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October 30, 2018

Via online submission at www.regulations.gov

Edward Gresser
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street NW
Washington, DC 20508

RE: Docket Number USTR-2018-0029, Request for Public Comments to Compile the National Trade Estimate Report on Foreign Trade Barriers

Dear Mr. Gresser:

We appreciate the opportunity to submit the enclosed comments regarding the 2019 National Trade Estimate Report on Foreign Trade Barriers ("NTE"), as well as comments regarding the operation, effectiveness, and implementation of, and compliance with U.S. telecommunications trade agreements pursuant to statute ("Section 1377").

The Telecommunications Industry Association (TIA) represents approximately 250 manufacturers and suppliers of high-tech telecommunications networks and services here in the United States and around the world. TIA is also an ANSI-accredited standards development organization.

If you have any questions about this document, or if we can assist you in other ways, please do not hesitate to contact K.C. Swanson at 703-907-7714 or at kswanson@tiaonline.org.

Sincerely,

Kathlene C. Swanson
Director, Global Policy

Telecommunications Industry Association

2019 NTE and Section 1377 Comments
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Argentina

Import Licenses

The Macri Administration has made significant changes to the prior DJAI (Advance Sworn Import Declaration**)** requirements for non-automatic import licenses and other pre-approval requirements that restricted imports. The SIMI (Integral System of Import Monitoring) system replaced the DJAI system. However, the SIMI system retains different processes for automatic and non-automatic licenses, and the differences in the criteria and internal procedures for the two types of licenses are not clear. Many ICT products are included among the items subject to non-automatic licenses, which means the license may take up to 60 days. Article 3.5(f) of the WTO Agreement on Import Licensing Procedures states that "the period for processing applications shall not be longer than 30 days if applications are considered as and when received and not longer than 60 days if applications are considered simultaneously."

Recommendation: TIA urges the government of Argentina to ensure a WTO-consistent regime is permanently in place and to reduce the number of products subject to non-automatic licenses in a manner that is not trade-distorting.

Tariff Barriers

Since 2009, Argentina has applied a 21 percent VAT on information technology and electronic products, including mobile phones, cameras, and tablets produced outside the Special Customs Area within Tierra del Fuego province. Also, imports of these electronics products were subject to a 35 percent import duty, while imports of electronic components were subject to a 12 percent duty. While Decree 117/2017, issued on February 17, 2017, eliminated the 35 percent duty on imports of a number of electronic devices effective April 1, 2017, and the 12 percent import duty on electronic components as of February 21, 2017, tariffs remain on other products, including mobile phones.

In 2017, the government reduced the excise tax on imported phones from 17% to 10.5% through 2018. Thereafter, annual reductions will occur until 2024 when the excise tax reaches zero (9% in 2019, 7% in 2020, 5.5% in 2021, 3.5% in 2022, 2% in 2023, and 0% in 2024). The excise tax on phones produced in Tierra del Fuego dropped immediately to 0%.

Recommendation: TIA urges the government to remove the additional tariff barriers on all electronics products.

Subsidies

Argentina currently has a tax-exempt trading area called the Special Customs Area (SCA), located in Tierra del Fuego province. The SCA was established in 1972 through Law 19,640 to promote economic activity in the southern province. The SCA program, which is set to expire at the end of 2023, provides benefits for established companies that meet specific production, exportation, and employment objectives. Goods produced in Tierra del Fuego and shipped through the SCA to other parts of Argentina are exempt from some local taxes and benefit from reductions in other taxes. Also, capital and intermediate goods imported into the SCA for use in production are exempt from import duties. Goods produced in and exported from the SCA are exempt from export taxes.

Since November 2009, cell phones, televisions, digital cameras, and other electronic items not produced in the SCA, as noted above, are subject to a 21 percent VAT. Some products are brought from outside Argentina to facilities in the SCA where they are taken apart and reassembled for sale inside Argentina in order to qualify for tax benefits. In light of the recent EU and Japan WTO Dispute Settlement decisions WT/DS472/R and WT/DS497/R against Brazil's similar industrial policies, Argentina should revise its SCA.

Recommendation: TIA urges the government to remove the 21 percent tax that favors some domestic producers over others and over imported products.

Safety Certification Requirements and Other Conformity Assessment Changes

In 2016, Argentina made significant improvements to its product safety requirements and addressed some long-standing concerns with its conformity assessment regime. The Macri government has been very receptive to working with local and global industry to make these reforms. Among other changes, Resolution 171/16 helped reduce unnecessarily burdensome product safety requirements on Highly Specialized Equipment (servers, storage devices, etc.), while providing additional time for manufacturers to obtain approvals for components. The GoA also made some progress addressing regulator-customs communications and labeling issues, though more improvements are still needed.

There have also been positive changes in Resolution 75, and Argentina is now issuing agreements with international certification bodies to accept their SMark certificates for a range of IEC standards for ICT products (via local Certification Bodies - CBs). The GoA also is modernizing the conformity assessment process, and the new online system and the transition have led to some delays.

Recommendation: TIA urges the GoA to continue to work with the local industry representatives to make appropriate changes to Resolution 171 and other provisions, where improvements are necessary and simplify requirements. It also encourages the GoA to sign additional agreements with international CBs, to continue to improve the conformity assessment process, and adopt proportionate and streamlined approach to surveillance requirements for ICT products.

At the end of 2017, the Telecom Agency (ENACOM) issued Resolución 5762-E/2017 for the homologation tests for mobile phones. While from a technical perspective the new requirements were very similar to international standards (ETSI, ITU, 3GPP, etc.), the articles that explicitly allowed international testing/certification of compliance (CNC N° 450/2000 y N° 270/2002) were revoked, implying that testing must be conducted in local labs. More recently, ENACON suspended the enforcement of this resolution given the lack of domestic capacity. However, these developments have given rise to industry uncertainty with respect to testing and certification.

Recommendation: TIA recommends that the Resolution be updated to explicitly allow international testing/certification to demonstrate compliance.

WTO Information Technology Agreement

TIA strongly encourages Argentina to join the World Trade Organization (WTO) Information Technology Agreement (ITA).

Brazil

Protectionist Measures Favoring Domestic ICT Industry

Brazil provides tax reductions and exemptions on many domestically-produced ICT and digital goods that qualify for status under the Basic Production Process (*Processo Produtivo Básico*, or PPB). The PPB provides benefits for the production and development of goods if they incorporate a defined amount of local content. Tax exemptions are also provided for the development and build-out of telecommunications broadband networks that utilize locally developed products and investments under the Special Taxation Regime for the National Broadband Installation Program for Telecommunication Networks (*Regime Especial de Tributação do Programa de Banda Larga para Implantação de Redes de Telecomunicações,* or REPNBL-Redes). Two WTO Dispute Settlement decisions -- WT/DS472/R and WT/DS497/R, Brazil – Certain Measures Concerning Taxation and Charges -- determined that these measures, among others, were inconsistent with Brazil's WTO obligations.

