with two authorities deciding and exerting their powers on intrinsically related matters. For example, during the last couple of years, an intense debate took place regarding which of these two entities had authority to regulate must-carry and retransmission consent issues, considering that, on the one hand, the ANTV was entitled to regulate television content and programming matters, and on the other, that the CRC has a clear mandate to define relevant markets and impose specific rules to ensure competition in each one of them. In addition to the uncertainty and confusion created by the coexistence of two regulators, it also causes duplication in information reporting obligations, which imposes inefficient burdens on providers subject to the control of both entities.

As the OECD noted in its Review of Telecommunications Policy and Regulation in Colombia (2014) "… it is expected that increasing convergence will erase the limits between traditional television broadcasters and telecommunications or content providers broadcasting video content over their networks on the Internet." In view of such developments, the OECD recommended Colombia's government to merge the ANTV and the CRC "and create an independent converged regulator, with responsibility for communication and broadcasting (including television) markets".[8]

Even though Colombia's government conducted a series of public hearings during the first semester of this year to discuss the redesign of a new audiovisual public policy and some mentions to a new converged regulator were included, the government is yet to present and promote the legislative reforms needed to materialize the merger of the CRC and the ANTV in a single converged regulator. We urge USTR to ask Colombia's government to present a bill of law at Congress that merges both entities and provides the regulatory coherence and certainty that investments require.

Community Television Services

Colombia has committed under Annex 1 of the U.S.-Colombia Free Trade Agreement to limit the so called "community television" services in light of their local, non-commercial nature. In order to avoid negatively impacting the commercial television market, Colombia agreed to limit each "community television" to having

[8] OECD. Review of Telecommunications Policy and Regulation in Colombia. 2014. Pg. 146. At: http://www.keepeek.com/Digital-Asset-Management/oecd/science-and-technology/oecd-review-of-telecommunication-policy-and-regulation-in-colombia/assessment-and-recommendations-towards-a-more-efficient-telecommunication-sector-in-colombia_9789264208131-5-en#.V9cCX00rJhE#page11

no more than 6,000 members (i.e., subscribers) and being restricted in geographical areas and in the number and type of channels that it can have.

Despite existing domestic regulation implementing these obligations, Colombian authorities have not been effective to date in enforcing such restrictions on the existing "community televisions operators," which frequently exceed the number of subscribers and the number of channels that they are allowed to have. Such lack of enforcement distorts the television market by allowing the "community televisions operators" to fully compete with the commercial providers while permitting them to keep substantial benefits applicable to their non-commercial nature (e.g., tax exemptions, reduced license and regulatory fees, etc.)

The CRC and the National Department Planning (DNP) recommended the ANTV to conduct a regulatory revision of conditions and restrictions imposed on "community television" operators, because different market analysis showed that their product (including an average of 75 channels) is directly competing with pay-TV providers' basic packages in the same relevant market. Given that, both authorities concluded, the conditions under which such "community television" providers operate need to be reviewed to avoid market distortions.

Granting "community television" operators beneficial treatment when official evidence shows that they compete directly with pay-TVproviders, may constitute an infringement of the equal treatment provisions agreed between the U.S. and Colombia under the Free Trade Agreement.

USCIB requests USTR to urge the Colombian government to effectively enforce limitations on "community television" operators in order to comply with the obligations under the U.S-Colombia Free Trade Agreement. Additionally, the Colombian government should work on eliminating the benefits applicable to "community television" operators that in practice compete with pay-TV providers in the same relevant markets.

Burdensome and onerous Must-Carry Obligation

Concerning the Free Trade Agreement obligations on Market Access (Article 11.4), Local Presence (Article 11.5) and Performance requirements (Article 10.9), Colombia clearly stated in its Annex 1 that subscription television services "must make available to subscribers, at no additional cost, [those] free-to-air Colombian national, regional, and municipal television channels available in the authorized area of coverage". In addition, it clarified that "the transmission of regional and municipal channels will be subject to the technical capacity of the subscription television operator."

Despite clearly stating that must-carry channels should be transmitted by pay-TV providers "at no additional cost", a decision enacted by Colombia's antitrust authority (SIC) on September 1st, 2016, orders pay-TV providers the burden of getting broadcaster's prior retransmission consent for must-carry channels and, allegedly, concedes broadcasters the right to impose retransmission fees on pay-TV providers. The SIC's decision contravenes prior precedents from the Constitutional Court (C-654/03) and the television services regulator (ANTV-Resolucion 2291/2014) which clarified that must-carry obligations should be at no cost to pay-TV providers, and subsequently, that broadcasters have no right to charge retransmission fees for such signals.

USCIB urges USTR to request to the Colombian government and, specifically to the SIC, to clarify that broadcasters have no right to charge retransmission fees to pay-TV providers for must-carry signals.

Taxes and Importation restrictions on Telecommunication Devices

Another issue of concern is Colombia's VAT exemption for computers, tablets, and other computing devices below a specified price. Today, smartphones (or intelligent mobile devices) often substitute for such devices, but are still subject to the full 16 percent VAT rate. Intelligent mobile devices or smartphones (e.g. mobile phones that offer greater functionalities than telco functions) should be afforded the same VAT exemption as other computing devices. Elimination of the VAT also would enable more Colombians to purchase smartphones, and enhance digital connectivity. Failure to afford the VAT exemption has the potential to restrict electronic commerce and is a barrier based on the type of device, rather than its functionalities.

On October 16th, 2015, the Government of Colombia published Decree 2025, which "establishes measures to control the import and export of intelligent mobile phones, cellular mobile phones, and their parts, susceptible to classification under Customs Tariff subheading 8517.12.00.00 and 8517.70.00.00", as part of its strategy to address the theft of mobile phones. While USCIB applauds Colombia's focus on this public policy and security concern, Decree 2025 itself creates burdensome restrictions and administrative requirements for trade in mobile phones, without significantly deterring or limiting illegal trade in stolen phones.

For example, Decree 2025 prohibits all imports and exports of mobile devices and parts via mail or express mail, and more generally prohibits all mobile phone exports with only limited exceptions for travelers, temporary export for outward processing, and for waste electrical and electronic equipment (WEEE), all of which create barriers to export for legitimate purposes such as exports for repair or refurbishing. In addition, the measure requires that each mobile phone have a government-issued IMEI verification certificate at the time of import, and that all importers and exporters pre-register with the National Police as a condition of being allowed to trade in mobile phones, without having already established the systems required to implement these new regimes.

As noted in last year's submission, there was significant commercial uncertainty created by the fact that the decree is scheduled to enter into force on December 1, 2015, even before some of the deadlines to implement new systems and in all cases prior to verification that any of the systems were in fact up and running. In fact, implementation of the Decree has been extremely disruptive to businesses, as the time frames set out in the law were routinely not met and no single agency owned responsibility for addressing such shortcomings. While several sets of changes were made to the Decree over the course of 2016, it still includes provisions that impede regular trade and commerce. We urge the government to rethink this burdensome approach which still is not functioning well.

With respect to the biopharmaceutical sector, in March 2016, a Technical Committee (TC) of the Colombian Ministry of Health (MoH) issued a recommendation that it would be in the public interest for the MoH to grant a compulsory license (CL) for a patent covering a particular form of imatinib (Novartis' leukemia medicine Glivec). The TC contended that a CL would create generic market competition and lead to a lower price, and hence, in the public interest. There was no assertion that any patient in Colombia who needs Glivec was unable to access it, or identify any other access problems. In the face of international criticism of the threatened CL issuance, the TC then recommended in the alternative that the MoH begin immediate price negotiations with Novartis, suggesting the price be lowered to a level that approximates free market conditions (i.e., conditions that would exist absent a patent). Ultimately, rather than recommending a compulsory license or continuing to negotiate, on June 20, the MoH issued a Declaration of Public Interest (DPI) stating that henceforth the target Glivec price will be based on an average of the generic drug prices in the region. We are concerned that the invoking of the DPI sets an unwarranted and dangerous global precedent.

OTT and Related Taxation Measures

Colombia has proposed a number of problematic measures aimed at online services and platforms. One bill in Congress proposed by the Ministry of Transportation seeks to subject online platforms used for the provision of transportation services to requirements of registration, prior authorization, and database sharing with authorities. The Colombian Ministry of ICTs is evaluating whether or not to extend broadcasting and public utility regulation to streaming platforms, and seeks to propose a bill to reform the TV sector including this topic. A bill in Congress aims at subjecting subscription-based audiovisual streaming platforms to the television public utility legal framework. In addition, there are secondary regulatory initiatives to classify audiovisual streaming services as telecommunications services.

Finally, Colombia has considered a tax proposal that would raise VAT tariffs and remove longstanding VAT exemptions, raising barriers for foreign companies in the ICT sector. This initiative seems focused on compelling foreign Internet services and platforms to contribute locally, as demonstrated by the public comments of several sponsors of the proposal.

These measures are likely to have a disproportionate impact on U.S. services. Complex regulations targeted at foreign services will be difficult to implement and will likely drive smaller digital services away from entering the Colombian market.

As Colombia works to adapt national frameworks to promote the digital economy and innovation, USTR should encourage Colombia to avoid creating market access barriers that could halt the growth of new online services that are critical to Colombia's growing economy.

Food safety risk classifications and plant registrations

Colombia's food safety regulatory authority, INVIMA, adopted Resolution 719 in March 2014. The regulation introduces high, medium, and low food safety risk classifications for food and beverage categories and bases the duration of a plant's registration with INVIMA on the level of risk established for the food or beverage produced in that plant.

Under Resolution 719, plants producing high risk products must renew their registrations every five years, half the previous ten year registration period. While current plant registrations remain valid until their expiration date, plants must re-register under Resolution 719 three months prior to the expiration of their current registration.

Extensive technical comments were submitted to the government of Colombia during the World Trade Organization (WTO) comment period on Resolution 719 (notified to both the Technical Barriers to Trade and Sanitary and Phytosanitary committees as G/TBT/N/COL/191/Add.2 and G/SPS/N/COL/249/Add.2, respectively). Colombia's designation of certain products as "high risk" is not based on internationally-accepted science or standards. These comments, therefore, questioned the "high risk" categorization of products including:

- Dairy products, including those that are pasteurized.
- Fortified products, including cereals and breads.
- Drinks, including bottled waters, sweetened and carbonated beverages, and fruit juices.

Nevertheless, Colombia adopted the regulation without any revisions to the risk classifications or explanation of why these classifications depart from existing international standards. Furthermore, it is unclear how the government of Colombia will determine compliance of foreign plants, as Resolution 719 calls for the completion of new questionnaires (as yet unavailable) and inspections of plants manufacturing products deemed to be "high risk".

COSTA RICA

As reported for the past several years in the Section 1377 report, the Costa Rican telecommunications regulator, *Superintendencia de Telecomunicaciones* (SUTEL), continues its unique requirement for retesting and recertification of hardware after a software or firmware update, focusing in particular on certain electromagnetic compatibility (EMC) testing and certification requirements. Such updates are often frequent, and allow users to protect their equipment from security threats and improve their experience with their ICT devices. As a matter of international best practices, such updates do not require re-testing or re-certification. These country specific requirements can also lead to redundant testing, particularly where a product is required to undergo testing to the same standard in both the exporting and importing country. The WTO TBT Agreement, Article 2.2 requires WTO Members to ensure "technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade".

DOMINICAN REPUBLIC

The vagaries of the regulatory regime in the Dominican Republic, coupled with the lack of action by the regulator in implementing its own regulations, results in an anti-competitive marketplace in the Dominican Republic. Specifically, high, non-cost-oriented mobile termination rates, nontransparent spectrum auction practices, and the failure by INDOTEL to renew concession agreements are significantly restricting the commercial viability of mobile operators.

Mobile terminations rates, according to Dominican regulations, must be cost-based. However, this is not true in practice. Dominant carriers are charging fees well above their costs. Simultaneously, each of those carriers offers reduced rates for calls their customers make to other subscribers on the same network. This price discrimination puts other smaller carriers at an inescapable competitive disadvantage. Because other carriers have a relatively small base of subscribers, who frequently call the more numerous customers of the dominant carriers, the high mobile termination rates prevent non-dominant carriers from pricing off-net calls as cheaply as the dominant carrier's price on-net calls. Moreover, the lack of spectrum for non-dominant carries has led to higher network costs and has frustrated non-dominant carriers' plans to launch new generations of wireless technology, which, in turn, has curtailed their ability to expand their network footprint. Lastly, INDOTEL has failed to fulfill its obligations regarding license renewals for over a decade, despite carriers meeting their legal obligations. This has put carriers with expired licenses in a regulatory limbo that undermines investment.

The USTR should advocate for lower, cost-based mobile termination rates in a way that allows smaller providers to compete with dominant players; in line with previous USTR recommendations. Additionally, USTR should recommend that INDOTEL comply with objective, timely, transparent, and non-discriminatory spectrum management policies consistent with the Dominican Republic's international trade commitments. Lastly, the USTR should urge INDOTEL to renew concession agreements as soon as possible where all carrier obligations have been met. In prior Section 1377 Reports, the USTR has noted that operating under expired concession agreements "creates regulatory uncertainty for the companies and can impair their ability to continue to secure outside financing for their operations, especially in cases in which licenses expire due to inaction by the regulatory authorities."

ECUADOR

Ecuador has recently enacted regulation aimed at protecting State-owned Enterprises ("SOEs") from competition. There are exceptions and exemptions that apply to SOEs to shield them from the increasing cost of doing business in Ecuador, which threatens U.S. investment in the country.

State-owned Enterprises (SOEs)

Recently Ecuador's balance of trade has been unstable due to the decrease of oil prices. This has led the country towards a more protectionist path in public policy. The result is a series of exceptions and exemptions that favor national SOEs in the marketplace. This has impaired competition and is inconsistent with Ecuador's national treatment obligations under the U.S.-Ecuador Bilateral Investment Treaty.

As way of example, the Ecuadorian government has put in place regulatory burdens on the private telecommunication sector while granting preferential treatment to CNT, Ecuador's SOE.[9] Such preferential treatment exempts CNT from complying with the following general obligations:

- Participate in public auctions for spectrum
- Pay federal license and spectrum fees
- Comply with municipal permitting requirements and taxes to deploy network infrastructure
- Pay a gradually increasing fee based on market share participation above 30 percent
- Reduce the amount of telecommunications equipment imported into Ecuador
- Comply with sector specific accounting requirements

CNT has traditionally been the incumbent operator for the fixed-line services in Ecuador with more than 2 million subscribers (86 percent), while its competitors combined have approximately 500,000 subscribers. In the Pay-TV market, CNT has rapidly grown in 2 years to become the second-largest provider with approximately 360,000 subscribers (27 percent), behind only DIRECTV Ecuador.

In order to assure fair market access to private operators in Ecuador, USCIB urges USTR to encourage the Ecuadorian government to adopt equitable and nondiscriminatory measures that allow U.S. investments in Ecuador to compete fairly with SOEs.

Illegal Regulatory Fee on Private Sector, and Uncertainty of the Rule of Law

The rule of law is at risk in Ecuador because several municipalities are assessing arbitrary and excessive fees, such as taxes for use of airspace and taxes for the establishment of business in clear violation of the Federal law. Even though, municipalities that established taxes for use of airspace during 2014 and 2015 have started to revoke their own decisions in response to judicial claims brought by the industry and the support of the federal government—which reaffirmed the illegality of such taxes—; at least two municipalities, Eloy Alfaro and San Lorenzo, are arbitrarily imposing a new tax for the establishment of telecommunication businesses on service providers that have no commercial establishment in those municipalities. Indiscriminate enforcement of this new tax is illegal under Federal Law provisions[10] expressly mandating that taxes for commercial establishment

[9] Expert market reports confirm that Ecuador's regulatory measures to favor CNT are part of a protectionist scheme sustained over time. See for example BMI Research's analysis for Ecuador, available at http://www.bmiresearch.com/ecuador, last accessed August 27, 2015. ["Regulatory changes at the beginning of 2015 continue to advance the more controversial aspects of operating in Ecuador's telecoms market. In the past, the government has shown a tendency to protect *CNT* from private competition and the new regulation instituted during 2015 will not change this trend, with additional taxation and high cost of 4G spectrum licenses."].

