



Telecommunications Industry Association

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October 29, 2020

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-2020-0034, 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 2020 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 400 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 Patrick Lozada at 703-907-7733 or at plozada@tiaonline.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Lozada", is written over a light gray circular stamp.

Patrick Lozada
Director, Global Policy

Telecommunications Industry Association
2021 NTE and Section 1377 Comments
Docket Number USTR-2020-0034
October 29, 2020

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Argentina

Blanket Licensing for Satellite User Terminals

Current regulations do not reflect efficient mechanisms to facilitate the rapid deployment and adoption of broadband satellite services as they require that each earth station terminal be licensed individually. The introduction of a single blanket license to cover a large number of customer earth station terminals would result in a reduction of the costs and administrative burdens for both the regulators and the service providers for the authorization of these terminals. Blanket licensing for earth stations will serve the public interest and foster the government's goals and objectives enhancing a more rapid and cost-efficient access to competitive and better services to end customers in the country.

Recommendation: A blanket licensing regime should be incorporated in the satellite regulatory framework to encourage faster deployment of new technologies and ease of access to broadband services.

Spectrum Usage Fees

High spectrum usage fees result in higher prices to end consumers, undermining the proposed goal of making satellite broadband services universally available and affordable, and negatively impacting the adoption of satellite technology. Considering the emergence of new types of satellite services, including consumer-oriented services and those that facilitate the realization of national policy objectives for the provision of broadband connectivity, the spectrum fees in Argentina should be updated. A modern and transparent spectrum fee structure for the provision of satellite services needs to be implemented to support adaption to new technology parameters and usage. Setting forth a reasonable formula fee per given time frame allows transparency and efficient planning of resources and encourages investment to expand satellite network services.

Recommendation: Argentina should adopt a modernized and transparent spectrum fee regime for satellite systems, including a fee structure that best accommodates and embraces new and different technology usage.

Price Regulation of Public Services

The recent Presidential Decree 690/2020 uses the context of the COVID-19 pandemic to declare all ICT services, including access to telecommunication networks, as "public services" and deems them essential and strategic to the country. The Decree mandates that pricing to users for all such services will be controlled by the Argentinean authority, replacing the current regime of free establishment of prices. This antiquated regulatory measure will create a huge disincentive for new investment in Argentina and discourage the much-needed novel technologies and broadband services that are necessary to stimulate diverse economic growth and access throughout the country.

Recommendation: The Argentinian government should enact a revised version of the Decree eliminating the provisions that mandate price regulation for public services.

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 and IT law were reshaped after being considered inconsistent under WTO rules (Dispute Settlement decisions - WT/DS472/R and WT/DS497/R, Brazil – Certain Measures Concerning Taxation and Charges). Despite this reshaping, the measures still require local content albeit in a less clear way than previously. 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 REPABL-Redes).

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 PPB rules and locally developed technology.

Recommendation: TIA is of the view that government of Brazil should adopt measures that foster more competitiveness for the local content, instead of just imposing requirements. 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 recommend the government of Brazil not unnecessarily impede the cross-border flow of information through local data storage mandates. 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 PPB. ICT bids for goods and services considered "strategic" may be limited to those with technology developed in Brazil.

Recommendation: Brazil should continue to move forward in its bid to accede to the WTO Government Procurement Agreement (GPA) in order to increase transparency in the procurement process. This would help address concerns regarding preferential treatment and promote fair competition.

Complex Tax and Tariff 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: Brazil should explore simplifying its tax system to better align it with other countries. As is, the current unnecessarily complicated tax system leads to higher prices that are subsequently passed on to consumers. Brazil 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.

Brazil should also join the WTO Information Technology Agreement (ITA). The ITA removes tariffs on a broad range of ICT products including telecommunications equipment. This would reduce costs for consumers, expand connectivity, and drive broader economic growth.

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. For example, one member company reported that Brazil currently requires them to ship 64 battery packs for testing for each new product to labs in Brazil. However, restrictions on the air transport of lithium ion battery packs because of a perception that they are dangerous have caused significant delays and substantial cost for companies seeking to sell battery-powered ICT equipment in Brazil. Certification delays can take three to four months, without any increase in value to Brazilian consumers, and in many cases must be undertaken every two years.

Recommendation: *Anatel* should institute 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.

Mutual Recognition Agreements

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 CITELE 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 CITELE. If Brazil implemented the CITELE 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.

Recommendation: Brazil should implement the CITELE MRA. 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.

Regulatory fees

There are discrepancies in how Brazil imposes regulatory fees based on the method of delivery for broadband services. The fees for satellite user terminals are about seven times higher than the fees charged to mobile operators for user terminals of the terrestrial mobile service. This discrepancy unfairly penalizes users of broadband in rural and remote areas, who rely on satellite services. These fees negatively impact satellite operators that provide broadband services directly to users, who then pass on these high fees to consumers via increased service costs. In some cases, these increased fees make broadband service inaccessible, particularly when providing community Wi-Fi access services in rural and remote zones of the country.

Recommendation: The Brazilian Government should refrain from imposing unfair and unequal regulatory fees for satellite broadband services.

Chile

Need Public Consultation on Regulatory Requirements

Over the past two years, Chile has implemented a number of regulations, guidelines and technical requirements that disrupt global supply chains, resulting in product delays and increasing 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 seeking public input. The resulting costs and challenges to business could arguably have been avoided with prior industry consultation.

Recommendation: Chile should provide a public consultation process with affected stakeholders prior to finalizing and enacting regulation. This will offer the industry an opportunity to bring useful feedback and experience into the regulatory process.