Another example of localization requirements that impose barriers to trade is the bidding for spectrum bands promoted by Brazilian National Agency of Telecommunications (*Anatel*) in June 2012. Companies that were given the right to explore the 2.5 GHz and 450 MHz spectrum bands were required to prove investments that include a high percentage of products, equipment, and telecommunication systems with local content. This includes goods manufactured in Brazil according to the "basic manufacturing process" (*processo produtivo básico* - PPB) rules and locally developed technology.

Recommendation: TIA urges the government of Brazil to eliminate all local content requirements. It should bring its industrial policies into alignment with its WTO obligations. It should eliminate policies that may obstruct fair access to the future spectrum auction processes for foreign companies. TIA also recommends that the methodology for software certification for local development be rescinded as a tool to grow and develop Brazil's domestic software industry. We also urge the government of Brazil to not unnecessarily impede the cross-border flow of information through local storage mandates. We believe that market dynamics, not government requirements, should be the main factors determining which technologies should be deployed based on customer needs. Brazilian consumers, including government agencies and businesses, should benefit from competition and have access to world-class technologies, regardless of where they are produced.

Government Procurement

Decree 7174/2010, which regulates the procurement of a number of goods including ICT goods and services, allows federal agencies and state entities to give preferential treatment to locally manufactured products and goods or services with technology developed in Brazil based on compliance with the "basic manufacturing process" (*processo produtivo básico* - PPB). ICT bids for goods and services considered "strategic" may be limited to those with technology developed in Brazil.

Recommendation: TIA supports efforts to encourage Brazil to accede to the WTO Government Procurement Agreement to increase transparency in the procurement process.

WTO Information Technology Agreement

TIA strongly encourages Brazil to join the World Trade Organization (WTO) Information Technology Agreement (ITA). This agreement removes tariffs on a broad range of ITA-covered products, including

telecommunications equipment, which reduces costs and stimulates demand. The ITA would lower the costs of telecommunications equipment to Brazilian enterprise purchasers and the end consumer, thus freeing up resources to increase connectivity and enable the Brazilian economy to more quickly realize the economic and social benefits of expanded use of information and communication technologies (ICTs) in Brazil. This is especially important as Brazil implements the National Broadband Plan and promotes the expansion of broadband connectivity throughout the country, as well as other digital inclusion initiatives.

Complex Tax System

Brazil places high import tariffs on imported telecommunications products, including a 16 percent import tax on mobile phones, and a system of multiple cascading taxes makes the effective tax rate much higher. Double taxation is an issue that affects many multinational companies doing business in Brazil, even those headquartered in countries with which Brazil has a Bilateral Tax Treaty in effect. While the multiple layers and cumulative nature of taxation in Brazil is a cross-sectoral challenge, there are special complexities regarding taxes on telecom services, which reach as high as 40 percent in some states. A variety of tax incentives disadvantage foreign goods and favor domestically produced products. Brazil's complex tax system often leads to litigation, and there is currently no process for mediation.

Recommendation: Lowering taxes and tariffs on ICT products and simplifying the Brazilian tax system would increase trade, lower the cost of ICT products in the region, and facilitate business opportunities for U.S. companies. An unnecessarily complicated tax system leads to higher prices that will subsequently be passed on to consumers. Brazil should explore simplifying its tax system to better align it with other countries' tax systems. It should also streamline the legal process under which taxpayers can challenge assessments raised by the Brazilian tax authorities, which should include the implementation of a tax mediation procedure.

Testing and Certification

TIA is concerned about the Brazil National Telecommunications Agency (*Anatel*) not accepting test data generated outside of Brazil, except in those cases where the equipment is physically too large and/or costly to transport. The limitations on test data essentially requires virtually all testing for IT/telecom equipment, including everything from mobile phones to optical cables, to be conducted in Brazil. Test data is only accepted when it is generated by a laboratory located in Brazil, and when witnessed by an approved certification body. These requirements conflict with Brazil's WTO commitments, including the WTO TBT Agreement, Article 2, Section 2.2, by creating unnecessary barriers to international trade, which raise costs and delay time to market. Some certification delays can take three to four months, without any increase in value to Brazilian consumers.

Recommendation: TIA supports *Anatel* reforms that allow manufacturers to manage their own test process to minimize cost and redundancy, and declare conformity with Brazilian requirements in the manner described in ISO/IEC 17050 Part 1 and Part 2. *Anatel* could then focus more attention on enforcement and less on equipment certification. This would help to ensure Brazilian consumers have access to innovative products more quickly and at a lower cost.

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 for imported telecommunications equipment. The United States and Brazil are both participants in CITEL. If Brazil implemented the CITEL MRA, it would benefit laboratories in both countries that could test to the other country's specifications, suppliers seeking to sell telecommunications equipment globally, and consumers who would enjoy speedier access to new technologies. 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.

Chile

Need for Input in Regulatory Requirements

Over the past two years, Chile has implemented a number of regulations, guidelines and technical requirements that disrupt global supply chains, result in product delays and increase the cost of doing business. Such requirements are often Chile-specific obligations that are inconsistent with global practices or standards. In a number of cases, they appear to have been published without prior efforts to obtain industry input. The resulting costs and challenges to business could arguably have been avoided with prior industry consultation.

Recommendation: TIA encourages Chile to provide a consultation process with affected stakeholders prior to finalizing regulation.

Homologation Issues

In March 2017, Subtel Resolutions 1474 and 1463 (and updates) imposed a mandatory Chile-unique emergency alert (vibration) standard on all mobile devices. In addition to the required software changes, companies also must test phones *from every shipment* for compliance in a lab in Chile or establish local testing labs.

These requirements are unduly burdensome and/or unnecessary. No other country requires this type of per shipment testing and hardest hit may be SMEs that do not import in bulk and importers facing import delays. To the extent that Subtel believes such a measure is needed, it would be sufficient to require testing for a new software/major upgrade and/or authorize random inspections to deter evasion.

Recommendation: TIA urges SUBTEL to revise its testing, inspection, and registration processes so that they that do not unnecessarily increase consumer costs and are better aligned with the commercial realities of global supply chains.

Mobile Phone Label Requirements

In July 2017, SUBTEL issued guidelines, "Manual of Graphic Standards: Broadband Label" pursuant to Resolution Nº 1.463. All mobile phone sellers must include a specific label on their packaging and in certain advertising indicating that device's compatibility with all mobile networks (e.g. 2G, 3G, 4G). The

label is required for all phones, even those that operate in all bands. The guidelines further delineate the label specifications, including content, colors, size, and placement.

Recommendation: TIA urges SUBTEL to revise its detailed label requirements so that they provide consumers with relevant information in ways that are not Chile-unique, do not unnecessarily increase consumer costs, and accommodate global supply chains.