[10] Article 547 of the Organic Law of Territorial Organization (COOTAD).

can only be imposed on merchants that conduct a commercial activity and have a commercial establishment in the jurisdiction where the tax is enacted.

The Judiciary system and the Federal Executive Government have been alerted of the matter, but have yet to take effective action to stop the abuse by the municipalities of Eloy Alfaro and San Lorenzo. Inaction towards this situation will weaken Ecuador's regulatory environment, affecting investment in the telecommunications sector.

USCIB urges USTR to encourage the Ecuadorian government to enforce the rule of law by taking action to prohibit government entities from assessing fees on private businesses that are illegal under Ecuadorian law.

Technical Standards

In the area of technical standards, Ecuador adopted RTE INEN 105 that makes mandatory the compliance with several voluntary international standards regarding secondary cells and batteries. It enters into force December 27, 2016, thus provides an unreasonably short time to comply. Moreover, it will severely disrupt trade in secondary cells and batteries, and thus the ability of companies to support their clients' needs for replacement batteries.

To obtain the certificate from the Ecuadorian certification entity *SAE, an importer of record would need:
- (i) evidence of compliance with IEC 61960, IEC 62133, US EPA 7471B, and ASTM E536-04a
- (ii) evidence of compliance with marking requirement
- (iii) register as generator of hazardous waste
- (iv) register of operations

The stated purpose of RTE INEN 105 is to "set forth the safety requirements applicable to all primary or secondary cells and batteries, for the purpose of protecting the life and health of individuals…"However, the scope of IEC61960 "specifies performance tests, designations, markings, dimensions and other requirements for secondary lithium single cells and battery for portable applications." It is not necessary to refer a "performance standard" in a "safety standard". Thus, the IEC61960 portion should be removed from RTE INEN 105 or this part should be made voluntary.

While referencing international standards is a sound practice, countries should avoid making voluntary standards mandatory and, in all cases, should provide sufficiently long transition periods for companies to implement the necessary requirements for compliance. These should be at least one year for technical standards.

Nutrition Labeling

As of November 2014, Ecuador requires all food products to comply with Executive Decree No. 4522 of the National Agency of Regulation, Control, and Sanitary Surveillance (ARCSA), an agency in Ecuador's Ministry of Health. The decree requires processed and pre-packaged food products to bear a label as set out in technical regulation RTE-INEN-022. The Executive Decree establishes several new labeling provisions. Labels must include a set of colored bars, commonly referred to as traffic light symbols that reflect a low, medium, or high content of salt, sugar, and fat in the product, based on limits established for these nutrients. For food packages smaller than 14.4 cm, instead of a traffic light label, an advisory message is required stating, "For your health, reduce the consumption of this product." An advisory statement is also required for foods that contain less than 50 percent "natural" content. Ecuador defines a "natural food" as "a food as presented in nature that has not been transformed." Despite concerns raised by many trading partners both bilaterally and under the framework of the WTO TBT Committee, the Executive Decree entered into force in August 2014.

Upon implementation of the Executive Decree, Ecuador also began enforcing previously existing, but unenforced Ecuadorian Service for Standardization (INEN) requirements for a certificate to demonstrate compliance with the labeling elements. The certificates of conformity (COC) may only be issued by the Ecuadorian Accreditation Agency (OAE), or an OAE accredited inspection body or designee, as established under existing mutual recognition agreements with Ecuador. There are no OAE accredited laboratories in the United States. All processed and pre-packaged foods with the new traffic light labels must also be reregistered under Ecuador's cumbersome Sanitary Registration process. Ecuador and the United States continue to explore alternatives to the COC, including use of State or Federal Certificate of Free Sale, a Supplier's Declaration of Conformity, or a determination of equivalence with INEN's requirements.

Sanitary and Phytosanitary Barriers

All agricultural imports require an SPS certificate issued by Ecuador's animal and plant health service (AGROCALIDAD). Importers complain the certification process is lengthy and burdensome. They also complain that the certificate process lacks scientific basis, is at odds with World Organization for Animal Health and Codex Alimentarius Commission standards, and is used to block imports that compete with domestic production of meat products, dairy products, and produce. COMEX Resolution 019, issued September 10, 2014, mandates that AGROCALIDAD require an SPS certificate for processed agricultural products, including low-risk (cooked) products. Ecuadorian customs officials began enforcing Resolution 019 on October 9, 2014. Importers of U.S. products, especially U.S. fast food franchisees, reported import processing delays caused by confusion among government agencies over how to enforce the resolution and by officials intentionally delaying the entry of imported products as part of Ecuador's policy of import substitution.

EGYPT

Import Registrations

In March 2016, Egypt implemented two Ministerial Decrees introducing new registration requirements for a variety of imported products not intended for private or personal use. The Decrees introduced new registration requirements for both manufacturing plants located outside of Egypt, and for products imported into the country. As the Decrees require registration of individual manufacturing plants, it is difficult for companies to compel manufacturing partners with which they have contracts to submit an application for registration and accept the possibility of a verification visit by the Egyptian government or other entity approved by Egypt's Minister of Foreign Trade.

In addition to these general concerns, the following uncertainties have yet to be addressed by Egypt:

- Is there a standard format for the required "application for registration"?
- What is considered acceptable in terms of the "license issued for the manufacturing plant" (i.e., which competent regulatory authorities will Egypt recognize to issue these licenses?)
- Can manufacturers or owners of trademarks be exempted from these requirements?
- How long will it take for the Egyptian authorities to confirm a registration?
- Will imports be allowed while one is in the process of registering?

Lastly, while Egypt notified these measures to the WTO in February 2016, the new requirements entered into force March, prior to the end of the WTO comment period. This contradicts WTO procedures that require notification well before the entry into force of the relevant measure, and did not allow time for exporters to Egypt to transition to and comply with the new requirements.

EL SALVADOR

In 2008, El Salvador increased international termination rates by approximately 100 percent by imposing a $US 0.04 per minute tax on those calls to fund domestic social programs. The tax is paid by domestic operators in El Salvador that receive inbound international traffic and is passed through to U.S. and other non-El Salvador carriers sending traffic to that country in the form of higher termination rates. The El Salvador legislation imposing this tax, Decreto No. 651, expressly seeks to shift the funding costs for these domestic social programs away from domestic end users in that country and to impose these costs on U.S. and other foreign consumers. The introductory paragraph to the legislation states: “Charges for interconnection services for inbound calls from outside the country are paid for outside the country and therefore have no impact on the cost of calls made by domestic end-users because these charges are not made part of the domestic charges.”

The impact of this tax has been severe. According to FCC data, in 2008, the United States sent 959,600,176 minutes of traffic to El Salvador.[11] Since then, however, the number of U.S. outbound minutes on this route have fallen by 50 percent and payouts to El Salvador carriers have dropped by over 35 percent.[12]

The tax violates El Salvador’s international trade commitments under both the WTO and CAFTA agreements. First, because El Salvador does not apply the tax to calls from other Central American countries, the tax violates El Salvador’s Most-Favored-Nation (MFN) obligations under Article 2 of the GATS. Second, Section 2.2 of El Salvador’s WTO Reference Paper commitment is titled “[i]nterconnection to be ensured” and states that, with respect to commercial telecommunications services, “[i]nterconnection with a major supplier will be” provided at “cost-oriented rates.” Since there is no relationship between the domestic social programs funded by the tax and the costs of interconnection services provided to cross-border suppliers, the new tax fails to be cost-oriented.[13] Accordingly, by imposing this tax, El Salvador is preventing its major supplier carrier, CTE, from charging cost-oriented rates for inbound international calls, and fails to comply with its WTO commitment under the Reference Paper that, for the types of international service covered by Section 2.2, interconnection with its major supplier at cost-oriented rates is “to be ensured.”

Third, Section 5 of the WTO Annex on Telecommunications requires El Salvador to “ensure that any service supplier of any other member is accorded access to any use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions.” The increased rates for access to public telecommunications transport networks in El Salvador resulting from the new tax are also contrary to the WTO Annex on Telecommunications. The WTO Dispute Settlement Body has found that “access to and use of public telecommunications transport networks and services on ‘reasonable’ terms include questions of *pricing* of that access and use.”[14] The tax has increased international termination rates by approximately 100 percent without any demonstration of increased costs. These increased rates fail to provide the reasonable terms for

[11] *See* FCC International Traffic Report for 2008 , Table A1.
[12] *See* FCC International Traffic Report for 2012, Table A1. In contrast, total U.S. outbound international traffic declined by only 17 percent between 2008 and 2010.
[13] WTO, El Salvador, Schedule of Specific Commitments, Supplement 1, GATS/SC/29/Suppl.1, Apr. 11, 1997.
[14] WTO, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, Apr. 2, 2004, ¶ 7.333

access and use required by the Annex.

The tax also violates similar requirements of the CAFTA entered into by the United States, El Salvador, Costa Rica Guatemala, Honduras, Nicaragua, and the Dominican Republic. Article 13.4 (5)(a) of the CAFTA requires the provision of wireline interconnection services with major supplier carriers at cost-oriented rates. Further, Article 13.2 (1) of the CAFTA requires that “enterprises of another Party have access to and use of any public telecommunications service… on reasonable and non-discriminatory terms and conditions.”

USTR has raised concerns regarding this tax in several prior Section 1377 reviews, and USCIB encourages USTR to continue to press El Salvador to remove this tax immediately.

EUROPEAN UNION

Up until recently EU Member States made significant progress to reduce their termination rates for international calls terminated on fixed and mobile networks. Unfortunately, in the last few years we have seen an increasing number of EU operators charging higher rates to terminate calls originating outside the EU than those charged for calls originating inside the EU. These increased rates do not appear to reflect incremental costs for terminating such traffic, and are generally higher than rates charged by carriers in the United States to terminate international calls. This practice raises concerns that these termination rate increases are not in accordance with Europe’s commitments in the General Agreement on Trade in Services.

A number of operators have been charging such rates, including operators in Bulgaria, Croatia, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, and Slovenia. At the end of 2015, French operators started to exempt U.S. traffic from these higher rates after charging the higher rate to U.S. originated traffic starting in early 2014, when the Regulator ARCEP permitted French operators to charge reciprocal rates for non-EEA originated traffic at the end of 2014. We are encouraged and appreciate the progress in France, but note that the problem is on balance growing in the EU. For example, ANACOM, Portugal’s regulator, similarly approved Portuguese licensed operators to differentiate between EEA and non-EEA traffic, leading to higher termination rates for U.S. voice traffic to Portugal. More broadly, National Regulatory Authorities (NRAs) in the EU take conflicting positions in this area, which result in an unpredictable and fragmented situation. Some NRAs such as PTS from Sweden (rightfully) forbid differentiation, while others, such as BiPT in Belgium, allow differentiation without any restrictions, or (ARCEP from France) only allow differentiation if rates are reciprocal or only after differentiation of traffic from a specific country has been explicitly approved (BNetzA from Germany). Neither the European Commission nor BEREC so far have taken initiatives to resolve the issue. While the EC strongly opposed a proposal from the Austrian TKK for differentiation with the European Union, it didn’t take a position so far on differentiation of rates for calls originating outside the EU.

Higher termination rates for calls originating outside the EU than for calls originating inside the EU, reciprocity-based or otherwise, appears to be aimed at addressing the significant discrepancy between the termination rates paid and received by European operators when they exchange international calling traffic with operators in some countries outside the EEA. USCIB notes, however, that this problem is shared by U.S. operators when they exchange international calling traffic with operators in all, or virtually all, countries. For many years, U.S. operators have paid higher rates to terminate outbound international calls on foreign operators’ networks than they are able to charge foreign operators to terminate inbound international calls. USCIB hopes that European regulators will address the concerns resulting from the rate discrepancies now being experienced on some international routes by maintaining deregulatory and pro-competitive policies to encourage European operators to negotiate lower termination rates with foreign carriers that would encourage further growth in the global telecommunications market, rather than ignoring the issue or continuing to adopt reciprocity-based approaches that could have the opposite effect.

As USTR noted in the 2015 Section 1377 review and the 2016 combined 1377/NTE Report, charging higher rates to terminate calls originating outside the EU than those charged for calls originating inside the EU also raises concerns regarding compliance with the WTO commitments entered into by the European Communities and their Member States. Article II of the WTO GATS Agreement requires EU Member States to provide to "services and service suppliers of any other member treatment no less favorable than it accords to like services and services suppliers of any other country." Requiring European operators to charge cost-oriented rates for calls from end-users within the EEA, while also authorizing those operators to charge rates higher than cost-oriented levels to terminate calls from end-users outside the EEA, does not appear consistent with the "most-favored-nation" (MFN) treatment required by this obligation.

Such measures are also inconsistent with the requirements of the WTO Reference Paper, which requires EU Member States to ensure that interconnection with major supplier operators is provided "under non-discriminatory terms, conditions . . . and rates" and at "cost-oriented rates."[15] Additionally, such measures are inconsistent with the EU commitments under the GATS Annex on Telecommunications, which require EU Member States to "ensure that any service supplier of any member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions."[16]

USCIB hopes that USTR will continue to highlight this issue and that it will draw these concerns to the attention of the European Commission and the relevant EU Member States.

In addition, the European Union has repeatedly rejected the notion of 'termination fees' for Internet content.[17] USTR should encourage the EU to continue along that path in its telecom framework consultation and reject the imposition of fees or other new burdens on content providers.

Digital Single Market (DSM) Initiative

The objective of the European Commission's DSM Strategy is to create a horizontal regulatory environment, as appropriate, across member states. In so doing, the Commission should seek to ensure more predictable and consistent market conditions, which will continue to inform and encourage transatlantic business investment.

We further note that the DSM is a broadly encompassing policy initiative that is currently in its formative stages and will require careful attention from government and private sector alike. Measures that help address fragmentation by removing any unnecessary regulatory and administrative obstacles across the EU regulatory environment, if appropriately reviewed and crafted, would be welcome. Consumer interests also should be safeguarded through development of appropriate measures supported by sound economic analysis.

---

[15] WTO, European Communities and Their Member States, Schedule of Specific Commitments, Additional Commitment, Sect. 2.2. An operator incurs the same cost to terminate an international call on its domestic network regardless of the call origination point. Pursuant to this commitment, cost-oriented termination rates required for EEA-originated calls should also apply to calls originating in other WTO Member countries.

[16] WTO GATS Annex on Telecommunications, Sect. 5. The WTO Dispute Settlement Body has found that the "reasonable" terms for access and use required by the GATS Annex on Telecommunications include "questions of pricing of that access and use." WTO, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, Apr. 2, 2002, ¶ 7.333.

[17] See, e.g., http://berec.europa.eu/files/document_register_store/2012/11/BoR_(12)_120_BEREC_on_ITR.pdf.

Government policymakers on both sides should strive to better understand the benefits and potential issues that arise in the context of new technologies including cloud computing, Big Data, IoT, and the continued growth of platforms and search tools. Forward-looking policy positions should include a review of legacy regulation with a rigorous economic analysis of changed market conditions. Wherever possible such regulation, including vestigial legislative and regulatory barriers, should be eliminated and only extended to new and evolving services in rare circumstances when supported by sound economic analysis. This review should support evolving business models and new technologies and ensure consistency with the rule of law and good practice which will spur economic growth and social benefit. Governments should carefully consider both policy and regulation to assure that needless burdens and unintended consequences do not occur from such new policies or regulations.

In particular, we urge the Commission to carefully reflect upon the OECD's Internet Policymaking Principles[18], a comprehensive and balanced set of principles developed by the OECD with input from all stakeholders including the Business and Industry Advisory Committee to the OECD, of which USCIB is the U.S. affiliate, to guide development and implementation of effective and compatible approaches to Internet policymaking and governance both at the national and international levels. The Commission should ensure that policy and regulatory elements of the DSM remain consistent with these OECD Principles. USTR should work with European counterparts to ensure that any legislative proposals are consistent with international obligations and avoid creating uncertainty for businesses.

As the Commission and member states move forward with DSM implementation, they should take care to support creativity and innovation and apply the rule of law while maintaining an inclusive environment for ICT products and services from both within and outside Europe.

Geographic Indications (GI)

We share the concern expressed in the 2015 NTE that the EU's system applies GI protections to an over-broad swath of food products and negatively impacts trademark protection and market access for U.S. products with generic names. The European Union has been pursuing increasingly aggressive bilateral and multilateral strategies to restrict the use of common cheese names by non-EU producers, which we urge the United States to strongly oppose.

Meursing Table Tariff Codes

We note the U.S. comments in the 2015 NTE remain relevant and concerning:

> "Many processed food products, such as confectionary products, baked goods, and miscellaneous food preparations, are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular mix of ingredients in each product. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU."

---

[18] See https://www.oecd.org/sti/ieconomy/oecd-principles-for-internet-policy-making.pdf

FIJI

In 2011, the Fiji Commerce Commission directed Fintel, the incumbent government-controlled carrier, to increase the minimum termination rate for inbound international traffic from $0.165 to $0.22 per minute without showing that the rate increase was cost-justified. Instead, the stated purpose of the increase was to ensure that consumers outside Fiji bear the costs of increasing telecommunications service penetration in Fiji. USTR called attention to this unreasonable trade barrier in the 2015 Section 1377 Review and USCIB encourages USTR to continue to press Fiji to rescind this increase.

GERMANY

Still in 2016, Germany remains a difficult market for new entrants. USCIB urges USTR to continue to urge Germany to comply with its WTO commitments.

The absence of an independent and effective regulator has had a negative impact on the development of competition. The German Federal Network Agency, BNetzA, continues to be subject to inappropriate political pressure in 2016 despite claims to the contrary by the Ministry of Economies. The German Government still holds a direct and indirect ownership interest of 31.7 percent in Deutsche Telekom AG (“DTAG”), the incumbent operator.

Under German law, BNetzA itself is a subordinated authority of the Federal Ministry of Economics. Although the decisions of its ruling chambers cannot be overruled by the Ministry, BNetzA remains bound by the Ministry’s directives. It should be noted that other agencies, such as the Federal Competition Authority (FCO), are not bound by direction from the Ministry. Thus, market players under the oversight of the FCO are able to enjoy the competitive benefits of a more independent and effective regulator.

In addition, we are concerned that the lack of opportunities for U.S. companies to participate in the majority of proceedings could have a direct and substantial impact on their business plans. Due to the Administrative Court’s rules of procedure, competitors have little or no opportunity to participate as third parties in the court’s proceedings, and therefore have no opportunity to defend their direct interest court. In contrast, DTAG always is a party to the cases and can therefore influence decision making at the court level. Even in cases rate approvals issued by BNetzA are being appealed by other market participants, competitors are not made parties to the proceeding, creating unnecessary financial risks and legal uncertainty. Despite BNetzA introducing an online register for proceedings (which is not updated regularly), market participants are also concerned about the lack of transparency regarding pending administrative proceedings and the short deadlines established by BNetzA to submit comments. In contrast to the long duration of most proceedings, market participants are forced to quickly review complex proceedings within days, significantly impacting their ability to follow and participate in them. USTR should continue to monitor BNetzA’s progress in this area and encourage it to follow international best practices of a 30-day minimum for comments and further improve the electronic publication of the reasoning behind its decisions and information about pending court proceedings.

Market participants continue to be concerned about data localization requirements proposed by the German government. USTR properly drew attention to these concerns regarding the government’s guideline requiring a “no spy declaration” for companies to qualify for data services procurement contracts with the German Federal Government in the 2014 review. The latest cause for concern is the introduction of a localization requirement in the context of new data retention obligations in Germany.

The new data retention law entered into force on December 18, 2015 and impacts providers of electronic communications services (ECS) that must comply with the new law by July 1, 2017. BNetzA is to publish detailed implementing regulations no later than January 1, 2017, giving companies six months to analyze the regulations, assess the impact on their business and implement measures to comply. The data retention requirements foreseen in the new law require providers of publicly available telephone services and providers of publicly available Internet access (fixed and mobile) to retain specific traffic data on German soil with immediate access for legal enforcement agencies and to apply very strict security measures, including highest encryption standards and separated storage systems. Compliance with the data retention requirements is expected to require significant initial investments (3digit m€/$ for the entire industry) by the affected providers that are, in principle, non-recoverable. Trade associations have estimated that the total cost to industry (ISPs) for complying with the law will be €600 million. The legislation has been criticized strongly, also by the European Commission (EC), which openly doubts that the requirement to store the retained data in Germany rather than anywhere else in the EU is in line with relevant EU law. However, neither the EC nor the German Government have taken any actions to withdraw the requirement.

As noted in previous years, market participants are seriously concerned with these issues beyond the immediate business impact due to i) Germany's important role in Europe and globally and ii) the landmark character of Germany's example, which, if left unchallenged, might open the door to other countries applying similar measures, or worse. USCIB urges USTR to continue to monitor these developments and, if necessary, to remind Germany of the requirements of its "most favored nation" (MFN) and national treatment obligations under the GATS.

GHANA

Ghana enacted legislation on December 31, 2009 requiring network operators to charge a minimum rate of US$0.19 per minute for all incoming international electronic communication traffic.[19] U.S. carriers had previously negotiated rates below US$0.07 for termination on fixed networks and below US$0.14 for termination on mobile networks.

Ghana has attempted to justify the $0.19 rate as being necessary to curb fraud and the use of "grey market" termination. However, commentators have noted that the measure is more likely to encourage the increased use of alternative routes. FCC data also demonstrate that reductions in international termination rates have stimulated huge increases in inbound and outbound international calling to and from Ghana, all providing significant benefits to the consumers in the U.S. and Ghana who make and receive those calls, and to carriers in Ghana through increased termination payments.

In 1997, the year before Ghana's WTO basic telecom commitments became effective, U.S. carriers paid carriers in Ghana an average per minute termination rate of $0.39, resulting in 50,269,789 minutes of U.S.-Ghana calling and total payments to carriers in Ghana of $19,638,574.[20] In 2009, more than ten years after Ghana's WTO commitments became effective, U.S. carriers paid carriers in Ghana an average per minute termination rate of $0.12, resulting in 325,582,418 minutes of U.S.-Ghana calling and total payments to carriers in Ghana of

---

[19] Electronic Communications (Amendment) Act, 2009, Act 786, December 31, 2009 Network operators that charge a lower rate are subject to a penalty of "twice the difference between the specified rate and the rate actually charged.". *Id*., Sect. 1 (2). The statute requires that 32 percent of this required interconnection rate is "kept by the Authority." Additionally, a portion of the increased rate reportedly is paid to a third party entity providing call monitoring services to the Ghanaian government. *See* Ghana Business News, June 2, 2010, *Vodafone raises Red Flag Over calls Monitoring by Foreign Company*, http://www.ghanabusinessnews.com/2010/06/02/vodafone-raises-red-flag-over-calls-monitoring-by-foreign-company/

[20] *See* FCC International Traffic Report for 1997, Table A1.

$39,298,038.[21] Thus, the 69 percent reduction in the level of Ghana's termination rate between 1997 and 2009 resulted in an *approximate 550 percent* increase in call volumes from the U.S. to Ghana and an *approximate 100 percent* increase in U.S. termination payments to carriers in Ghana.

The Ghana rate increase, like the El Salvador tax described above, has drastically impacted U.S.-outbound calling volumes to Ghana. FCC data show that U.S. carriers sent only 138,082,534 minutes to Ghana in 2013, a reduction of 57 percent from 2009 volumes.[22] Additionally, between 2009 and 2011, U.S. carrier payouts to Ghana's carriers declined by 50 percent, plunging from $39,298,038 to $19,800,016.[23]

Ghana's measure raising negotiated rates not only adversely impacts U.S. calling volumes to Ghana benefiting consumers at both ends of this route but, as USTR has noted in prior Section 1377 reports, is contrary to this country's WTO commitments under the Annex on Telecommunications. This requires the provision of access to telecommunications networks and services in Ghana on reasonable terms and conditions. This measure also is contrary to commitments under the WTO Reference Paper requiring, for the types of international services covered by Section 2.2, the provision of interconnection services with major supplier carriers at cost-oriented rates.[24] The new tax has increased rates for termination on fixed networks by more than 200 percent and rates for termination on mobile networks by approximately 50 percent, without any demonstration of increased costs. These increased rates fail to provide the reasonable terms for access and use required by the Annex or, as applicable, the cost-oriented rates required by Ghana's Reference Paper commitment. USTR should continue to press Ghana to remove this mandated rate increase.

Customs Treatment of Software

Ghana is one of a number of countries in West Africa that has used inconsistent methodologies for valuation of software for the purposes of assessing Customs duties. A 1984 Decision of the then-GATT Committee on Customs Valuation enables countries to calculate the customs value of software based only on the value of the underlying carrier medium.[25] In some instances, countries are using this method, while in others they are assessing duties based on the IP value of the loaded software. To ensure wide availability of best-in-class technologies, Ghana and other West African countries should consistently apply the valuation method provided for in Decision 4.1.

GULF COOPERATION COUNCIL (GCC)

Guide for Control on Imported Foods

As noted in the 2015 NTE, the GCC notified the WTO Committee on Sanitary and Phytosanitary (SPS) Measures of their intention to implement a new "GCC Guide for Control on Imported Foods." GMA submitted comments in response to WTO notification G/SPS/N/OMN/44/Rev.1. GMA noted the regulation's broad scope and the need for stakeholders to have appropriate time to understand and adapt to these new requirements. GMA requested the Gulf Standards Organization (GSO) substantially clarify the intent of these requirements and their scientific basis, as well as clearly delineating implementation plans.

We understand the GCC countries began "experimental" implementation of the guide June 1, 2015 (12 days

[21] *See* FCC International Traffic Report for 2009, Table A1.
[22] *See* FCC International Traffic Report for 2013, Table A1.
[23] *See* FCC International Traffic Reports for 2009 & 2013.
[24] WTO, Ghana, Schedule of Specific Commitments, Supplement 1, GATS/SC/35/Suppl.1, Apr. 11, 1997.
[25] WTO Decision 4.1 (Valuation of Carrier Media Bearing Software for Data Processing Equipment).

before the end of the WTO comment period), with implementation practices varying widely across GCC members. While we understand and support the need to ensure the safety of food products, regulation should be based on internationally-accepted science and standards and should take a risk-based approach. The GCC should clarify the science base for its regulations and harmonize regulations in its member states with the Codex standards on Principles for Food Import and Export Inspection and Certification (CAC/GL 20-1995). In accordance with these and other specific concerns listed in our comment, the GCC should consider fully all comments received and derive a new implementation date that allows sufficient time to comply with the new regulations, three years at minimum.

Food Additives

In June, 2015, comments were submitted on the GCC's draft standard on additives permitted for use in foodstuffs. Our comments noted a number of specific additives for which the draft standard either omitted or is inconsistent with science-based food additive standards established by the Codex Alimentarius.

General Requirements for Halal Foods

In February, 2015, comments were submitted on the GCC's draft standard on general requirements for halal foods. We have serious concerns with some provisions in the draft regulation and believes the regulation would significantly disrupt food and beverage trade, impact the operations of manufacturers of all sizes in the region, and potentially affect product availability and price. We requested that GSO substantially clarify the intent of these requirements and clearly delineate implementation plans (the current implementation date.

We are particularly concerned by the requirements in Section 4.12 related to the use and cleaning of equipment, tools, or production lines used for halal and non-halal foods. The requirements would, in practice, require dedicated production lines and supply chain infrastructure for halal products and could represent an undue barrier to trade. GMA also requested the GSO clarify the applicability of these requirements to naturally halal foods, such as nuts, dried fruits, and juices.

INDIA

The Government of India's roll out of initiatives, such as Digital India, accelerated broadband deployment, and the creation of one hundred Smart Cities, in conjunction with the explosive growth of mobile broadband and the emergence of technology formats such as machine-to-machine (M2M) computing, the Internet of Things (IoT), and cloud computing, have the potential to put the Indian economy on a growth trajectory. However, India must implement policies that foster an innovative environment and are compatible with global standards.

It is important to keep encouraging the Indian government to support further market liberalization and to remove remaining market access barriers. India should be urged to continue its efforts to provide legal and regulatory certainty both in the development of a body of clear and consistent laws and regulations, and in the transparent and equitable application and enforcement of those laws and regulations.

National M2M Roadmap

The National Telecom M2M Roadmap document issued by the Department of Telecommunications (DOT) in May 2015 is a vision document intended to foster healthy growth of M2M. While DOT acknowledges the importance of aligning with the evolving global standards and has adopted a forward-looking approach generally to policymaking, DOT must continue to recognize the critical importance of creating a policy environment that allows for flexibility and use of commercial arrangements to the healthy proliferation of M2M and IoT services.

We urge the Government of India to take a light-touch regulatory approach in devising guidelines for M2M. In addition, we urge the Government of India to keep in mind the following principles:

i. Avoid restrictions on the free flow of information across borders.
ii. Avoid imposing any restrictions on permanent international roaming to provide flexibility for differing service models, e.g., some SIM cards will be embedded in manufacturing devices that are stationary; some will be embedded in cars -- others in unforeseen combinations. The GOI should avoid imposing any technology mandates or requirements and favor a flexible and a light-touch approach.
iii. Avoid prohibiting the use of foreign SIMs for permanent roaming, as this will impede the growth of M2M services. Further, requiring the use of a local number will not enhance the availability of data significantly.
iv. Avoid requiring the use of local Indian SIM for M2M, as it would not be technically and commercially viable to retrofit devices embedded with foreign SIMs with local SIMs. That would be a costly and lengthy process. In addition, there may be design elements associated with the SIM that would need to be considered such as proprietary nature of SIM or the design which cannot be replicated or replacement may endanger or impede SIM functionality.

In July 2016, DOT released for limited circulation draft guidelines for regulating M2M service providers in India. Despite the "Roadmap" of 2015 clearly acknowledging the international services dimension of M2M and IoT services, the draft guidelines represent an extensive regulatory interference in the marketplace by establishing licensing requirements for M2M service providers. In addition, the draft guidelines include data localization requirements that only local telecommunications resources (e.g. numbering) be used in the provision of mobile–network enabled devices, both of which would complicate the ability of companies to offer globally interconnected M2M/IoT services. This localization requirement is consistent with other jurisdictions, which instead have supported a framework that would allow foreign carriers to utilize foreign SIMs to provide permanent roaming for M2M or IoT services to their respective OEM customers. Industry has provided comments on the guidelines and continues to engage with the Indian government as it continues to review the guidelines.