Spectrum/Power Alignment

The frequency bands (2,4GHz / 5GHz) are regulated by Resolution 755 of 2005 and its modifications. SUBTEL updated the regulation on January 23, 2017, but still not harmonized with FCC or any international requirements.

Recommendation: TIA recommends that SUBTEL update Resolutions 755/2005 and 840/2008 to align with the FCC limits, and not establish Chile-specific requirements.

Power Adapter Safety Requirements

Following industry recommendations, in late December the SEC (regulator for product safety) published Resolution 16677, updating Chile's safety requirements for power adapters to be based on the globally accepted IEC 60950-1 standard. Several aspects remain unclear, as SEC has not conducted a public consultation. Questions involve multiple sample testing, factory audits, and per shipment tests; clarity on which bodies are authorized to test/certify the devices, both for type testing and for ongoing unit verification; and batch certification and special certification.

Recommendation: TIA recommends the SEC work with industry post-Resolution to clarify outstanding concerns.

China

State Campaign to Replace Foreign Technology with Domestic Products

Through a lengthy series of industrial roadmaps, China has made clear its plans to become a global leader in key technology fields such as telecommunications equipment, semiconductors, software, cloud computing and artificial intelligence. This striking drive to boost domestic industry has been accompanied by a more concerning attempt to undermine and shrink the role of U.S. and other foreign technology firms.

Over the past several years, government agencies have issued a growing number of guidelines and policies that call on both companies and government entities to buy IT hardware that is "secure and controllable," "secure and trustworthy," or "secure and reliable." Though Beijing has never provided a clear definition for these terms, Chinese officials have invoked such language in state media to explain China's need to develop indigenous technology and to justify cyber security reviews of IT products. In October 2016, President Xi Jinping called for speeding up a plan to replace existing IT products with indigenous and controllable Chinese-made hardware and to construct a secure and controllable information technology system.

On a related front, China has proceeded to issue a complex array of overlapping rules and standards it says are necessary for national security, many associated with the Cybersecurity Law that took effect in June 2017. TIA members are concerned that China's growing slate of security rules may disadvantage U.S. exporters selling into China's commercial markets.

Broad Definition of Critical Information Infrastructure (CII).

Beijing has sought to project its security umbrella far beyond the sensitive military or government systems where valid national security concerns might normally apply; its formulation of national security has expanded to include many commercial markets. The Chinese government has shown itself increasingly inclined to categorize commercial industries as CII, which it uses to justify restrictions on foreign involvement.

The Cybersecurity Law says critical information infrastructure includes but is not limited to public communication and information services, energy, transportation, water conservancy, finance, public services and e-government. Other measures have offered broader definitions of CII.

After seeking to establish that large segments of the economy are subject to special security considerations, the Cybersecurity Law offers legal justification for an expansive state-led testing regime. Over the past two years China has issued a complex and overlapping series of policies and standards that purport to vet foreign technologies to determine their "security." Though many are not yet finalized, the text of draft measures has already raised concerns about the potential for IP disclosures. TIA members are concerned that China's growing slate of security rules may disadvantage U.S. exporters selling into China's commercial markets.

***Recommendation**:* China should narrowly limit the scope of CII to networks involved in operations critical to national security.

Restrictions on Cross-border Data Flows

China's Cybersecurity Law calls for CII operators to store within China "personal information and important business data," which are not clearly defined. Related implementing measures reinforce onerous government oversight over cross-border data transfers. Although the *CSL* draft implementation measures have given network operators more flexibility regarding the cross-border transfer of personal information, and have encouraged them to establish self-assessment frameworks for transferring personal information abroad, the international transfer of "important data" (a term which has yet to be adequately defined) must be reported to authorities, and transfers conducted by CII operators require approval from competent authorities.

Recommendation: The development of e-commerce, innovation, and overall economic growth in the digital era – all key objectives of China's Internet Plus strategy -- are enabled by the free flow of data across borders. Instead of pursuing an overly restrictive, China-specific scheme of data containment, we would recommend Beijing seek to align with international practice in how it approaches data. The Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules (CBPR) system and the Organisation for Economic Co-operation and Development (OECD) Privacy Principles could serve as key references in the development of frameworks would help to enable interoperability and compatibility with respect to data. We strongly urge China not to impose onerous restrictions on cross-border data transfers.

Expansion of Security Ranking System

In June 2018 China announced a draft update to an earlier security ranking system, renamed the Cybersecurity Classified Protection System. Under new rules, networks would be assessed according to a subjective ranking based on their alleged sensitivity to national security, social order, the public interest, and the legitimate interests of individuals and organizations. Parameters have been changed to make it easier to classify a given network as security-sensitive, and networks classified above a level 3 on a scale of 1 to 5 will be required to use more "secure" products and services. It is not clear how security would be evaluated, raising concerns that the rules will be interpreted so as to favor Chinese suppliers.

Recommendation: Though the measures remain in draft form, we would urge the Chinese government to refrain from implementing any security policies that would unnecessarily limit sales for foreign companies, in accord with President Xi Jinping's prior commitment to the U.S. government.

Cybersecurity Review Regime

New measures were issued in May 2017 to create a cybersecurity review system focused on the "security and controllability" of products used in networks related to national security. According to the *Interim Security Review Measures for Cyber Products and Services,* failure to pass a review will result in products being barred from being purchased for use in China's critical information infrastructure – which, as noted above, encompasses large segments of its commercial economy.

We appreciate the desire to safeguard national security; however, we are concerned that the "secure and controllable" reference may be employed as a de facto market access barrier for U.S. companies. Moreover, since the Chinese government has scoped CII to extend well beyond the government realm into much of the commercial economy, including most of the telecom sector, the review regime could cover a broad range of ICT products.

Recommendation: In light of the Chinese government pledge not to implement any security policies that would unnecessarily limit sales for foreign companies, we would strongly urge that CII be narrowed to focus on networks relevant to national security, so that the cybersecurity review regime could in turn be scoped more precisely and without creating market-distorting side effects.

State-led Security Testing as a Requirement for Market Entry

In June 2017, new regulations were issued that create a market-entry requirement for a number of commercial telecom equipment products. There was no comment period or industry consultation. Under the new system, ICT products including routers, switchers, servers, and programmable logic controllers must be tested relative to unspecified national standards and other mandatory requirements. Only then will they be included in the *Cyber Critical Equipment and Cybersecurity-Specific Product Catalogue*, a prerequisite for their sale into the Chinese commercial market.

Recommendation: Although the policy constitutes a technical regulation under the World Trade Organization's Technical Barriers to Trade (TBT) Agreement, there was no comment period or consultation with industry before the policy was released. We recommend that Beijing suspend implementation of the rules, notify the WTO Secretariat of the regulation, and re-issue it in draft form for a public comment period of at least 60 days.