USCIB urges the USTR to encourage India to promote an international, interoperable policy framework for IoT and M2M solutions that includes permanent roaming. Many IoT and M2M solutions will only reach their optimal scale if they can operate around the globe. Monitors on airline cargo or shipping containers must be able to operate wherever their freight travels. Automakers sell vehicles across many different countries and operators drive vehicles across national borders for commercial and personal purposes; automakers and customers alike need a single communications platform to support their connected vehicles. The Indian government should support providers of IoT and M2M devices to choose between various available options for numbering and device management, rather than imposing a single, one-size alternative for all cases.

USCIB urges USTR to request the Indian government to review its approach to M2M permanent roaming and to discourage India from imposing any rules that would restrict international trade in M2M services. Instead, USTR should encourage India to adopt approaches that enable cross border data flows, refrain from data localization requirements, remain technology neutral, enable the use of global standards in a manner that facilitates the global deployment of IoT products and services, is not detrimental to foreign investment and continues promoting the scale and interoperability required for the deployment of M2M services.

As other countries begin to consider regulating M2M and IoT around the world, we urge USTR to engage them to ensure that they adopt flexible approaches that enable the deployment of this innovative new service on a global basis.

Remote Access Policy

Global telecom operators have made significant investments in establishing India's network infrastructure. However, sudden changes in policies pertaining to Remote Access (RA) negatively impact network security and compliance, and ultimately hamper telecom operators' ability to efficiently operate networks in India. There has been a continuous backtracking on RA policies even though the same policy was developed by way of a Government-Industry consultative process.

Despite complying with the new requirements pertaining to setting up an in country storage server, the DOT is has attempted to introduce additional requirements which are not part of any stated policy. As a result, some operators are experiencing complete uncertainty regarding the RA policy. Clearances of some operators are not being granted even after meeting the requirements. Instead, carriers are required to perform additional activities, which are not part of the guidelines. This has affected some operators' ability to execute future deployments of services and investments in the network. It is requested that the Government of India clear the approvals, based on the existing guidelines with future approvals granted based on earlier demonstration of compliance. If inspection is required, it should not delay clearances.

Convergence of Services/Networks/Devices

There is a need for consistency between the proposed Unified License Regime proposal (ULR) and the objectives of the NTP-2012. USCIB notes that the proposed technology neutral approach under the ULR framework has been qualified with specific restrictions on PSTN and VoIP/IP telephony networks in general and more specifically extending to the Closed User Group (CUG) environment. To realize the true potential of converged services, networks and devices and to achieve the stated objectives for convergence, the present restrictions and barriers among different PSTN/IP/CUG-PSTN networks should be removed under the proposed Unified License-Phase II in order to ensure seamless interconnection. This will certainly help provide some of the necessary momentum towards achieving the government's goals under its "Digital India" plan.

In 2016 the Telecommunications Regulatory Authority of India (TRAI) initiated a public consultation on the use of Internet telephony, or Voice over IP (VoIP). An important element of the TRAI consultation is the removal of the existing barriers on the PSTN-IP convergence for voice services. Removal of these barriers would bring India's regulatory regime on VoIP more in line with leading digital economies, which have long permitted VoIP-PSTN interconnection. USCIB will continue to monitor developments in this area and urges USTR to encourage India to remove this regulatory obstacle to the growth of converged digital services in India.

Cloud Computing

Cloud Computing is increasingly relied upon by many economic sectors to deploy digital solutions in today's digitally enabled economy. Recognizing the increased use of cloud computing in the deployment of different types of services and applications, the Telecommunications Regulatory Authority of India initiated a consultation paper in 2016 examining numerous policy issues surrounding Cloud Computing services. While a report on this consultation is still pending by the TRAI, we continue to encourage that industry views on the importance of creating an enabling environment for Cloud computing in India and globally. USCIB encourages India to enable open and competitive markets through existing legal and regulatory frameworks. Additionally, India needs to avoid, and where necessary, eliminate barriers to seamless cross-border data flows as well as avoid restrictive data localization requirements that adversely impact investment and innovation. It is further important that, when applying any consumer protection regulation, India distinguishes between services that are offered to individual consumers and those sold to businesses to avoid automatically extending consumer protection obligations to enterprise providers.

OTT Regulations

Including the cloud computing and VoIP papers described above, TRAI has issued several consultation papers seeking input on whether there is a need for regulation of Over-the-Top (OTT) providers that offer cloud, VoIP, and other services. However, regulators have provided little feedback or response to industry submissions. Given that many of these consultations and drafts could generate restrictive rules and market access barriers for U.S. services seeking entry to the Indian market, we encourage USTR to engage with counterparts in India and promote a light-touch regulatory framework for OTT services that is consistent with the U.S. approach.

Telecommunications Network Security

We continue to draw USTR's attention to the fact that certain elements of the May 31, 2011 amendment to the telecommunications service provider licenses deviate from global practice, while others require clarification to understand how they will be implemented to ensure that these elements do not become barriers or have unintended consequences. While the most egregious provisions of the May amendments were rescinded by the Indian government, there remain problematic legacy provisions that could undermine the ability of U.S. ICT companies to compete fairly in India's telecommunications sector.

Most concerning is the mandatory requirement to test certain ICT technology (the exact scope and coverage of this testing requirement remains unclear) in Indian labs by April 1, 2017. Moreover, DOT officials, in a number of meetings with U.S. industry representatives, indicated that source code audit inspections may be included in future testing requirements, although no further details have been provided. However, the Indian government has not issued any guidance or details about this in-country testing requirement. U.S. ICT companies require significant lead time to adjust complex global supply chains to meet these types of requirements. Moreover, it appears that India lacks a sufficient testing ecosystem to implement this requirement by the 2016 deadline. In addition, it is important that this testing requirement will not impact the supply chain framework of the operators.

There is no evidence that the geography of development or testing of a product corresponds with the level of security assurance provided by the product. Thus, the government's insistence on having products tested locally will not provide greater security assurance. USTR should emphasize that there are longstanding internationally accredited/recognized laboratories conducting testing in this area, and that the location where the testing is performed, in accordance with global best practice, has no bearing on the accuracy of the test in question, as long as the laboratory has achieved the appropriate certification. We urge USTR to suggest that the Indian government to examine these issues carefully and establish close consultation with industry stakeholders to find a practical and flexible approach.

Submarine Cable Landing Stations Access & Collocation Charges

USTR has in the past properly commended India for taking important steps to reduce access facilitation and collocation charges at submarine cable landing stations in India to more reasonable and cost-based levels. TRAI issued its decision revising these charges in December 2012. Tata Telecommunications Ltd. and Bharti Airtel

Ltd., which own the majority of cable landing stations in India, have since appealed this decision in the Madras High Court. As a result, for more than three years, the implementation of the decision has been stayed by the Madras High Court. Bandwidth is an important ingredient to the success of the Digital India Initiative launched by Prime Minister Modi last year. The proposed reduction of the CLS charges by TRAI will result in unlocking of idle bandwidth available with the telecom operators in a cost-efficient manner. We look forward to an immediate and expeditious resolution of this matter in the broader interest of the growth of affordable broadband and data services in India.

Defining the Revenue for Payment of License Fee

USCIB urges India to examine the methodology it currently uses to calculate the annual license fees to ensure that India's license fee regime does not frustrate the goals of promoting competition, creating a level playing field among all service providers, and reducing the sales price of services to consumers. Under the current methodology, license fees are based on revenues from both licensed and unlicensed activities, which make the calculation of such fees unnecessarily burdensome. Also, the current definition leads to double payment of license fees to the Indian government as it does not allow deduction of wholesale charges from retail revenues.

USCIB applauds India's decision in 2016 to enable Virtual Network Operators (VNOs) to enter the market as a positive step to increasing competition in the marketplace. However, it is important for DOT to review the impact of the effective double assessment of licensing fees on the economic viability for VNOs to enter the market if they are unable to deduct the inputs they rely on to offer their service. The double assessment of licensing fees currently operates as a multi-stage and cumulative tax. Facilities-based operators, relying on their own networks, only pay the license fee once, while the services that operators such as VNOs buy from other operators are subject to the license fee twice – once when they are sold from the first network owner to the second operator (e.g. a VNO), and then again when the second operator sells them to the end user. Thus, a telecom operator who buys inputs from other licensed operators is placed at a competitive disadvantage with those who do not need to buy those inputs to provide their service.

To avoid this double assessment, we urge USTR to impress upon the Indian government the importance of seriously considering this long-standing request and urge the Indian government to clarify that such license fees apply only to revenues from retail sales transactions where the service is provided to an end user. The resolution of this issue has a direct bearing on the ability of operators to compete effectively in the market.

Encryption

The freedom of business and consumers in India to use strong encryption protects their corporate and personal information. Strong encryption also enables India's rapidly growing IT and business processing industries to secure their global clients' confidential information. The Government of India should be urged to more appropriately reflect the needs of next generation data and IP services providers and the considerations of their business enterprise customers by allowing for the robust use of encryption to protect data and privacy. At the time of this submission, USCIB understands that the Ministry of Electronics and Information Technology is in the process of preparing a draft encryption policy for consultation with industry. In developing its encryption policy, the Government of India must recognize the need to distinguish enterprise services from consumer services and establish a carve-out or exclusion. USCIB encourages the Government of India to work with the U.S. and other governments to share best practices in this area.

Cybersecurity is a true common cause, as industry shares many risks and objectives with governments, users, and other stakeholders. The breadth of cybersecurity threats is vast; from cyber terrorism to online safety and conventional cybercrimes. A key component in strengthening networks against cybersecurity threats is strong encryption. So that businesses may employ the measures to reasonably protect information, a critical component of India's updated encryption policy must include updating the permissible level of encryption for enterprise services beyond the current 40-bit level. Businesses must instead be permitted to apply encryption consistent with industry standard guidelines, such as the Advanced Encryption Standard (AES).

USCIB requests USTR to urge India to recognize that it is essential that enterprise services providers be permitted to offer and provide network services that employ more robust encryption to allow business customers to better secure customers' networks and communications from cyber threats. The current encryption limitation reduces the ability of business customers to apply industry-standard encryption to network services to help defend against cybersecurity threats, which are increasing in volume and sophistication at exponential rates.

FDI in Business-to-Consumer e-Commerce:

E-Commerce models must be allowed to enable small and medium businesses across the country to reach national and global consumers. However, foreign direct investment (FDI) in business-to-consumer e-commerce is still restricted in India. In order to facilitate e-commerce in India, the government should allow at least 51 percent FDI in e-commerce —and ultimately 100 percent.

Restrictions on the Import of used and refurbished ICT and medical device component parts:

In July of 2015, the Indian Ministry of Environment, Forest and Climate Change (MoEFCC) issued a rule banning the importation of used ICT and medical device parts and equipment. The Ministry justified this ban by stating that these imported products constitute "E-Waste", a ruling which grossly mis-classifies these products. U.S. companies import spare and refurbished parts to service and repair installed ICT and medical device equipment. By banning the importation of these parts, MoEFCC is severely disrupting the ability of multinational companies to service customer equipment and meet basic warranty obligations. After intensive international lobbying, in September, MoEFCC reversed this import ban. However, the Ministry continues to require companies to apply for individual licenses to import this equipment and, to date, very few licenses have been approved. This has effectively meant that the ban remains in place.

Compulsory Registration Order for ICT Products

Of significant concern to the tech industry in India is the Compulsory Registration Order which requires most ICT equipment to be tested and certified in India for safety, regardless of whether it had already been certified in other countries. This measure is blatantly inconsistent with international norms and provides no utility to Indian consumers. Double testing ICT equipment is not necessary for helping India meet its regulatory objectives and is incredibly costly to U.S. firms. We request that the U.S. government reflect the state of play on this issue in 2016 NTE in order to urge India to bring its testing and certification regime in line with international norms.

Intellectual Property

USCIB supports the Government of India's efforts to strengthen the innovation ecosystem and IP legislative and regulatory environment in the country. The National IPR Policy ("the policy") addresses a comprehensive range of objectives, from raising awareness on the benefits of intellectual property to strengthening the country's legal, administrative and enforcement capabilities. Overall, the National IPR policy acknowledges the importance of IP as a driver of economic growth and articulates the aspirations of the Indian Government in calling for educational programs aimed at building awareness on the importance of IP to India. However, in practice, the policy lacks specificity with respect to inter-ministerial coordination on implementation, budget allocation, and does not address some of the most important outstanding IP policy issues including with respect to Section 3(d)'s enhanced efficacy requirements for pharmaceutical patents. We hope that the policy will serve as a platform for continued engagement and enhanced dialogue with the Indian government towards more concrete legislative, regulatory and related reforms to address pharmaceutical IP issues – for example, with respect to clarifying Section 3(d) of India's patent law, providing for early resolution of patent disputes, and simplifying administrative requirements.

Food – Product Approvals

The Supreme Court of India upheld a court ruling striking down India's food safety agency's (FSSAI) product approvals process. We remain concerned about the status of products with pending applications and how India intends to proceed after the Supreme Court's ruling. The United States should encourage India to adhere to international standards and scientific evidence for ingredient safety approvals, rather than requirement product-by-product approval. In general, we are very concerned by India's frequent failure to notify regulations to the WTO and its non-science-based approach to processed food regulations.

Taxation

USCIB members are also concerned about India's recent vote on an "equalization levy," aimed at creating an additional 6 percent withholding tax on foreign online advertising platforms. While this levy was introduced with the ostensible goal of "equalizing the playing field" between resident service providers and non-resident service providers, one significant problem is that its provisions do not provide credit for tax paid in other countries for the service provided in India. Another problem is that this levy will result in taxes on business income even when a foreign resident does not have a permanent establishment in India, and even when underlying activities are not carried out in India, in violation of Articles 5 and 7 of the US-India tax treaty.

The current structure of the equalization levy represents a shift from internationally accepted principles, which provide that digital taxation mechanisms should be developed on a multilateral basis in order to prevent double taxation. This levy is likely to impede foreign trade and increase the risk of retaliation from other countries where Indian companies are doing business. In addition, there is a risk that the levy will be extended more broadly to cover a broader range of foreign e-commerce services. We urge USTR to recognize that this levy may serve as a market access barrier for foreign services, and engage with counterparts in India to develop taxation principles that are consistent with global best practices.

INDONESIA

Indonesia imposes local content requirements in the telecom sector that are not consistent with its WTO obligations and is currently considering further such requirements. The Indonesian Ministry for Communications and Information Technology issued two decrees, a wireless broadband decree and a telecommunications decree, that place restrictive local content requirements and sourcing requirements on service providers.

The "wireless broadband decree" requires local content of 30-50 percent in the wireless broadband sector. The "telecommunications decree" requires all service operators to spend 35 percent of their capital expenditures on domestically manufactured equipment. Currently, at least 40 percent of the equipment must be locally sourced, but within the next five years it is expected to increase to 50 percent. These provisions are reiterated in Article 6 of the 2011 decree on the use of the 2.3 GHz Radio Frequency Band (19/PER/M.KOMINFO/09/2011). These restrictions do not appear consistent with Indonesia's obligations under the WTO Agreement on Trade-Related Investment Measures and may also raise concerns under Article III of the General Agreement on Tariffs and Trade (GATT). USCIB supports the actions taken by USTR in conjunction with the European Union to raise these concerns in the WTO Committee on Trade-Related Investment Measures and urges USTR to continue to press Indonesia to remove these restrictions.[26]

FDI Cap

In addition, current regulations impose a cap (ranging from 49-65 percent) on foreign ownership for telecommunication network and service providers. These foreign ownership caps present significant and often insurmountable barriers for U.S. businesses seeking to enter the Indonesian market from an operational and economic perspective. Service providers are unable to establish operational control, protect their brand, and deliver services in Indonesia that are seamlessly integrated in the service providers global network offerings. The service providers also become a horizontal competitor of the local telecom operator provider, further eroding the value of the investment. USCIB requests that USTR encourage Indonesia to remove this provision and allow foreign companies to offer services with any legally operating telecom entity they find suitable.

E-Commerce Barriers

Another important development is the Indonesian government's issuance of Government Regulation No. 82 of 2012 on Electronic System and Transaction Operation ("GR 82/2012"), which was stipulated on October 12, 2012 and enacted on October 15, 2012. This Decree creates significant barriers to e-commerce for U.S. firms.

In particular, as USTR noted in the 2015 Section 1377 review, Article 17 of GR 82/2012 requires an Electronic System Operator ("ESO") for public services to place a data center and disaster recovery center in Indonesia for the purpose of upholding justice, safeguarding, and upholding state sovereignty towards its citizen's data. While the term "public services" is not defined in the bill, it is defined elsewhere in Public Services Law (Law No. 25 of 2009), despite that this is not clearly mentioned in GR 82/2012. A public services provider can be in the form of a corporation (i.e., company); however, that company must be considered carrying out "public services." The Public Services Law provides various categories of public services activities, which are all carried out for the benefit of the public and not solely for commercial purposes. Importantly, the government is also reviewing the definition to expand it to include all services provided in Indonesia.

A local data center requirement would prevent providers from leveraging the economies of scale from existing data centers and discourage future investment in Indonesia. Furthermore, such a requirement inhibits the global data flows that are essential to e-commerce transactions. In practice, the increased costs that necessarily accompany a local data center mandate could diminish incentives to offer services in Indonesia.

Other aspects of GR 82/2012 erect significant barriers to entry, including disclosure of encryption used in providing e-services and providing the encryption key to the government.

Local Content Requirements

Several other regulations are also concerning. For example, regulation 68/2015 from the Ministry of Industry

[26] *See* WTO, Committee on Trade-Related Investment Measures, Communication from the European Communities and the United States, G/TRIMS/W/61, May 8, 2009.

imposes local content requirements on the manufacturing and development of mobile phones and communication devices. And a new regulation from the Ministry of Communications and Information Technology, No. 27 of 2015, also provides for local content requirements on LTE based Telecoms Equipment and/or Devices.

OTT

In 2016, Indonesia proposed two new regulations, one governing the provision of over-the-top (OTT) service and the other governing on the provision of e-commerce services. Both proposals contained unnecessary and burdensome data localization requirements in addition to containing provisions imposing content filtering responsibilities on companies, mandating a national payment gateway for online transactions, server localization requirements, and forced cooperation with local telecom operators offering similar services. The compliance and enforcement provisions of the OTT regulation would be difficult, imposing significant costs to both companies and the government that will ultimately hamper the development of Indonesia's digital economy. Indonesia should carefully weigh the broad economic costs of implementing these regulations and engage with industry to find a path forward that promotes growth of its digital economy.

Taxation

Through these regulations, Indonesia has taken steps on taxation that significantly deviate from global norms, bilateral tax treaties, and WTO commitments. These steps include proposed requirements that would compel foreign services to create a permanent establishment in order to do business in Indonesia. For example, Article 4 of the regulation described above would require providers to create a local entity or permanent establishment, as well as undergo a rigorous process of registration, including first with the IT regulator (BRTI) and then with BKPM in order to establish a business entity. This process would require significant resources from online service providers, many of which are small companies that lack the necessary legal and technical resources to comply with such processes, and could have significant tax consequences that conflict with OECD multilateral principles. Furthermore, this requirement would likely violate Indonesia's WTO commitments to allow computer and other services to be provided on a cross-border basis. USCIB urges USTR to classify these disproportionate taxation measures as market access barriers.

USCIB encourages USTR to encourage Indonesia to adopt approaches that enable cross border data flows, refrain from data localization requirements, remain technology neutral, and enable the use of global standards in a manner that supports an international, interoperable policy framework for the digital economy and that promotes foreign investment and continues promoting the scale and interoperability required for the Digital economy.

Draft Trade Bill

Indonesia's Trade Ministry released a draft Trade Bill, which in its present state, lacks sufficient clarity and detail and could potentially give a legal basis for barriers to trade not compliant with Indonesia's international trade commitments, especially the General Agreement on Tariffs and Trade 1994 (GATT). In particular, USCIB has concerns about lack of equal treatment for imported and domestic goods; potential restrictions or prohibitions on trade in goods; licensing, standardization and use of the Indonesian National Standard (SNI) over international standards; and provisions permitting protection of the domestic industry. Use of the draft Trade Bill in sectors such as telecommunications where development and production of equipment and services are global in nature may hinder Indonesia's national competitiveness.

Spectrum Allocation

Finally, Indonesian regulators have allocated spectrum in a non-internationally harmonized manner to benefit domestic manufacturers. This calls into question Indonesia's commitment to technology neutrality under the TBT Agreement. Recently, Indonesian regulators have relaxed such rules associated with the 2360 – 2390 MHz band ((19/PER/M.KOMINFO/09/2011).

Media and Entertainment barriers

Indonesia maintains a variety of barriers in its media and entertainment sectors, significantly curtailing the growth potential of this sector and limiting the legal entertainment options of its citizens. Indonesia's film law technically imposes a 60 percent screen quota for Indonesian films – a quota so impractically high that it would cripple Indonesia movie theater sector if it was ever enforced. Other policies seek to limit the import of and market for foreign films – e.g., a prohibition on dubbing imported films into local languages, a local replication requirement that has not been enforced since it is unnecessary and impractical. On the positive side, in May 2016, the Indonesian Government opened up foreign direct investment in film production, distribution, and exhibition, which should help create new opportunities and interest in this sector.

Intellectual Property

Indonesia recently passed a patent law, which contains concerning provisions which will weaken, rather than strengthen, Indonesia's intellectual property system—making the country a less attractive investment destination.

In particular, USCIB remains very concerned about implementation of measures that would:

- Narrow the scope of patentable subject matter;
- Create uncertainty by unnecessarily requiring disclosure of origin of genetic resources or traditional knowledge "related" to inventions;
- Discourage voluntary licensing of technologies;
- Provide for compulsory licensing on vague and arbitrary grounds that are inconsistent with Indonesia's international obligations.

KOREA (Republic of Korea)

Financial Services

In order to implement its commitments related to the transfer of information under KORUS and the Korea-European Union Free Trade Agreement, Korea adopted new regulations in 2013 governing the outsourcing of data and IT facilities to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed in affiliates outside Korea. U.S. stakeholders raised concerns that vague guidelines and a lengthy application review period have hampered Korea's implementation of these data transfer commitments. In order to address these implementation concerns, the United States and Korea meet on a quarterly basis along with industry stakeholders to maintain thorough monitoring of Korea's implementation of the commitment. Stakeholders also raised concerns about strict new rules and enhanced penalties governing data privacy under the May 2014 Act on Promotion of Information and Communications Network Utilization and Information Protection.

Further strides were made by Korea in 2015 to address the concerns of the USG and private sector. A new regulation improved the environment to offshore and process data, however, implementation is still underway and is not yet fully compliant with the KORUS obligation. The United States must continue to monitor Korea's implementation of the new regulation and continue to work to ensure that KORUS commitments are fully implemented in practice.

Media and Entertainment

Korea maintains regulatory restrictions on local advertising and local language dubbing for retransmitted foreign channels, and prohibits foreign retransmitted channels from carrying ads for the Korean market. These provisions unnecessarily interfere with foreign access to Korea's television market.

Cloud Computing

The Cloud Computing Promotion Act was passed in 2015 but significant blockers still exist to the adoption of public cloud services, especially those that are provided from offshore locations. Under government procurement policies, all public sector agencies are required: (a) to ensure that server, network, security equipment they procure are physically separated from cloud computing services consumed by general users; and (b) ensure that only specific encryption algorithms that are recognized locally are used in IT products that incorporate encryption technology. These government policies effectively favor local IT providers to the detriment of foreign service providers. Furthermore, in the healthcare sector, medical records must remain onshore and backup systems need to be physically segregated from other systems that process patient data.

LATIN AMERICA

Signal Theft

The unauthorized use of encrypted television signals is a widespread practice in Latin America. Such practice distorts competition, affects existing U.S. investments in the region and restrains new entrants from accessing the market.

Pay-TV operators in Latin America have to compete against illegal or informal providers that offer services at predatory prices or even for free. Such providers do not pay taxes, do not comply with regulatory licensing regimes and requirements, do not pay for the content they illegally retransmit and do not offer installation, support or warranty services. Therefore, any revenue derived from the business represents positive margins, which are a significant competitive advantage and permits them to set artificial low prices that a law-abiding operator could never match.

Governments in Latin America are well aware of the problem, yet they fail to take measures that effectively stabilize competition and regulate informal service providers. This creates a barrier to market access and harms U.S. investment in the region.

Signal theft equipment (which are the devices used to decrypt encrypted pay-TV signals) cost between US$80-130 and are sold online or in large retail stores. Once such equipment is acquired, the user is able to access an average of 200 pay-TV signals illegally and no longer needs to pay a monthly subscription fee[27]. Most Latin

[27] See, for example, Decos Chile's webpage, available at http://www.decoschile.com/, last accessed August 27, 2015. Decos Chile offers and sells online signal theft devices in Chile at an average price of US$100 and announces that customers do not need to pay any monthly fees, will not be attached to subscriber agreements and can access more than 200 pay-TV signals.

American countries have laws prohibiting the commercialization of equipment that decrypts encrypted signals, yet the practice is generally tolerated and insufficiently enforced by the local governments.

The Organization of American States (OAS), through its telecommunications advisory body (CITEL), recently acknowledged that "subscription satellite television has been negatively affected" by the widespread use of signal theft devices "to the extent of putting its future development at risk". CITEL has urged its member states to "set forth provisions to prevent importation, marketing and use" of such signal theft devices.[28]

DIRECTV Latin America, a subsidiary of AT&T, has urged USTR[29] in the past to particularly engage the governments of Brazil, Colombia, Chile, Ecuador, and Paraguay to enact legislation that would specifically prohibit the theft of pay-TV signals, and to better enforce the laws already in force.

In the case of Brazil, despite important efforts made by customs to stop signal theft devices from entering into Brazil's territory, it has not yet adopted specific legislation to combat signal theft. A bill of law PL (239/07) intended to impose criminal penalties for signal theft has been proposed at Congress but remains stalled because the Brazilian House of Representatives is yet to act on it.

Colombia has not made material progress in better enforcing its own laws or implementing its trade agreement obligations to combat signal theft. Many local community cable television operators retransmit pay-TV signals without authorization. Although Colombia's television regulator has initiated a variety of enforcement actions against community cable operators, the vast majority of them have not yet resulted in any meaningful action.

In Chile, signal theft remains a competitive threat to pay-TV operations, which lose numerous subscribers every year to "free" decoders used to steal pay-TV satellite signals. Under the U.S.-Chile FTA (2003), Chile is committed to adopt measures to sanction signal theft[30]. In compliance with such commitment, the Chilean Government proposed measures in 2013 to criminalize the sale, importation, distribution, and installation of illegal satellite devices, however, the proposal has made no significant progress through the Chilean legislative process.

Paraguay continues to be the leader of legal importation of satellite decoders with pay-TV signals decryption capabilities, in South America. Such devices have also been openly available throughout the Paraguayan territory, in particular in Ciudad del Este city. Paraguay is yet to make progress in better enforcing current legislation to combat signal theft.

In Ecuador, the Intellectual Property Law from 1998 that criminalized the violation of copyright and related rights was repealed. As of February 10, 2014, with the new Criminal Integral Code, the intellectual property crime, ceased to be a typical, unlawful and culpable conduct, therefore leaving copyright owners with just administrative and civil remedies.

USCIB remains concerned that signal theft constrains the growth of the telecommunications and media industry in Latin America, and diminishes investment in technology and innovation across the region. USCIB urges USTR to engage Latin American countries (including Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Puerto Rico, Uruguay and Venezuela) to take the following actions:

---

[28] Available at: https://www.citel.oas.org/en/SiteAssets/PCCII/Final-Reports/P2!R-3857r1_i.pdf.

[29] See, United States Trade Representative's Special 301 Review, 2013, 2014 and 2015 submissions made by DIRECTV Latin America LLC.

[30] United States-Chile Free Trade Agreement, U.S.-Chile, art. 17.8, June 6, 2003, 42 I.L.M. 1026, available at http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text ("U.S.-Chile FTA")

- Enact robust laws to prohibit the importation, commercialization and use of signal theft equipment,
- Increase regulatory oversight and strengthen civil and criminal enforcement, and
- Consider the impact of signal theft when conducting regulatory market analysis.

MALAYSIA

Financial Services

In 2013, Malaysia adopted a screening mechanism for the financial sector. The screen, known as the Best Interests of Malaysia test, gives the Malaysian financial services regulator, Bank Negara Malaysia unfettered and unchallengeable discretion to restrict or add conditions on U.S. investments in the Malaysian financial services sector. The “Best Interests of Malaysia” test, is highly subjective and applies to all investments in the financial services sector (e.g., banking and insurance). The criteria for evaluation under the “Best Interests” screen are vague, and not subject to review. Moreover, the 2013 Act provides the Malaysian financial services sector regulator (Bank Negara Malaysia, BNM) unfettered authority to impose whatever limitations BNM sees fit pursuant to the Best Interests screen, including equity caps.

Media and Entertainment Services

Malaysia undertook a number of important market-opening commitments in TPP. Once that agreement is in full effect, Malaysia’s media and entertainment market will be largely open to providers from TPP countries. Until Malaysia makes the changes necessary to implement TPP, however, it maintains a variety of laws and regulations that limit the size of this sector and discriminate against foreign providers. Malaysia maintains a quota on free over-the-air broadcast TV of 70-80 percent local content, including no foreign content during primetime. Malaysia’s cinema entertainment tax is at an effective rate of up to 31 percent, among the highest in the world, limiting the growth of the theatrical industry. Malaysia imposes limits on foreign investment in a variety of media and entertainment sectors, limiting capital inflows and business opportunities in these sectors.

Cross Border Dataflows

The government requires medical records to be kept within the premises of local healthcare institutions, which effectively amounts to a data localization policy.

MEXICO

On July 18, 2016, President Peña enacted legislation that includes several reforms to the National Anticorruption System. The central purpose of these reforms is to tackle one of the most criticized issues of the current administration, through transparency, accountability, property and financial background checks.

As part of the reforms, Mexico has approved the General Law of Administrative Responsibilities (“GLAR”). This law establishes that serious administrative offenses derived from private party activities will include: bribery, illegal participation in administrative procedures, use of false information, conspiracy, wrongful use of public resources, and wrongful recruitment of ex-public servants. The reforms also establish obligations for public officers to fully disclose their asset declaration, and compels private companies to establish internal “integrity” policies.

The GLAR also establishes coordination mechanisms at the three government levels, for prevention, investigation and corruption activities. A Civil Committee will be created to oversee policy proposals, methodologies, indicators and evaluation of the National Anticorruption System.

Drug Registries announcements

On June 19th, the Mexican Federal Commission for the Protection Against Sanitary Risk (COFEPRIS) announced measures to streamline the process for securing marketing authorization for medicines, starting in September 2016. One of the initiatives entails the partial acceptance of dossiers in English in order to facilitate the marketing process for international firms. The exemption will apply to three of the five sections included in the dossier, related to pre-clinical and clinical trials.