Full Market Access for Products Listed in Telecommunications Services Catalogue

In March 2016 China implemented an updated version of a key regulatory document that applies to telecommunications services, the Telecommunications Services Catalog. The catalog imposes major new market access restrictions on some of the fastest-growing and most important technology sectors. This impacts cloud computing, where U.S. companies have staked out a leading role, as well as a number of other digital services including content delivery networks, information services and virtual private networks.

The catalog incorrectly classifies a wide range of ICT technologies and services as telecom value-added services, when in fact they are computer and related services that are merely delivered over a telecom network. This distinction matters because companies that provide so-called value-added services can only operate in China through joint ventures, in which foreign ownership is capped at 50 percent. In reality, however, they should be classified as computer and related services, which under China's WTO commitments should not be subject to any market restrictions.

The regulation requires TIA member companies that seek to do business in these areas either to find a Chinese partner, which brings its own set of challenges, or choose to stay out of the market altogether.

The resulting disparity in treatment between China and the United States is particularly noticeable in the cloud market: Chinese cloud providers are expanding globally into geographies including the U.S., where they are allowed to freely establish commercial operations without need of a license or foreign partner.

Recommendation: TIA urges MIIT to dismantle the value-added telecom services licensing regime, including associated equity caps and capitalization requirements. We seek to ensure that efforts to regulate services delivered over public networks be consistent with China's WTO commitments.

Standards-setting Approaches that Depart from Global Norms

The issuance in 2017 of Guidelines on Foreign Participation in Standards Work reflects the reality of a Chinese standards-setting regime that expressly distinguishes between Chinese and non-Chinese participants, undermining the core principle of "openness without discrimination" in standards policy outlined in the WTO Technical Barriers to Trade Committee in its "Decision…on Principles for the Development of International Standards."

Indeed, while the Guidelines stipulate on paper that standards-setting technical committees should be open to foreign companies, foreign participation has fallen well short of expectations, reflecting a lack of transparency and systemic barriers in the standards-setting process.

China's recently revised *Standardization Law* of 2018 includes a number of elements that disadvantage U.S. companies in China. Most notably, Article 20 promotes the incorporation into standards of "indigenous innovative technology," which is usually understood to refer to domestic Chinese technologies. There is a decided risk that an approach premised on favoring domestic technology could rise to artificial domestic monopolies and create trade barriers for U.S. products.

In addition, China's *Standardization Law* carves out an important role for "enterprise standards," a construct unique to China in which companies may be obligated to reveal important and possibly proprietary details about their products and services. The specifications subject to disclosure might

include product features and/or information about manufacturing and assembly that is protected by patents, copyrights and trade secrets. Such a requirement could be employed to compel disclosures of confidential business information.

Moreover, the final Standardization Law required the disclosure of all standards relevant to a given product – not only enterprise standards, but also mandatory, recommended, and social organization standards. This came as an unwelcome surprise to the business community, since the final draft issued for public comment contained no such language, and documenting what are likely to be extensive lists of standards across many ICT products would be very expensive and time-consuming. The implementing measures for enterprise standards have not yet been issued. But if the final rules align with the apparent intent of the Law, the new requirement would impose an exceptional burden on companies.

Although officials in the Standards Administration of China have sought to clarify that proprietary information need not be disclosed, there is a concern that administrators at lower levels of government may interpret the rules to the detriment of U.S. companies. More broadly, granting "standard" status without appropriate peer review subverts the normal standards-setting process. It creates the potential for companies to employ "enterprise standards" in a manner that could distort the market.

On a related note, in July 2018 the Chinese government released additional rules that establish a "pioneer system" for enterprise standards. The new structure creates an incentive for companies to disclose a high level of detail about their products in exchange for being accorded preferential treatment in government procurement and possibly financial assistance.

Recommendation: We seek commitments from China clarifying that foreign as well as domestic bodies have the right to full participation in the standards-setting process, including voting rights, and that China employ international standards as the basis for mandatory standards whenever possible. We ask that China seek to prevent national standards from creating unnecessary trade barriers and provide adequate time for comment on new draft standards. In addition, we urge the Chinese government to clarify that any related intellectual property rights (including copyright rights and patent rights) will be respected.

Testing and Certification

The product testing and certification process in China is significantly more difficult than in other markets, which increases the costs of U.S. products for sale in the Chinese market. China's current certification requirements for telecommunications equipment conflict with its WTO obligations, which stipulate that imported products should be subject to only one conformity assessment scheme and require the same mark to be used for all products (Article 13.4(a) of China's WTO Accession). In total, China has three different licensing regimes – the Radio Type Approval (RTA), the Network Access License (NAL), and the China Compulsory Certification (CCC). For a given piece of equipment, it can cost between U.S. $20,000-$30,000 to test for all three licenses (RTA, NAL, and CCC).

China has opted out of the CB scheme for electromagnetic compatibility (EMC) testing, with the result that such testing must be done in-country. EMC requirements emerged out of a collective international effort and many countries participate in the EMC component of the certification body (CB) scheme and accept CB scheme test reports generated by other participating members.

Ideally, China should eliminate the NAL as a product licensing requirement. However, recognizing the structural/legal problems that would pose, TIA and its members recommend that, in the interim, China reduce the number of tests required by the NAL to a bare minimum.

To promote improved transparency in testing and certification in China, reduce associated costs and generally facilitate trade, we urge the Chinese government to provide the necessary scope in product coverage and enact the necessary legislative changes to allow it to resume meaningful talks with the U.S. government on a mutual recognition agreement (MRA).

Recommendation: TIA asks the government of China to improve the application of international conformity body scheme reports by national laboratories and eliminate the need for additional samples and redundant testing. Any certification-related process should be in conformance with related WTO TBT requirements. We also recommend that such efforts conform to international best practices as reflected in the ISO/IEC CASCO Guidelines. Finally, we strongly encourage China to take steps to make meaningful progress on an MRA.

ZUC 4G LTE Encryption Algorithm

ZUC is China's government-developed indigenous encryption algorithm created for usage in 4G LTE networks, and perhaps in other national communications networks. ZUC is the first encryption algorithm that China proactively brought to the international standards community. It was approved as an international voluntary standard by the 3rd Generation Partnership Project (3GPP) in September of 2011. While we welcome China taking its standard through the international standardization process, China's State Cryptography Administration (SCA) has confirmed that implementation of the ZUC algorithm and related standards will be mandatory in the commercial market. This is outside of global norms as no other major country has mandated a specific algorithm for use in the commercial telecommunications market as a baseline for market access. Of greater concern are the testing and certification requirements, which will require an extensive process that includes a review of source code and other proprietary information. The mandate to include the ZUC algorithm is not consistent with the TBT, including Article 2.8 that specifies "wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics."

Recommendation: TIA urges the Chinese government to remove the requirement to utilize the ZUC algorithm and any mandatory conformity assessment procedures that would require the disclosure of sensitive proprietary information, including source code.

Anti-Monopoly Law

TIA notes the purpose of China's *Anti-Monopoly Law* (AML), which took effect in 2008, is to prevent monopolistic behavior and enhance competition in China's commercial environment. While this is a laudable goal, AML investigations by Chinese authorities appear to be distorting the AML and related laws to target foreign companies as an additional policy tool to support China's national industrial policy objectives. The Chinese companies that benefit from these AML enforcement cases are often national champions in various strategic sectors, including the telecommunications sector.

Recommendation: TIA urges the government to employ the AML only in such a manner as to promote fair and open competition without trespassing on IP protections or otherwise undermining the market position of foreign companies to the advantage of domestic entities.

Government Procurement

China's progress towards joining the WTO Government Procurement Agreement (GPA) has been extremely slow, dating from its first offer for accession in December 2007 to its most recent revised offer (its fifth) submitted in December 2014, which unfortunately fell short of expectations in its coverage. In the meantime, as noted earlier, the government has issued a number of policies under the banner of improving security that seek to replace foreign ICT goods and services with "secure and controllable" Chinese products in government computer systems. Such actions raise questions about the current degree of Chinese political support for improving the terms of any subsequent GPA offer. However, we believe China would benefit from embracing the principles of openness, transparency and non-discrimination embodied in the GPA.

Recommendation: TIA urges China to join the GPA and ensure that its accession package fully accords with international norms.

Colombia

VAT Application

Colombia currently offers a VAT exemption for computers, tablets, and other computing devices below a specified price, equivalent to 50 UVTs, or COP 1,657,800 in 2018. A similar provision applies for tablets and smartphones if the price falls below the 22 UVTs, or COP 729,432 in 2018. Besides the artificial threshold of the policy, which makes the most advanced devices less accessible to the Colombian population, exchange rate variations make the market highly unpredictable. In 2016, for example, the dollar equivalent of 43 UVTs varied from a low of US$432 to US$523. This introduces a considerable element of uncertainty for small and medium business owners who retail such devices, since they are captive to the vagaries of the exchange rate. Whether or not a device vendor must pay the steep 16 percent VAT surcharge depends on currency fluctuations on the day a given device is imported.

Today, smartphones (or intelligent mobile devices) often substitute for such devices, but are still subject to the full 19% VAT rate if their price is higher than 22 UVTs. Intelligent mobile devices or smartphones (e.g. mobile phones that offer greater functionalities than feature phones) should be afforded the same VAT exemption as other computing devices. 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.

Recommendation: We recommend the government extend the VAT exemption to apply to smartphones as well as other digital devices.

Theft of Mobile Phones

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. In practice, Decree 2025

creates burdensome restrictions and administrative requirements for trade in mobile phones, without significantly deterring or limiting illegal trade in stolen phones.

Implementation of the Decree continues to be disruptive to businesses, as the time frames set out in the law are 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.

Colombia maintains a system of black (mobile phones reported as lost or stolen) and white (mobile phones with homologation, valid International Mobile Equipment Identity - IMEI) lists. It requires that each mobile phone have a government-issued verification certificate at the time of import. It requires exports (e.g., as WEEE or for repair) be on the White List, though not all phones must be included on that list prior to import – for example, a device brought into the country by an individual. This system is challenging the operational capacity of the government and recently civil society organizations raised privacy and security concerns about the system. While the concern about phone theft is valid, the current system imposes unnecessary and undue burdens and impedes regular trade and commerce of communications devices.

In early August 2017, the General Attorney stated that "Simply, the IMEI blocking is not working" as a deterrent to mobile theft. Rather than continue to address legitimate concerns about phone theft through processes that are not working, Colombia should explore approaches that have proven effective in other countries. These could include focused efforts on the illicit spare parts market, educational campaigns about technology-based solutions (such as those that allow the user to block the phone, remotely erase the content, and make the devices unable to connect to the network), and cooperation beyond national borders.

Recommendation: We recommend the government repeal the import requirement to register all IMEI numbers before import.

Costa Rica

Testing and Certification

Costa Rica's telecommunications regulator, *La Superintendencia de Telecomunicaciones* (SUTEL), mandates retesting and recertification of mobile handset hardware after each software or firmware update. While SUTEL has reduced costs and streamlined procedures for retesting and certification, this procedure is burdensome, unique to Costa Rica, and is not required by any other regulator worldwide. Software and firmware updates allow users to protect their equipment from security threats, improve their experience with their phones, computers and other equipment, and potentially avoid having to visit repair centers in the future. Such updates do not require any re-testing or re-certification by regulators as a matter of international best practice. Costa Rica's re-testing and re-certification mandate is inconsistent with the WTO TBT, Article 2.2, which 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."

Recommendation: Costa Rica should follow international procedures for the testing and certification of mobile handsets and other ICT products. Elimination of this requirement will remove an artificial regulatory barrier to user access to the latest versions of their equipment.

Ecuador

In-Country Testing and Certification

Local regulator *ARCOTEL* has expressed interest in conducting in-country testing and homologation certification, with the goal of becoming the exclusive homologation lab for Ecuador. Should *ARCOTEL* succeed in its efforts, all manufacturers would be forced to have their products certified in Ecuador, and certifications from internationally recognized homologation labs would no longer be recognized. Such a development would translate into additional costs for manufacturers and additional time to bring products to market, and it would cause disruptions and create inefficiencies.

Recommendation: TIA recommends the government of Ecuador not demand in-country testing for mobile phones and instead continue to recognize certifications from internationally recognized labs.

Regulatory Fees

The Ecuador Ministry has had the same fee rules in effect for satellite services since the early 2000s. These rules fail to account for changes in technology whereby fixed satellite services (FSS) will be provided directly to end users through individual earth stations. In addition, Ecuador requires each FSS earth station to be licensed individually imposing huge administrative burdens on FSS operators.

Recommendation: TIA recommends that the government of Ecuador adopt a blanket licensing approach for FSS earth stations used as user equipment and immediately significantly reduce its fees for FSS user terminals to a reasonable amount.

Voluntary Standards Made Mandatory

RTE INEN 105 mandates compliance with several voluntary international standards regarding secondary cells and batteries. It entered into force in 2016, without having provided adequate time for importers to come into compliance. Its effect is to disrupt trade in secondary cells and batteries, and thus the ability of companies to support their clients' needs for replacement batteries. The measure increases cost and expenses, with no benefit to the consumer.

To obtain the certificate from the Ecuadorian certification entity *SAE, an importer of record would need:

- evidence of compliance with IEC 61960, IEC 62133, US EPA 7471B, and ASTM E536-04a
- evidence of compliance with marking requirements
- register as generator of hazardous waste
- 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 to a "performance standard" in a "safety standard."

Recommendation: 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, Ecuador should avoid making voluntary standards mandatory and, in all cases, should provide sufficiently long transition periods for companies to implement the necessary requirements (i.e., at least one year for technical standards).