From July 22, 2016, COFEPRIS agreed to recognize foreign Good Manufacturing Practices (GMP) from authorized sanitary authorities valid for foreign manufactured drugs, and for registry renewals. Approved foreign sanitary authorities include: FDA (US), Health Canada, TGA (Australia), EMA (UE), Swissmedic (Switzerland), ANVISA (Brazil), MHLW (Japan), and MFDS (KOREA). As a part of the announcement, COFEPRIS proposed a new strategy for extending renewals of drug registries. The proposal allows for modifications and two 5-year term extensions for registries. It also simplifies the process and promises review within 45 days after the extension renewal is submitted.

Special Economic Zones

On July 2, 2016, the Federal Government enacted new regulations for the Federal Law of Economic Special Zones, which creates a new Federal Authority for the Development of Special Economic Zones (SEZ), with the capacity and competence to declare a SEZ. These new SEZ swill have administrative, financial, tax and customs benefits and advantages for industrial investments.

Telecommunications

Mexico enacted a new Federal Telecommunications and Broadcasting Law on July 14, 2014, which went into effect on August 13, 2014. The new law introduced competition in the broadcasting and telecom sectors and opens the door to new operators seeking to provide all types of services, and to current players seeking to offer additional, previously excluded services, provided that certain market non-concentration requirements are satisfied. USTR should actively monitor the ongoing implementation of these reforms to ensure that this progress remains on track.

In addition, it is fundamental to maintain the autonomy of the new Mexican regulatory agency, *Instituto Federal de Telecomunicaciones* (IFT) to ensure the application of predictable, evidence-based and long term regulation. The IFT identified América Móvil as a preponderant economic agent (PEA) in 2014. The IFT has authority to impose, and has imposed asymmetric regulatory measures on the PEA. However, two years following Mexico’s telecom reforms and the reclassification of América Móvil as a preponderant economic agent, its control of the market has remained with 60 percent of the total telecom market and 70 percent of the wireless market. Strengthening and enforcing much-needed asymmetric measures will help prevent abuses of the dominant market position, and create effective and durable market competition.

USCIB notes that Mutual Recognition Agreements (MRAs) reduce redundant and expensive testing, permitting equipment sold in their markets to be tested and certified in the United States. In May 2011, the United States and Mexico signed a bilateral MRA on conformity assessment of telecommunication equipment, fulfilling a long outstanding NAFTA obligation. The IFT now has the required authority to accomplish full implementation. In March 2016, the IFT issued the guidelines for accreditation, designation and recognition of test labs, which according to the authorities will be the last regulation needed to harmonize the testing procedures in both countries. In August 2016, the IFT sent to the FCC Annex 1 of the MRA, which includes all the regulations subject to testing under the MRA. Still pending is the issuing of Annex 2, which includes the list of entities that will be accredited, designated or recognized to conduct testing in each country. The U.S. and Mexico should expeditiously continue the implementation process.

Technical Barriers to Trade

Mexico's National Commission on Efficient Energy Use (CONUEE) has continued to issue energy efficiency standards (NOM-032-ENER-2013 published in 2015 and now PROY-NOM-029-2016 is under discussion). All energy standards require local testing and some of them require specific marking and labeling for electronic and electrical equipment. Acceptance of international testing results, international marking and non-physical labeling would attain the authorities' goal to ensure that products comply with the efficiency standards, without the burden and costs of local testing and labeling.

Administrative Procedures and Customs Practices

Mexico's tax authority, the *Servicio de Administración Tributaria* (SAT) issued an amended version of the Customs Law Rules (reglamento de la ley aduanera) on April 20, 2015, ostensibly to harmonize its terminology and regulatory definitions with the Customs Law, while including new documentary requirements. The most significant change resides in Article 81, which establishes the "requirement for an Importer of Record to provide documented support on the valuation of imported merchandise to the Mexican customs broker." Documents must be available at the time of importation to be provided to customs upon request. As written, the article makes importing cumbersome, and sometimes impossible, as it asks for documents that are usually issued after the article is imported, or are confidential, or non-existent. The enforcement of this requirement has been delayed five times.

The SAT's practice of creating regulations without private sector input, by relying on a provision of Mexican law that does not require public comment on fiscal-related regulations, has led to several regulations that cannot be applied because they are impossible to implement, and are following the same path as the aforementioned Article 81.

Currently, there is a project to change rule 3.7.3 and include a new rule 3.7.35 of foreign trade. These proposed changes would increase the VAT and duty for express shipments, in addition to several new requirements, such as reporting the HS code of every product contained in an express shipment and monthly reports listing tax IDs for customers and shipment invoices. This would eliminate the possibility to import via courier with the "simplified import" figure and apply to every import where the package comes from a company to an individual or another company.

This would mean that all imports will need a Custom agent and a formal classification of merchandise, and undergo the normal import procedure for large cargo. It would apply even when the cost is minimal or there is no declared value a specific import. While the SAT maintains this is necessary to avoid technical smuggling via courier from e-commerce sites, the enforcement of this requirement would (1) create additional burdens both in time and money for all types of companies, (2) run counter to what the Mexican Government has been negotiating within the North American region on facilitating e-commerce, and (3) not address its purported objective of eliminating technical smuggling.

Maintaining a simplified imports model not only helps fuel the growth of a new sector of the Mexican economy, but also brings consumer benefits by allowing wider selection of products at the best possible prices. Mexican customs authorities should 1) ensure compliance with its national and international commitments regarding foreign trade facilitation, as expressed in the TPP and the TFA—to which Mexico recently adhered; and 2) evaluate the alternate rule proposed by courier companies. Industry requests the U.S. government include this issue in the NTE 2017 and immediately oppose these changes.

MIDDLE EAST AND AFRICA

Restrictions on Voice of Internet Protocol (VoIP)

Government policies around the world that restrict or prohibit voice over Internet protocol (VoIP) and other forms of Internet telephony create obstacles to continued Internet innovation and have a negative impact on trade and investment. Since VoIP is a key application that drives broadband deployment, such prohibitions on VoIP can easily deter cross-border service deployment and negatively impact a broad range of other information flows. VoIP restrictions also effectively limit access to, and distribution of, video applications, such as video conferencing, that incorporate real-time voice traffic.

Requirements to separately engineer service deployments in line with national rules, and/or comply with *sui generis* national licensing requirements, are costly and greatly impede, deployment of VoIP and Internet telephony services to a given market.

Please consider the following country-specific examples:

- Saudi Arabia[31] policies restrict the use of VoIP by non-basic service licensees to closed user groups (CUGs) that do not allow for origination or termination of IP phone calls on the PSTN.
- Other governments restrict the provision of VoIP to a licensed operator and sometimes one that is state-owned, require VoIP providers to partner with the licensed operator, or impose onerous or restrictive licensing regimes which unnecessarily constrain trade and investment. Examples of jurisdictions with restrictions include Egypt,[32] Qatar,[33] United Arab Emirates,[34] Uzbekistan,[35] and Vietnam.[36]

---

[34]International VoIP services are permitted to a limited extent in Saudi Arabia, and are restricted to closed user groups that may not interconnect to the PSTN. Note: Saudi Arabia confirmed on in March that it was seeking to regulate local use of popular Internet-based services such as Skype and Whatsapp, and threatened "suitable measures" if the providers of the services failed to comply with the kingdom's demands. See http://www.marketwatch.com/story/saudi-arabia-seeks-to-regulate-skype-web-services-2013-03-31

[35]There is no specific legislation for the provision of VoIP, but VoIP providers are required to have a license. Class A Internet Service Provider (ISP) licensees may offer VoIP services within closed user groups, either within a company or via virtual private networks (VPNs), and only on a PC-PC basis..

[33] VoIP is permitted in Qatar; however, it may only be provided through the two existing licensees, Ooredoo Qatar (formerly Otel) and Vodafone Qatar.

[34] VoIP is permitted in the United Arab Emirates; however, it may only be provided by, or in partnership with, the four licensed operators: Etisalat, Du and satellite companies Thuraya and Yahsat. Licensees are allowed to block unlicensed VoIP traffic on their networks.

[35] VoIP is permitted in Uzbekistan: however, services are strictly controlled by the state-owned operator Uzbektelekom (UT). There are four ISP providers offering VoIP services in the country and all are directly or indirectly owned by the UT, and UT sets high VoIP tariffs. Consequently, it is unlikely that foreign operators would be able to provide a new VoIP service in Uzbekistan under the current regulatory and market conditions. CUG VoIP would be categorized as a data transmission network service and would not be exempted from licensing requirements.

[36] VoIP is permitted in Vietnam; however, foreign companies are prohibited from providing such services. The Vietnamese Government recently passed a new Telecommunications Law which clarifies that VoIP services, including those offered on a CUG basis, are considered Internet Telephony services and categorized as a Telecommunications Value-Added Service (Telecom VAS). Pursuant to Vietnam's WTO commitment, foreign companies are not permitted to obtain a license to provide such services. Instead,

- In UAE, Morocco, Saudi Arabia, and Oman, nationally controlled telecom services have consistently throttled foreign VoIP and communications services, creating significant market access barriers for US-based Internet services and apps. Regulators have generally condoned these blocks. We urge USTR to classify this issue as a market access barrier and to engage directly with UAE and other countries in resolving these barriers.
- Moreover, in some instances, regulations are ambiguous or subject to government caprice. This is the case in jurisdictions such as Kuwait and Ethiopia[37] where the status of VoIP has fluctuated, but it is not generally considered to be legal.

USTR should encourage governments to permit the unrestricted use of VoIP to enable U.S. companies to gain the economies and efficiencies of global platforms, reduce the cost of doing business in foreign countries, and promote investment and vigorous information flows.

Free Trade Zones (FTZs)

According to the International Chamber of Commerce, in which USCIB serves as the U.S. National Committee, there is a great need for greater regulation and oversight of Free Trade Zones. They are especially vulnerable to facilitating counterfeiting and illicit trade. According to the ICC, "FTZs provide significant opportunities for legitimate business and play a critical role in global trade. However, the by-product of their proliferation brings increased vulnerability for abuses by criminal actors who take advantage of relaxed oversight, softened Customs controls and lack of transparency. Free Trade Zone management, in some instances, fails to enforce intellectual property rights (IPRs), thereby enabling laundering, distribution of counterfeit goods and consumer purchases of potentially unsafe products."[38]

Recent cases in the United Arab Emirates, such as Case No. 15873 of the 2006 penal and Criminal Circuit Misdemeanor Case No. 1614/2009, as well as the Kardo Case in Turkey, provide examples of the challenges that are often associated with the regulation and oversight of FTZs. We encourage USTR to look more deeply into this phenomenon and develop with its interagency colleagues, a government-wide effort to encourage trading partners to control the FTZs.

Saudi Arabia

- **Gulf Council Cooperation (GCC) pricing policies**

Pricing for new registrations is decided on the lowest price among a basket of 30 countries. In the last months, the Saudi FDA pricing committee went beyond this rule, requesting a further reduction. This lack of a clear price mechanism makes the market unpredictable for innovative breakthrough medicines.

- **Regulatory data protection (RDP)**

The submission of confidential test or other data for the marketing authorization of innovator drugs are protected for at least five years from the approval date. However, Saudi Arabia has not complied with its own regulation and WTO commitments. It demonstrates a lack of effective RDP in Saudi Arabia.

- **Cancellation of quantities for awarded tenders**

On January 28, 2016 the Saudi Ministry of Health issued a circular related to 2015 and 2016 tender awards. The

---

foreign companies are required to enter into a joint venture with a locally licensed telecommunications service provider and cannot receive more than 65 percent of the total revenues flowing from the joint venture.

37 The legal status of VoIP is unclear and has fluctuated several times in recent years as the government simultaneously tried to limit VoIP's negative impact on the Ministry of Communications' (MoC) international call revenues, while acknowledging VoIP's value in driving Internet use.

38 http://www.iccwbo.org/advocacy-codes-and-rules/bascap/international-engagement-and-advocacy/free-trade-zones/

government canceled 30 percent of the quantities that were awarded in 2015 tenders and planned to be delivered in February, and 50 percent of the quantities of the tenders of 2016 (the government has the right to increase or decrease the quantities by 30 percent). Key concerns with this issue are the predictability of the decision, as well as the unilateral move without consultation with the industry.

- **Offset requirement condition**

Saudi Arabia inserted a new requirement called “offset requirement” in one of the most important national tenders in January 2016. For all Saudi pharmaceutical tenders equal to or greater than SAR 400 million,[39] the winning bidder must invest a minimum of 40 percent of the total value of the bid in Saudi Arabia. This requirement is detrimental to attracting innovative pharmaceutical investment to Saudi Arabia.

Jordan

- **Local preference in government tenders**

The government is not willing to sign the Government Procurement Agreement, resulting in the preferential treatment to locally-produced generic products and affecting MNCs in government tenders.

- **Burdensome regulatory and pricing policies**

The implementation of regulatory policies, bureaucratic procedures and frequent price revision has a negative impact on the registration of novel products and limits the availability of registered products.

- **Innovative industry representation in the Higher Council for Drugs**

The request for representation aims to improve policy dialogue on best practices with the government.

- **Regulatory Data Protection (RDP)**

Health authorities have consciously taken steps to weaken their RDP regime, and continue to deny RDP to new indications. Jordan requires the MA application of a new medicine to be filed within 18 months from the first worldwide regulatory approval in order to be considered as a “new chemical entity” and, thus, eligible for RDP. If it is not so filed, a generic version of that medicine can be approved. Meeting the 18-month deadline is complicated by a series of regulatory requirements established by the JFDA.

Iraq

- **Counterfeit Pharmaceuticals**

The situation of counterfeits worsened via parallel trade, which is not clearly or transparently regulated.

- **Pharmaceutical product licensing**

The registration process is non-transparent, and guidelines on assessing new submissions are ambiguous. Pharmaceutical companies receive irrational and excessive requests for documentation, beyond the international norms, making the registration process long. Also, the law requires the molecule to be listed in the national formulary, in order to be considered for registration. However, the formulary listing has no clarity on criteria.

Algeria

- **Pharmaceutical Pricing**

The process for setting prices is not transparent and does not provide for any specific appeal system. Algeria has implemented policies to control prices: (1) products that have corresponding generics on the Algerian market are subject to reference pricing for reimbursement; (2) some patented products with no generic equivalent on the market have been referenced against generics deemed to be in the same therapeutic class; and (3) imported, patented products are subject to international reference pricing. This poses new issues to pharmaceutical companies. Due to delays in pricing approvals, combined with new international pricing benchmark, the pricing review for products is often delayed.

- **Regulatory delays**

---

[39] 1 SAR, Saudi Riyal = 0.27 USD

The registration process is slow and additional, burdensome requirements for obtaining registration to market pharmaceutical innovative products have been implemented. Also, local manufacturers receive preferred treatment, affecting patient access to innovative medicines.

- **Intellectual property**

Algeria has inadequate patent protection, ineffective mechanisms to enforce patents, and does not grant RDP. A generic copy of a product covered by an Algerian patent may be granted MA while the patent on the original product is still in effect. This puts the originator in an unfair position with no possibility to defend its rights.

Morocco

- **Discriminatory pharmaceutical pricing policies**

The price for a drug is picked based on the lowest price out of 7 reference countries: France, Portugal, Spain, Belgium, Saudi Arabia, Turkey and the country of origin (COO). Since Morocco doesn't have the same sales or medical coverage as in these countries, it is not possible to compensate for the low price.

- **Marketing authorization (MA)**

MA is granted only to companies that have a manufacturing site in Morocco. This law is problematic for many MNCs as they do not hold all the rights to their products (the MA is owned by a third party, in general a local manufacturer). This means that if a MNC wants to do business in Morocco but does not have a manufacturing plant in the country, it needs to make an agreement with a local company.