India

The issue of greatest concern to TIA in India is New Delhi's repeated imposition of import duties on ICT products, in violation of its WTO obligations.

When India joined the Information Technology Agreement in 1996, it agreed to grant zero-duty treatment to many ICT goods, including telecom equipment products classified under the 8517 harmonized system (HS) heading. In 1997 the Indian government modified its GATT schedule to reflect those changes, and under a staging process, introduced a plan to eliminate duties on all 8517 products by 2005. In accord with its WTO obligations, in 2005 India formally updated domestic customs regulations to provide for zero-duty rates on the goods.

However, in a clear breach of those commitments, India has subsequently levied duties on covered products on six separate occasions. These actions violate the basic WTO obligations on duty treatment documented in India's GATT schedule.

A brief chronology follows:

- In July 2014, India rescinded a duty exemption and implemented a 10 percent basic duty on a range of advanced telecom technologies classified under the 8517 heading.[1]

- Three years later in July 2017, New Delhi again imposed import duties of 10 percent, this time on a much broader group of telecom equipment products including mobile phones, smart phones, and base stations.[2]

- Only five months later in December 2017, India boosted the duty rate on cell phones and smart phones once more, from 10 percent to 15 percent.[3]

- In February 2018, India further increased the duty on cellular mobile phones from 15 percent to 20 percent, while raising duties on phone parts from a range of 7.5-10 percent to 15 percent. The duty on wearable devices was raised from 10 percent to 20 percent.[4]

- In April 2018, India announced it will impose a 10 percent duty on populated printed circuit boards (PCBs) used in mobile phones.[5]

- In October 2018, India said it will double the 10 percent levy on telecom goods including base stations, smart watches, optical transport and VOIP equipment to 20 percent[6] and impose a new 10 percent duty on parts and components of telecom products[7] that were previously not subject to duties.

At the same time New Delhi has rolled out multiple rounds of duties, it has clearly proclaimed its protectionist intentions to keep out foreign goods and create a domestic telecom equipment industry. In August 2018, the national telecom regulator announced a goal to slash imports of telecom equipment to "net zero" by 2022.

India's national Digital Communications Policy released in September 2018 calls openly for "rationalising taxes and levies and differential duties to incentivize local manufacturing of [digital communications] equipment, networks and devices." It also called for incentivizing private operators to buy domestic Indian telecom products. Unfortunately, India's protectionist policies have made U.S. products more expensive and less competitive in the marketplace, effectively shrinking American market access.

***Recommendation*:** We urge the Indian government to rescind the aforementioned duties on imported ICT equipment as soon as possible. The new levies have not only hurt investor confidence, but risk needlessly raising the price of technology products and services for India's own citizens, which will make it more difficult for the government to achieve the goals of Digital India.

Excessive and redundant requirements for in-country tests. In 2018 India introduced a sweeping system of required in-country tests for telecom equipment, MTCTE (mandatory testing and certification for telecom equipment). The policy was not notified to the WTO in draft form.

The new requirements impose needless costs on ICT companies, which already conduct such tests in internationally accredited labs in other geographies. Testing fees may cost up to 50 lakhs rupees or $78,000 per product when carried out by government labs, and no price cap has been established for commercial labs. The system of certifications will eventually cover all types of telecom equipment, ranging from simple IoT devices to fully-functioning base stations.

While the policy was initially intended to become effective October 2018, in September the Department of Telecommunications announced the timeline of implementation would be delayed somewhat. Phones, certain radios and transmission products, wi-fi access points, multiplexing products and satellite equipment are all required to comply with the requirements starting January 1, 2019; other types of telecom equipment including routers, switches, gateways, and IOT devices will be subject to the new rules as of April 1, 2019.

Subsequently in early October 2018, there was a DoT follow-up announcement that manufacturers may seek exemptions from submitting certain types of test reports and receive provisional certifications of up to a year. This would include situations in which there are currently no existing tests conducted by internationally accredited labs – a salient issue since the new system is supposed to include security tests, but there is currently no international baseline for security testing of telecom equipment. Indeed, while it remains unclear what security checks India might ultimately seek to employ, there is general consensus among security experts that a checklist of tests is an ineffective response to the dynamic risk of cyber threats.

Besides the lack of available tests for some of the prescribed parameters, India's current lab capacity is very limited. At the moment there are only a small number of labs in India that can do certain types of testing, including for electromagnetic compatibility (EMC) and electromagnetic interference (EMI), and only four certification bodies exist nationwide to review results and summary reports.

Moreover, there is no need for India-based tests, as global vendors already certify products to a high level of international standards in areas such as radio frequency and safety. Requirements to test once again for the Indian market will not improve safety but merely incur needless and unnecessary costs for suppliers. Telecom suppliers worry that intrusive testing could potentially allow for leaks of proprietary information.

Recommendation: TIA urges the government to let telecom equipment vendors use internationally accredited labs in any global location to conduct testing. We further encourage the Indian government to reference internationally recognized standards to be used in such testing. Such an approach allows for robust security vetting without imposing new fees that will drive up end user costs or needlessly delay time to market for ICT products.

Preferential Market Access (PMA)

India has recently issued a series of policies to promote government purchases of locally made ICT products, including the following:

In January 2017 the Department of Telecommunications issued conditions for a list of telecom products under which they could qualify as domestic and therefore be accorded a preference in government procurement. Under the Public Procurement (Preference to Make in India) Order issued in June 2017 by the Department of Industrial Policy and Promotion, government agencies and companies are requested to accord a 20% price preference to products containing more than 50% local content. Most recently in September 2017, the Ministry of Electronics and Information Technology issued a lengthy list of cybersecurity products that will be subject to the June order.

At a practical level, local content requirements are often difficult to meet. For example, the procurement preference for 50 percent local content is difficult to meet for many switching systems used in telecommunications as well as satellite systems. It is not currently possible to manufacture such systems in India while meeting the necessary technical requirements outlined in tenders.

Like all countries that manufacture ICT products, India's ICT manufacturing base depends on a globally flexible supply chain that is characterized by intense competition and fluctuations in price and supply of different inputs. Market demands are such that it would be impractical for the commercial sector to eliminate the use of global resources or a distributed supply chain model.

Recommendation: Since India is not currently a member of the WTO Government Procurement Agreement (GPA), we acknowledge that this policy is not in conflict with its formal agreements. However, we would submit that the PMA policy does a disservice to the Indian government in limiting access to the most cost-effective and advanced ICT products available, especially at a time officials are implementing important new programs to promote digital connectivity nationwide. We would urge the Indian government to consider a procurement policy that grants agencies maximum flexibility, allowing them to purchase products based on performance, operational needs, and overall cost, rather than focusing on local content requirements.

Local content mandates have not historically proven effective in promoting the development of local products that are either high quality of cost-competitive. Instead of granting domestic preferences in public procurement, a better way to help local industry would be to focus on enhancing the business environment to foster healthy competition and encourage innovation.

As the Indian government seeks to enhance exports, we would encourage it to take a closer look at the practices reflected in the GPA and consider how they might bring their practices into alignment with it. Ultimately, joining the GPA would expand the access of Indian's own IT industries, including its services sector, to government procurement markets around the world.

Satellite Service Access

To sustain communications services and applications, companies and end-users rely on robust infrastructure and the ability to select the technology and provider based on cost, effectiveness, and availability. This ability to source the best-suited infrastructure for a given application or service enhances the resulting service and may advance its service launch or reduce consumer costs. For satellite infrastructure, the United States and many WTO members have adopted policies that permit users of satellite services the flexibility to work directly with any satellite operator that has the ability to serve them, without constraint by government preferences.

Recommendation: TIA encourages India to adopt such an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider and technology that best suits their business requirements.

Freedom to Use Strong Encryption

TIA urges India to adopt policies allowing the use of strong encryption algorithms that have been reviewed by international experts for robustness and security assurance to protect corporate and personal information online. The freedom to use strong encryption is a global standard for securing information online, such as confidential business information, financial information, online transactions, and internal government communications, from intrusion by hackers, thieves, competitors, and other wrongdoers.

Recommendation: TIA urges the government of India to amend its current encryption policy to allow for more robust encryption, which will enable India's rapidly growing IT enabled services and business process outsourcing industries that rely on strong encryption to secure their global clients' confidential information. India should adopt policies that protect the freedom to use strong encryption online and, consistent with global practice, not limit the type of encryption technologies that can be employed by the private sector.

Indonesia

Protectionist Policies including Local Content Requirements

We are concerned about a pattern of Indonesian regulations issued in recent years that provide a framework for protectionist measures, some of which target ICT goods and services. In 2014, the Indonesian government finalized a trade bill that authorizes the government to take protectionist steps such as restricting exports and imports with the goal of helping local industries.

In 2015, the Ministry of Communications and Information Technology issued regulation no. 27, which imposes local content requirements on LTE-based telecom equipment that would rise to 40% for base stations and 30% for subscriber stations within two years of the date of implementation. This follows

the ministry's earlier issuance of two decrees, a wireless broadband decree in 2009 and a telecommunications decree in 2011, that place restrictive local content requirements and sourcing requirements on service providers. The "wireless broadband decree" requires local content of 30 to 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

In 2016, the Communication and Information Technology Ministry proposed new regulations that would require foreign companies that provide online content to set up formal offices in Indonesia according to national tax law and abide by a number of other requirements, including local censorship rules. The high costs of complying with such a mandate could make it difficult for many smaller foreign service providers to operate in Indonesia, and as a result, may limit Indonesian access to innovative online applications that would be available in other global markets.

Finally, in the fall of 2017, news reports said Jakarta was considering a plan to require Internet of Things device manufacturers to source most of their materials from Indonesia.

Recommendation: TIA urges the government of Indonesia to rescind local content requirements that limit technology choices available to its consumers and businesses.

Data Localization

Regulation No. 82 of 2012 requires operators of "public services" to locate data centers on Indonesian territory.

Recommendation: Data localization is likely to impede innovation by rendering international communication more difficult; moreover, by increasing costs, the regulation threatens to discourage service providers from entering the Indonesian market. Rescinding the data localization requirement would serve to promote investment by alleviating investor concerns over the expense and time associated with compliance.

Classification of Zero-Duty Digital Goods in Tariff Schedule

In February 2018, the Indonesian Ministry of Finance issued regulation No. 17, which established five eight-digit tariff lines under chapter 99 on software and other digital products. Though initial duty rates were established at zero, the treatment of services as potentially dutiable goods creates a worrying precedent. Any imposition of duties on such goods would appear to violate the WTO's moratorium on e-commerce, in which members agree to abstain from imposing duties on electronic transmissions.

Foreshadowing this development, at the MC11 trade ministerial in Buenos Aires in 2017, Indonesia circulated a communication saying it is Jakarta's understanding that the e-commerce moratorium "applies only to the electronic transmissions and not to products or contents which are submitted electronically." In practice, such an approach is at odds with the moratorium and would render it effectively meaningless.

Recommendation: We urge the Indonesian government to remove digital services it has pledged to keep duty-free from its tariff schedule.

Korea

Security Verification Requirements

The U.S. and Korean governments are parties to the Common Criteria Recognition Agreement (CCRA). However, the Korean government requires products certified at a CCRA-accredited lab outside of Korea undergo an additional security verification process for every procurement – even when it is the same product being purchased by the same government customer. In contrast, products that are certified at a CCRA-accredited lab in Korea are exempt from this additional security verification process.

This additional security verification undermines the purpose of the CCRA – to allow for certified products to "be procured or used without the need for further evaluation" – by including country-specific standards beyond those standards agreed to under the CCRA.[1]

Recommendation: We would urge the Korean government to eliminate the unequal treatment of CCRA certification.

Indigenous Standards

The Korean government requires the use of locally developed technical standards for government procurement. For example, rather than utilizing internationally developed cryptographic standards, the Korean government has made mandatory the Korea-developed "ARIA" cryptographic standard for Internet Protocol (IP) telephony.

Recommendation: Rather than relying on indigenous standards to develop specifications for government procurement bids, we would urge the Korean government to utilize internationally developed standards where such relevant international standards exist, per global practices and Article 2.4 of the WTO Agreement Technical Barriers to Trade (TBT Agreement).

Mexico

Administrative Procedures and Customs Practices

Documentation for valuation of imported merchandise. On April 20, 2015, Mexico's tax authority, the *Servicio de Administración Tributaria* (SAT) issued an amended version of the Customs Law Rules (*Reglamento de la Ley Aduanera*), ostensibly to harmonize its terminology and regulatory definitions with the Customs Law, while including new documentary requirements. The most significant change is 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 officials upon request. As written, the article renders the import process cumbersome and sometimes impossible given requests to produce documents that are usually issued after import, confidential, or non-existent.

[1] Common Criteria Portal, "About the Common Criteria – Purpose of the Arrangement"

Recommendation: Permanently eliminate Article 81, as it has proven to be inapplicable.

The enforcement of this requirement has been delayed four times. There is an attempt underway to change rule 3.7.3 and include a new rule (3.7.35) that 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 would need a customs agent and a formal classification of merchandise, and undergo the normal import procedure for large cargo.

While the authority 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) fail to address its purported objective of eliminating technical smuggling.

Recommendation: Maintain the simplified procedure figure for imports via courier and use international best practices, such as the certified importer figure, as an example, to deter technical smuggling.