- **Lack of regulatory data protection**

Morocco does not provide effective RDP. A new Decree on MA, requiring the Office of Drug and Pharmacy at the Health Ministry to implement effective RDP in Morocco, is therefore needed.

Tunisia

- **Government pricing restrictions**

A price for a pharmaceutical product is based on prices of the registered product in the COO; and prices of other products deemed to be in the same therapeutic class. In addition, health authorities impose a discount of a minimum of 12.5 percent compared to the price in the COO. In some cases the authorities are requesting additional price reductions of up to 50 percent. The criteria for these requests are not clear nor based in legislation, creating a highly unpredictable environment for the marketing of new medicines.

- **Lack of regulatory data protection (RDP)**

Tunisia has not complied with its own law and international obligations to provide RDP for pharmaceutical product marketing approval, except for products that are already protected in their COO and when their companies have already submitted a request to protect the patent in Tunisia.

Egypt

- **Pharmaceutical Pricing**

Government pricing is not clear, fair nor transparent. There is a need for pricing policies that enhance timely access to treatment, based on transparency and predictability and consistent with international trade agreements.

- **Intellectual property**

Egypt does not have patent linkage system allowing the Ministry of Health to grant regulatory approval for copies of innovator products that still have a valid patent. Egypt also lacks RDP and effective patent enforcement. This allows local manufacturers to obtain MA for generic products prior to the expiration of the patent of the originator. Accordingly, there is a need for stronger IP protection.

NEW ZEALAND

Telecommunications

In 2013, New Zealand passed amendments to the Telecoms Interception Capability and Security (TICS) Act which require technology providers to offer interception capabilities for all telecommunication services. The amendments, for which domestic telecommunications firms advocated, apply to online services providers as well as "traditional" telecommunications companies, and providers outside of New Zealand can be required to provide the intercept services. This could lead to conflicts with laws in other jurisdictions that may limit disclosure of users' communications to foreign law enforcement agencies, thus making it difficult for overseas providers to offer VOIP services in New Zealand.

Encryption

The government recently relaxed its policy on the use of office productivity policy cloud services hosted outside of New Zealand. However, they are now considering imposing a condition that, in order to use such services, government agencies must "*ensure that data is encrypted both in transit and at rest, and that agencies have sole control over the associated cryptographic key*"[40] This condition, if adopted, would appear to be inconsistent with New Zealand's future TPP obligations.

NIGERIA

In December 2013, the Nigerian Ministry of Communication Technology issued *Guidelines for Nigerian Content Development in Information and Communications Technology (*the Guidelines). The Guidelines contain highly problematic provisions that will undermine the ability of U.S. ICT companies to compete in Nigeria's telecommunications sector, as well as other sectors of the economy that rely on telecommunications products. Among many problematic provisions, the Guidelines contain onerous local content requirements, applicable for both government and private sector procurements, for hardware, software, services and data. Moreover, the Guidelines state that failure to meet these local content requirements will result in criminal penalties for executives of multinational companies. The Guidelines run counter to Nigeria's WTO commitments.

We urge USTR to press the Nigerian government to rescind these guidelines. U.S. ICT companies stand ready to work with the Nigerian government to develop Guidelines that are based on international best practices, rely on positive incentive policies to attract investment, and do not deviate from fundamental WTO obligations.

PAKISTAN

As USTR noted in the 2016 Section 1377 Review, Pakistan has removed the former restrictions on the negotiation of competitive termination rates with all carriers in Pakistan. On February 24, 2015, the Supreme Court of Pakistan lifted a lower court stay and affirmed the decision of Pakistan's Ministry of Information Technology ("MIT") to withdraw its former directive limiting competition, and the Pakistani Telecommunications Authority ("PTA") issued an order supporting competitive rate negotiations. USCIB has been greatly encouraged by these developments and is glad to report that we are experiencing significantly lower termination rates for traffic into Pakistan. We appreciate the efforts of USTR and the FCC for their work in bringing about this positive outcome that lowers the cost for voice calls to Pakistan for U.S. consumers.

---

[40] See Cabinet paper: Accelerating the adoption of public cloud services, June 2016 (copy available at https://www.ict.govt.nz/guidance-and-resources/information-management/requirements-for-cloud-computing/)

PERU

Nutrition Labeling

In May 2014, Peru notified draft regulations (G/TBT/N/PER/59) to the WTO TBT Committee which established criteria for added sugar, sodium, and saturated fat in processed food and beverages by which these products would be considered "high in" these nutrients. Multiple WTO member states and other stakeholders submitted comments requesting, among other things, more information on how the government of Peru developed these nutrient limits and justification for the departure from existing international standards, like Codex, that set guidelines for nutrient intakes in the context of an individual's total diet.

The government of Peru did not respond to these and other questions, and instead, in April 2015, issued a new regulation establishing even stricter nutrient criteria than those originally notified to the WTO. These criteria, though publically issued by Peru's Ministry of Health, were not ultimately implemented and enforced however, and in September 2016 the Ministry issued yet another set of criteria for added sugar, sodium and saturated fat in processed food and beverages. These criteria were notified to the WTO as a TBT measure, but once again no supporting technical information, risk assessment or other scientific justification was offered demonstrating why this latest iteration of criteria depart from international standards or how they are applicable to the Peruvian population.

Since the definition of processed foods in this latest regulation is so broad, and the nutrition criteria so strict, many pre-packaged foods offered in Peru will likely be considered "high in" added sugar, sodium and/or saturated fat and therefore subject to additional provisions including warning labels occupying at least 10 percent of the front-of-package, and restrictions on the marketing and advertising of these products.

Specifically, the warning label must state: "High in (Sugar and/or Sodium and/or Saturated Fat): Avoid Excessive consumption."

The WTO TBT Agreement calls on member states to ensure that technical regulations be "no more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create." WTO Members are required to assess those risks on the basis of "available scientific and technical information." Peru provides no scientific support for the criteria proposed in the regulation, and no justification for the departure from existing Codex standards, including Codex General Guidelines on Claims (CAC/GL 1-1979) which prohibits claims on labels which "could arouse or exploit fear in the consumer," and Codex Guidelines for Nutrition and Health Claims (CAC/GL 23-1997) stating "health claims must be based on current relevant scientific substantiation and the level of proof must be sufficient to substantiate the type of claimed effect and the relationship to health as recognized by generally accepted scientific review of the data and the scientific substantiation should be reviewed as new knowledge becomes available."

PHILIPPINES

Local Ownership Requirements

Pursuant to the Philippine Constitution and Foreign Investments Act, telecom operators in the Philippines must be at least 60 percent Filipino-owned. These regulations result in significant barriers to entry for foreign telecom services wishing to do business in the Philippines.

Similarly, Philippines prohibits foreign investment in mass media, including the payTV and broadcasting sectors. These restrictions impede capital inflows, limit the choices available to Philippine consumers, and inhibit the growth of these sectors in the Philippines.

Government Procurement Restrictions on Cloud Services

In September 2014, the government released a draft administrative order that appears to require government agencies to procure cloud services from the Government cloud, and only where this is not possible will they be permitted to purchase commercial cloud services. Such restrictions could prevent Philippine government agencies from accessing best-in-class cloud services. This is further aggravated by government procurement preferences that generally favor local companies and locally produced materials and supplies

Licensing Restrictions on Cloud Services

Telecommunications regulators have sometimes interpreted existing regulations to mean that cloud service providers are required to obtain a Valued Added Telecom Services license, which is open only to Filipino companies. The requirement has not been consistently enforced, but if it were, it could severely limit overseas companies' ability to provide cloud services in the Philippines.

Financial Services

The Philippines continues to require mandatory lending to the agricultural and agrarian reform sectors under the Republic Act No. 10000, which requires banks to lend 25 percent of their loanable funds to the agricultural and agrarian reform sectors. Mandated lending should be eliminated in the Philippines as has been done in Indonesia and Thailand. Foreign banks face difficulties in complying with the law due access to these sectors, and infrastructure (e.g. limits on branching capability). The practice of mandated lending has been abandoned in Indonesia and Thailand.

Taxation

The Philippines maintains an array of taxes on film distribution, which collectively make for an oppressive tax regime curtailing economic activity in the film distribution sector – including 30 percent income tax on net profits, 5 percent withholding tax on net receipts, 10 percent tax on distributor's share of box office, duties on prints and trailer imports, tax on advertising materials, tax on royalty remittances.

<u>RUSSIA</u>

Data Storage Requirements

On September 1, 2015, Russian Federal Law No. 242-FZ went into effect and threatens to have serious consequences on trade and investment. This law requires any company collecting personal data of Russian citizens through automated/computerized means to store and process the data on Russian territory. The law would impact a broad range of industries. Based on the first guidance that came from the regulator, non-Russian companies would be allowed to send data outside the country as long as it was collected with the use of local infrastructure in Russia and remains stored and processed on that infrastructure. That obligation means that, in practice, companies operating in Russia and dealing with individuals will be forced to place their servers within Russia if they plan to continue doing business in the market. In the case that a company does not comply, Roskomnadzor will require carriers to restrict access to those services following a court decision establishing the violation. In case of a restrictive interpretation of the law, current frameworks on cross-border data transfers would be under scrutiny with a huge impact on companies doing business in Russia and their customers and users.

On July 6, 2016, Federal Law No 374-FZ was signed into law and, like the above law, also is likely to have a significant impact on investment and trade in Russia. This law provides certain Russian authorities with information access rights. It also requires (i) Communication Providers and (ii) Internet Organizers to retain, in Russia, “metadata” as well “contents of a communication” sent through their services. The Law further requires Internet Organizers to provide the Russian authorities decoding information necessary to decrypt Internet communications.

Companies will be required to store huge quantities of data to comply with this new law. Furthermore, the process of retaining such data and complying with the decryption requirement will likely be complex. Accordingly, these obligations will likely impose significant cost and resource burdens on Communication Providers and Internet Organizers, which will likely discourage trade and investment in Russia.

SOUTH AFRICA

Intellectual property – potential changes to legal framework for IP protection

South Africa is reviewing draft changes to its intellectual property policy. It is important that any such changes advance a strong and balanced intellectual property framework for information and communication technologies that fosters innovation and growth.

On July 6, 2016, the South African government released the Intellectual Property Consultative Framework to engage with government partners and other stakeholders to raise discussion points for intellectual property policy formulation. USCIB encourages the South African government to engage in this process in an inclusive and transparent manner in order to ensure a balanced IP Policy that promotes innovation across all sectors and results in an enabling environment for technology transfer and investment.

Local content requirements

South Africa’s Black Economic Empowerment (BEE) policies include “Equity Equivalent” provisions by which multinational companies can contribute to advancement of minority groups in lieu of explicit share set-asides. These rules include local content and manufacturing provisions that are inconsistently interpreted and applied, hindering availability of best-in-class ICT products and services in South Africa.

Media and Entertainment Sector

South Africa imposes content quotas on broadcast and pay TV sectors that limit access of its consumers to foreign TV content. At the same time, South Africa has seen a significant growth in sales of set top boxes used to bypass encryption on pay TV or to access pirated content, with little to no enforcement against this activity. These policies substantially interfere with the growth of the legitimate market in South Africa.

THAILAND

In December 2007, Thailand brought its domestic telecommunications regulatory regime, Telecommunications Business Act (TBA), into compliance with its 1997 GATS Schedule of Commitments, including a new licensing framework. The National Broadcast and Telecommunications Commission (NBTC) was created to oversee implementation of the regulations. Despite these positive steps, the new licensing framework offers limited market opportunities for U.S. telecommunications services providers in Thailand.

The existing licensing regulations provide for three types of telecommunications licenses. The Type I license is for non-facilities-based telecommunications services and is subject to no foreign ownership restrictions. However, types of business in this category are very limited as set forth in the Telecommunications Business Act. Type II and Type III licenses restrict foreign ownership to less than half of registered capital (i.e. 49.99 percent) in companies seeking to provide advanced telecommunications services, whether facilities-based or non-facilities-based, to businesses (Closed User Groups) and consumers. At present, no large-scale telecommunications service operator in the Thai telecommunications market is wholly owned by a foreign investor.

In 2010, the NBTC has released a draft notification on business takeover by a non-Thai person. The Notification prohibits any “business takeover” of a Thai telecommunications business by a “foreigner,” which is defined as allowing non-Thai persons or entities to exercise controlling power or influence, whether directly or indirectly, to formulate policy, and/or to manage or administrate important business that may affect a telecommunication business's management or operation. Under existing law, non-Thai persons and entities are already prohibited from holding a majority of shares in such a business. If this draft becomes effective, the Thai telecommunications market would be less attractive to foreign investments compared with the current regulatory regime.

In 2011, the NBTC published a Notification on August 30, 2011, in the Royal Thai Government Gazette that restricts "foreign domination" of the country's telecommunications businesses.[41] The Notification applies to all current and future telecommunications licensees and severely restricts foreign investments in Thailand’s telecommunications sector. It came into full force on July 23, 2012. In particular, NBTC prohibits the following acts by non-Thai persons and entities:

- Direct or indirect shareholding by foreigners or foreigners’ agents;
- Use of apparent agents;
- Holding of shares with special voting rights;
- Participation in appointing or having control over the board of directors or senior officers of the licensee;
- Any financial relationship such as having a corporate guarantee or a loan with a lower-than-market interest rate;
- Licensing or franchising;
- Management or procurement contracts;
- Joint investments (by a licensee and foreigners);
- Transactions involving transfer pricing; and
- Any other behavior which provides direct or indirect control to a foreigner over a licensee.

[41] Wendy Zeldin, Thailand: Notification Restricting Foreign Takeovers of Telecom Businesses, Library of Congress Global Legal Monitor, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402837_text.

In October 2012, Thailand's 2100MHz 3G mobile license auction was approved by the NBTC, giving local concessions to AIS, DTAC and True. The approval was endorsed in November 2012, despite a petition made by a group of senators to the Administrative Court, alleging that the auction is illegal. Although adding 3G to the mobile market can be considered a positive step in opening up more competition, there is no change on controls imposed on foreign investors.

USTR should urge Thailand to further broaden the list of telecommunications services that can be provided by foreign carriers and eliminate the restriction on foreign ownership of telecommunications businesses. Expanding market access would increase competition and stimulate new investment in the Thai telecommunications market. As is the case with China, restrictions on FDI are a significant disincentive to investment by U.S. service providers seeking to provide seamless, global services to their multinational enterprise customers.

At the 2007 ASEAN Summit, the leading countries in the region declared their strong commitment to accelerate the establishment of an ASEAN Economic Community (AEC) by 2015. The main purpose of the AEC is to make ASEAN a more dynamic and competitive economic force by making it a single market and production base by applying the principles of an open, outward-looking, inclusive, and market-driven economy. As envisioned, the single market would be based on five core elements: (1) free flow of goods; (2) free flow of services; (3) free flow of investment; (4) freer flow of capital; and (5) free flow of skilled labor.

Regarding the free flow of services, it is notable that the ASEAN member countries have so far negotiated eight packages of commitments under the ASEAN Framework Agreement on Services (AFAS). The "free flow of services" covers the liberalization of:

- Business services
- Professional services
- Construction
- Distribution
- Education
- Environmental services
- Healthcare
- Maritime transport
- Telecommunications
- Tourism

Thailand has entered into the 7th package of the AFAS, pledging commitment to allow for higher foreign equity ownership, but has not ratified the protocol itself. Regardless of whether the ratification is yet done by Thailand or not, USTR may not be directly benefited by the AFAS because this aims to make it opened for ASEAN members only. However, entering into the Thai market through other ASEAN countries may enable investors from outside ASEAN to indirectly get involved in Thailand's telecommunication businesses, if the laws of such other ASEAN countries are less restrictive.

Thailand's market entry restrictions are a significant disincentive to investment by U.S. service providers seeking to provide seamless, global services to their multinational enterprise customers. USCIB therefore urges USTR to encourage Thailand to broaden the list of telecommunications services that can be provided by foreign carriers.

Financial Services

Thailand continues to restrict foreign participation in the banking sector. Banks are limited in the number of licenses for bank branches and subsidiaries. In practice, discretion by the Bank of Thailand means little access for foreign banks. For example, foreign banks typically must acquire an existing bank to participate in the market and is limited to 25 percent ownership. The Bank of Thailand has discretion to raise the equity participation by the foreign bank. Thailand maintains restrictions on the maximum numbers of branches allowed and a subsidiary may open only 20 branches and 20 off-premise ATMs across Thailand. Thailand also restricts the number of ATMs a foreign bank branch may open to three.

TONGA

Although the Tongan government has removed its former requirement that all international traffic must pay a minimum rate of US$ 0.30, that country's major supplier, Tonga Communications Corporation ("TCC"), refuses to negotiate cost-oriented and reasonable termination rates and continues to block the circuits of U.S. carriers that refuse to accede to its unreasonable rate demands. Tonga thus continues to act in blatant violation of its recently-made WTO Reference Paper and Annex commitments to ensure that termination rates are both cost-oriented and reasonable. Additionally, Tonga's failure to prevent TCC's disruption of U.S. carrier circuits violates Tonga's Annex commitment to "ensure that service suppliers of any other WTO Member have access to and use of any public telecommunications transport network or service offered within or across the border of Tonga."[42]

Tonga joined the WTO on July 27, 2007 pursuant to commitments that it would, among other things, ensure that interconnection rates for the termination of international traffic with TCC, its major supplier carrier, are both "cost-oriented," as required by the WTO Reference Paper, and "reasonable," as required by the WTO Annex on Telecommunications.[43] Tonga also made the further Annex commitment described above that to ensure that carriers from WTO member countries would have access to and use of its cross-border circuits. At that time, U.S. carriers terminated international calls with TCC at rates of approximately US$ 0.13 per minute. Subsequently, under one U.S. carrier's most recent agreement with TCC, international termination rates were further reduced to approximately US$ 0.09 per minute for the period July 1, 2008 through August 31, 2008.

Notwithstanding its recent WTO commitments, the Tongan government issued a ruling on August 11, 2008 requiring all international traffic terminated in Tonga to pay a minimum rate of US$ 0.30.[44] The ruling provided no explanation or justification for the rate increase, which raised rates to more than three times the previously-negotiated level. Tonga has therefore provided no evidence that the rate increase reflects increased costs, as required by its WTO obligations. Indeed, the near-contemporaneous agreement of Tonga's major supplier, TCC, to the rate of US$ 0.09 per minute for the period July 1, 2008 through August 31, 2008 is compelling evidence that there is *no* cost justification supporting this increase.

Furthermore, on June 15, 2009, the FCC issued the Settlements Stop Payment Order on the U.S.-Tonga Route which found that the actions taken by TCC to disrupt the U.S. international networks of AT&T and Verizon, for purposes of trying to force these carriers to agree to higher termination rates, are anticompetitive and require action to protect U.S. consumers in accordance with FCC policy and precedent. The FCC Order requires that all U.S. carriers with FCC authorizations permitting the provision of facilities-based international switched voice

---

[42] Annex on Telecommunications, Sect. 5(b).
[43] WTO, *Report of the Working Party on the Accession of Tonga*, T/ACC/TON/17/Add.2, Dec. 13-18 2005.
[44] Tonga Government Gazette, Aug. 11, 2008.

services on the U.S.-Tonga route to suspend immediately all U.S. carriers' payments for termination services to TCC. Neither TCC nor the Tongan government have responded favorably to the FCC Order and have refused to modify the rates and exchange traffic directly with U.S. carriers. On November 16, 2009, the Federal Communications Commission extended its stop payment order to include all U.S. carrier payments for termination services to Digicel Tonga Limited. The Order remains in effect as of November 2012.

Also, as USTR reported in prior Section 1377 reports, the government of Tonga has instituted a new requirement that its carriers must pay the government US$0.051 for each minute of international incoming calls, which will maintain termination rates above cost-based levels. USCIB supports continued action by USTR to strongly press Tonga to take immediate action to ensure that TCC negotiates cost-oriented and reasonable rates in compliance with Tonga's WTO commitments and to require TCC to restore all U.S. carrier circuits.

TURKEY

As of September, 2014, Article 51 of the Social Security Institute Law has been amended. According to the new wording, the Institute is entitled to demand a fee for the application to the reimbursement list and remain in the list and for any kind of amendment to the list, also it maybe charge an agreement fee, and all these fees differ between importing or local groups. Additionally, following an announcement by the Ministry of Health on July 17, 2014, imported pharmaceuticals must renew their GMP inspections every three years. The same condition does not apply to locally produced pharmaceuticals, and the GMP inspection has to be conducted by the Ministry of Health. This process generally takes a minimum of 2 years.

Data localization

Existing or draft regulations applicable to several sectors, including financial and telecommunications services, impose restrictions on the transfer or storage of data outside Turkey. This has led entities in other sectors to insist on their data being kept in-country. Such measures may disrupt entities wishing to offer or utilize cloud services from offering innovative, cloud-based services in Turkey.

Protectionist measures to foster local manufacturing

The Turkish government is considering safeguard duties on ICT hardware, including tablets and mobile phones, despite the fact that the conditions required under WTO rules to use such safeguards do not appear to be present. The proposed safeguards appear to be part of a broader push to use protectionist measures to foster local manufacturing.

UGANDA

Uganda enacted legislation in 2013 imposing a tax of US$ 0.09 on inbound international calls. FCC international traffic reports show that U.S. carriers paid average rates to terminate international traffic in Uganda of $0.062 in 2012 and $0.075 in 2011.[45] Press reports indicate that the new tax was enacted as part of a package of measures to address the country's budget deficit.[46] The new tax is contrary to Uganda's WTO commitments under the Annex on Telecommunications requiring the provision of access to telecommunications networks and services in Uganda on reasonable terms and conditions. The tax also is contrary to Uganda's commitments

[45] *See* FCC International Traffic Reports for 2011 & 2012 , Table A1.
[46] *See* Uganda Radio Network, Sep. 20, 2013, http://ugandaradionetwork.com/a/story.php?s=56524. S*ee also*, *Uganda Hikes Mobile Taxes in Wake of Corruption Scandal*, Jun. 18, 2013, http://reason.com/blog/2013/06/18/uganda-hikes-mobile-taxes-in-wake-of-cor.

under the WTO Reference Paper requiring, for the types of international services covered by Section 2.2, the provision of interconnection with major supplier carriers at cost-oriented rates.[47] The tax substantially increases international termination rates without any demonstration of increased costs and fails to provide the reasonable terms for access and use required by the Annex. USTR noted these concerns in the 2015 Section 1377 Review and USCIB encourages USTR to continue to press this issue.

URUGUAY

Article 56 of the new Audiovisual Media Services Law (the "Media Law") prohibits pay-TV service providers from offering any other telecommunications service (including Internet). Such line-of-business restriction does not apply to the state-owned telecommunications and IPTV provider, ANTEL, which is exempted article 1 of the Media Law.

The restriction was subsequently challenged under constitutional grounds by different industry actors, including DIRECTV Uruguay, a U.S. company and a subsidiary of AT&T. Even though all constitutional claims against such provision are based on the same legal grounds (i.e. violation of the constitutional right to Free Enterprise), the Constitutional Court surprisingly decided to uphold the prohibition in the case of DIRECTV, but overrule it in the case of two local cable providers; Montecable and Nuevo Siglo (i.e. Constitutional rulings in Uruguay are "in personam", for the benefit of plaintiffs only).

Lines-of-business limitations that are discriminatorily imposed are contrary to the national treatment, performance-requirement, and fair and equitable treatment requirements of the United States-Uruguay Bilateral Investment Treaty. The Constitutional Court decision has the effect of targeting a single provider in Uruguay.

Measures that single-out and seek to limit a specific provider are part of a general approach towards limiting foreign investors' participation in the Uruguayan telecommunications market and restricting competitive opportunities. In line with that approach, the Uruguayan government revoked America Movil's license to provide pay-TV services in the country twice already and also included a provision in the Media Law (article 106) which states that new audiovisual service licensees can no longer be an affiliate of a foreign company. DIRECTV Uruguay has been grandfathered because it has been in Uruguay for over 10 years.

USCIB urges USTR to encourage Uruguayan authorities to revoke the existing line-of-business restrictions, such as the prohibition on DIRECTV Uruguay providers to offer other telecommunications services.

VIETNAM

Foreign Investment Restrictions

In April 2011, Vietnam's Ministry of Communications issued Decree No.25/2011/ND-CP implementing the new telecommunications law to comply with its WTO commitments. While the new law purportedly complies with Vietnam's minimum WTO commitments, it still fails to allow full competition in the Vietnam market.

In particular, Decree No. 25 limits foreign investment to 49 percent for providing telecom network service, and 65 percent for value added services. USCIB applauds Vietnam for its efforts in implementing its WTO commitments, including seeking comments from the private sector, but urges USTR to encourage Vietnam to eliminate all barriers to entry, including the FDI restrictions.

---

[47] WTO, Uganda, Schedule of Specific Commitments, Supplement 1, GATS/SC/89/Suppl.1/Rev.1, Nov. 29, 1999.

International Roaming Rates

In October 2014, the Vietnam Telecommunications Authority (VTA) issued an *Order for Promulgating the Average Tariff and Regulated Rate for Inbound International Roaming Services* setting a rate "floor" for international roaming data, SMS messages and voice services that U.S. and other operators outside Vietnam purchase from Vietnamese operators. The effect of the order has been to substantially increase the wholesale international roaming rates that U.S. operators pay to operators in Vietnam. USTR appropriately highlighted this concern in the 2015 Section 1377 Review. However, the Roaming Decree remains in place to the detriment of operators and end users in Vietnam, where data roaming is largely unavailable or extremely limited. USCIB encourages USTR to continue to press for the complete removal of this market barrier and for Vietnam instead to allow the market to set the wholesale roaming rates.

OTT Services

In 2014 and 2015, Vietnam's government released two draft regulations appearing to target foreign providers of Internet services. In October 2014, the Ministry of Information and Communications released a draft "Circular on Managing the Provision and Use of Internet-based Voice and Text Services," proposing unreasonable regulatory restrictions on Over-The-Top (OTT) services. These services are VoIP and Internet Based Text Services provided over IP broadband connections, either fixed or mobile through or over the Internet. These restrictions include requiring that foreign providers of OTT services must either install a local server to store data or enter into a commercial agreement with a Vietnam licensed telecommunications company. They also include allowing foreign providers of OTT services to place a server in Vietnam only if they cooperate with Vietnam's telecommunications companies who are licensed to provide telecommunications services in the form of OTT services in accordance with international commitments and foreign investment regulations as stipulated in the Law on Telecommunications. These restrictions are major barriers to market access for foreign OTTs that effectively prevent foreign competitors from viable entry into the supply of Internet-based services in Vietnam.

In April 2015, the Authority on Broadcasting and Electronic Information released a draft circular "On detailed regulation of cross border provision of public information." This regulation specifically targets overseas providers of some Internet services and imposes forced localization requirements, including the appointment of a "local legal representative."

Both of these draft regulations raise major concerns regarding Vietnam's compliance with its WTO commitments. They are trade-distortive and encourage anti-competitive behavior. The provisions requiring commercial agreements with a Vietnam licensed telecommunication's company and the requirement to install a local server violate several commitments Vietnam made in joining the WTO. As the provision of OTT services does not require an interconnection arrangement with a telecommunications operator, the imposition of a "commercial arrangement" with a local telecommunications service provider is unnecessary and on its face violates GATS Article VI requiring that "all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner." These provisions also violate GATS Article XIV requiring that "[s]ubject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services." Indeed, there is no reason to require a commercial agreement between OTT providers and local telecommunications providers other than to raise costs of rivals providing service in Vietnam.

These draft regulations also are more restrictive than those listed in Vietnam’s GATS schedule in 2007. While Vietnam’s schedule for Internet Access Services states only that “service must be offered through commercial arrangements with an entity established in Viet Nam,” the draft Circular requires foreign providers of chargeable OTT services to locate a server in Vietnam or to enter into a specified commercial agreement with a Vietnamese telecommunications company. To the extent that these restrictions represent “GATS-minus” commitments, or restrictions above and beyond those stated in Vietnam’s GATS schedule only eight years ago, they are inappropriate limitations. These restrictions also have an even more burdensome impact than they would have had in 2007, given the continued development of cloud computing and other telecommunications/Internet services.

The proposed OTT Circular also violates Vietnam’s commitment to provide National Treatment to foreign suppliers. These requirements specifically state that “foreign providers” without a local server shall enter into a commercial arrangement with a local telecommunications provider in order to provide service. This treatment of foreign OTT providers on its face is discriminatory as it does not apply to domestic OTT providers. Similarly, requiring a foreign OTT provider to locate a server in Vietnam in order to avoid the “commercial arrangement” with a local telecom provider is likewise discriminatory and also violates the National Treatment commitment. There is no reasonable basis to require such local servers except to raise the cost of service to a foreign competitor.

As USTR stated in the 2015 Section 1377 Review, Vietnam should reconsider the Circular and instead promote policies to encourage greater growth and competition in ICT services. USCIB urges USTR to continue to press these concerns.

Data Localization

The 2013 Decree on Internet Content ("Decree 72") requires companies that provide online gaming, social network and general website services to locate servers inside Vietnam. The rules are ambiguous with regard to other online services; implementing circulars will be required to clarify the Decree’s scope.

Draft Decree on Business Licensing Requirements for Information Security Products and Services

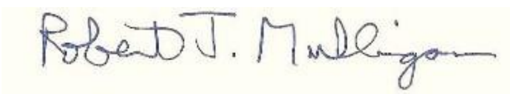
Vietnam has issued a draft decree proposing licensing requirements for entities engaged in providing information security products and services. Given that information security services can be supplied remotely and on a global basis, it is important that Vietnam’s eventual policy does not contain trade barriers that require localization requirements, either for data or local presence. We also note that these provisions would appear to contradict the commitments made by Vietnam in the Trans Pacific Partnership, specifically with respect to local presence requirements in the delivery of cross-border services and for data flows/computer facilities in the E-Commerce Chapter. Vietnam should consider aligning its approach to cybersecurity along the lines of international best practice, which creates a flexible and market driven approach based on risk management. Excessive government regulation of these services may make ultimately make it harder for Vietnam’s economy to benefit from the latest cybersecurity products and services. USCIB urges USTR to monitor developments and seek clarification from Vietnam that the Decree does not apply to foreign entities without a local permanent entity or branch office in Vietnam.

Media and Entertainment Services

When TPP is fully implemented in Vietnam, it will result in some improvements in access to Vietnam’s media and entertainment services market. Vietnam maintains a variety of discriminatory and distortive policies –

including a screen quota of 20 percent (with a proposal to increase it to a TPP-inconsistent 35 percent); a broadcast quota of 50 percent, an outright prohibition on foreign content during prime time, and a requirement that 30 percent of air time be devoted to Vietnamese feature films; restrictions on foreign investment; an opaque and uncertain censorship review process; 30 percent of total channels limit on foreign channels for pay TV providers; discriminatory requirements on advertisements on pay TV channels; local agent requirements for pay TV.

Sincerely,



Robert Mulligan
Senior Vice President, Policy and Government Affairs
USCIB

Barbara Wanner
Vice President, ICT Policy
USCIB