Russia

Localization Requirements for Personal Data

Federal Law No. 242-FZ[2], which went into effect in September 2015, established localization requirements for the personal data of Russian citizens. The new law creates substantial new burdens for TIA member companies in Russia, not only in capital expenditures for new equipment but also in the ongoing time commitment required to isolate particular kinds of data and ensure it is handled as required under the law. The free flow of information across borders is critical for a broad range of industries in that it facilitates access to international markets, lowers operational costs by leveraging global computing resources like cloud-based services, and provides a platform for a variety of new and innovative business models.

Recommendation: We would urge the Russian government to reconsider policies that erect barriers to the cross-border flow of information, as they will needlessly hinder Russia's further integration into the global digital economy.

WTO Information Technology Agreement

In the "Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization" (the Working Party Accession Report), Russia agreed to "submit its Information Technology Agreement (ITA) Schedule to the ITA Committee for verification, in accordance with ITA

[2] Federal Law No. 242-FZ "On Amendments to Certain Legislative Acts of the Russian Federation for Clarification of the Procedure of Personal Data Processing in Information and Telecommunication Networks" was adopted on 21 July 2014.

procedures, in order to enable the Russian Federation to join the ITA when it became a WTO Member[3]." However, we understand that Russia has still not taken the necessary final action to incorporate its WTO ITA commitments into its bound rates.

Recommendation: We would strongly urge Russia to make the necessary changes to its bound rates so that it can join the ITA as expeditiously as possible.

Import Licensing for Products with Encryption Technology

With regard to import licensing for products containing encryption technology in Russia, the Russian Federation committed in the Working Party Accession Report to apply "on a non-discriminatory basis and in conformity with the relevant provisions of the WTO Agreement, in particular, Articles I and III of the GATT 1994, and that procedures related to the notification, evaluation, approval, and licensing of goods containing encryption technology, would be transparent and predictable and would not impose unreasonable or burdensome requirements on such goods[4]." Currently, Russia has in place a complex and non-transparent licensing regime that unnecessarily impedes the importation of goods that incorporate encryption technology. In addition, the use of these products is further encumbered through the use of activity licenses once imported into Russia.

The current system of import licensing for products containing encryption technology poses unnecessary barriers to their importation through inconsistent application of the licensing requirements and an overly broad scope of product coverage. In addition, we understand that in some cases, import licensing requirements for commercial products are issued on a per shipment basis rather than for a "product family", which further burdens importers of these products through added administrative processes and costs. The implementation of activity licenses further impedes commercial activity for imported products with encryption technology by requiring separate licenses for the resale and servicing of these products after their importation.

To meet its WTO accession commitments, we recommend that Russia ensure that all exempted products as defined under the Notes to Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies are exempted from import and activity licensing requirements[5].

Recommendation: To the extent that a product does require an import license, we recommend that blanket licenses and one-time notifications be implemented to streamline the import licensing system. To enhance transparency, we recommend that explanations on why a license is denied or revoked be provided in a timely manner to the license applicant and the establishment of an appeals process, should a license be denied or revoked. Finally, we would urge regulatory consistency among the Customs Union Members (Russia, Belarus, and Kazakhstan).

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[3] WTO, "Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization", WT/ACC/RUS/70 WT/MIN(11)1, Para. 324, 17 November 2011

[4] *Ibid*., Para. 472

[5] Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Category 5 – Part 2, Accessed on 28 August 2013

Copyright Levy System

With regard to the management of copyright levies in Russia, the Russian Federation committed in the Working Party Accession Report to "adopt necessary measures to monitor and hold accountable organizations engaged in collective management of rights to ensure that right-holders received remuneration that was due to them[6]." While we respect the need to compensate copyright holders for their works, copyright levies tend to be an inexact method of distributing remuneration for a variety of reasons, which affect ICT manufacturers and importers to the Russian market.

TIA continues to be concerned with the administration of the existing copyright levy system administered by the Russian Union of Right-Holders (RUR), which is the accredited organization for the collection and distribution of remuneration to rights holders in Russia.

A transparent process is essential to the effectiveness of a copyright levy system; in particular, in the areas of how the scope[7] and the amount of a copyright levy are determined as well as the process of distributing remuneration to rights holders, which are lacking in the current system administered by the RUR. This lack of transparency makes it harder for Russia to meet its commitment to monitor and hold accountable the RUR. We would also note our concern that the RUR, as the accredited collection organization, does not appear to have the legal authority to effectively administer the copyright levy system. Furthermore, for those companies that have entered into contracts, the RUR continues to assert the right to reject these contracts at any time, which increases the uncertainty with respect to the current copyright levy system.

In addition, we would note that the current copyright levy system allows for the unequal treatment of importers of products as compared to domestic manufacturers. The current system requires the Russian Customs Authority to report to the RUR all imported products that fall under the copyright levy system, while domestic manufacturers are allowed to self-declare their products, resulting in a higher burden for imported goods. The current system also differentiates in the scope of product coverage for imported products as compared to domestic products, which exacerbates the concerns of companies with regard to entering into agreements with the RUR as the accredited collection society.

Recommendation: We urge Russia to reexamine the practicality of copyright levies as a way to distribute remuneration to rights holders for alternative approaches that provide a more transparent and effective means of remuneration, which could include licensing directly from rights holders to users by including the remuneration in retail prices, with or without digital rights management, or direct government subsidies. In addition, we would strongly encourage USTR to examine the disparity of treatment between importers and exporters and to pursue the issue of operational transparency of the RUR.

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[6] WTO, "Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization", WT/ACC/RUS/70 WT/MIN(11)1, Para. 1216, 17 November 2011

[7] The current list of levied products, accredited by the Decree October 14, 2010, No. 829, contains products which do not have any recording function (*e.g.* DVD players) and products which are not used for reproduction of copyrighted works for private purpose (*e.g.* digital still cameras). These are clearly inconsistent with the article 1245 of the Civil Code of the Russian Federation (CC RF).

With respect to Russia's commitments related to collective management of rights and distribution of remuneration, we would urge the MED to complete its review of the current copyright levy system to address the shared concerns that we have provided, with the goal of developing a transparent system that treats all products equally. Finally, we would also urge the Russian Federation to immediately dismiss criminal proceedings against importers which have not concluded agreements with the RUR and, as a result, have not yet started to pay copyright levies because such proceedings have no legal grounds.[8]

[8] According to Article 1245 of CC RF, the legal nature of copyright levy is categorized as a civil matter. According to the Decree October 14, 2010, No. 829, payment of copyright levy shall be made in pursuance of a contract concluded between the importer of the levied products and the accredited organization (RUR). Article 421 of CC RF establishes freedom of contract principle. No compulsion to conclude a contract shall be allowed, excluding any cases when the obligation to conclude the contract is fixed by CC RF, any law or a voluntary obligation. Meanwhile, the legislation fixes no importer's obligation to conclude contracts with the accredited organization. So, objectively importers which have not concluded with RUR are innocent under the current system. The same issue is described by the MED in its consultation request.