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: SUBTEL should revise the existing processes for testing, inspection, and registration associated with the homologation of telecommunications equipment so that such processes 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 N° 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 and further delineate the label specifications, including content, colors, size, and placement.

Recommendation: SUBTEL should limit or remove national labeling requirements and instead align with global labelling standards, including the use of e-labels.

Safety Marking

Chile’s Resolution 16677/2017 and protocol PE-8/8 implemented new safety certifications named “System 2” (S-mark System) requiring that all power adaptors for smartphones to be certified in Chile by the SEC (*Superintendencia de Electricidad y Combustibles*) and that these certifications be displayed with the product that contains the charger. In mid-2019, Chile also issued Public Consultation [PE N° 8/9:2019](#), regarding the extension of the rule for many other power adaptors including for notebooks, tablets, and audio and video products. These regulation and protocols have created challenges and cost increases for OEMs and sellers who only had a short period of time to comply with this Chile-specific requirement.

Recommendation. SEC should accept international documentation issued under the CB scheme by accredited international bodies certifying product safety instead of mandating duplicative, Chile-specific requirements with unnecessary factory inspection rules.

China

State Campaign to Replace Foreign Technology with Domestic Products

Despite ostensibly agreeing to ramp up the purchase of U.S. ICT telecommunications equipment as part of purchase targets set out in the “Phase One” trade deal agreed to in early 2020, the Chinese government has continued to pursue an aggressive import substitution campaign in key sectors such as

telecommunications equipment, semiconductors, software, cloud computing, and artificial intelligence. President Xi Jinping and other senior officials continue to promote technological “self-reliance,” advancing a range of measures to support domestic industry and undermine global technology companies. U.S. firms have been particularly impacted by these efforts in the context of rising U.S.-China trade tensions.

This industrial policy, previously advanced under the name “Made in China 2025,” is now being pushed forward under the label of the Strategic and Emerging Industries (SEI) initiative. This initiative dates back to planning documents released in 2010 and represents primarily a continuation of previous technology industrial policies as opposed to a substantive change from the Made in China 2025 initiative.

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 “indigenous and controllable.” 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 cybersecurity reviews of IT products.

These restrictions have notably increased in the past year through both formal and informal restrictions on the purchase of non-Chinese technology generally and U.S. technology specifically. Examples include:

- Informal guidance issued to Chinese government entities and SOEs to avoid purchasing ICT equipment from U.S. companies;
- Threats issued publicly in state media outlets to interrupt individual company operations in China;
- Guidance issued by city and provincial governments requiring computer purchases to incorporate domestically manufactured inputs such as computer chips;
- Laws, rules, and standards requiring entities classified as “Critical Information Infrastructure” limit the use of products who supply could be disrupted due to “non-technical factors like policy, diplomacy, and trade.”

The Chinese government has also continued to release a maze of overlapping laws, 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.

Discriminatory Regulations and Standards Ostensibly Based on National Security.

Beijing has sought to project its security umbrella far beyond areas where valid national security concerns might normally apply to include large swathes of the economy. The Chinese government has shown itself increasingly inclined to categorize commercial industries as Critical Information Infrastructure (CII), which it uses to justify restrictions on public communication and information services, energy, transportation, water conservancy, finance, public services and e-government.

Over the past three years since the implementation of the Cybersecurity Law, China has issued a complex and overlapping series of policies and standards that restrict the ability of global companies to access the China market. China’s Technical Committee 260 and other Chinese standards development bodies have significantly increased the pace of the release of these documents over the course of 2019

and 2020. China has plans to further expand the scope of ostensibly cybersecurity-focused standards over the next few years per the “Guidelines for the Development of Data Security Standard System in Telecom Network and Internet Industry,” which also contains a length list of relevant standards of concern to industry.

Recommendation: China should narrowly limit the scope of CII to networks involved in operations critical to national security, fully open technical committees responsible for developing security standards to participation by non-Chinese entities, and eliminate language that discriminates against foreign firms.

Restrictions on Cross-border Data Flows

China has aggressively expanded its restriction on crossborder data flows over the last year including through the promulgation of the following laws, rules, and standards. These include but are not limited to:

- October 26, 2019: GB/T35273 Information security technology - Personal Information Security Specification
- July 3, 2020: Data Security Law (Draft for Comment)
- August 28, 2020: Information security technology - Cyber-data process security specification (Draft for Comment)
- September 22: Guiding Opinions on Implementing CCPS and CII Protection Scheme
- October 17, 2020: PRC Export Control Law
- October 21: Personal Information Protection Law (Draft for Comment)

These various actions have solidified the crossborder data restrictions laid out in China’s Cybersecurity Law and continue to make it challenging for multinational companies to do business in the country.

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 Organization 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

The Chinese government has expanded and updated a security ranking system, known as the Multi-level Protection Scheme (MLPS). Under the MLPS, networks are 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. 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 to favor Chinese suppliers. Expanded MLPS 2.0 rules came into effect in December of 2019, and further expanded the scope of this ranking system.

Recommendation: We urge the Chinese government to refrain from implementing security policies that unfairly limit the use of global ICT solutions by companies on security grounds.

Cybersecurity Review Regime

China's Cybersecurity Review Measures, which came into effect in June of 2020 after several rounds of edits, discriminates against use of foreign ICT products in China by enterprises identified as "Critical Information Infrastructure."

Specifically, Article 9 of the law contains language which are likely to exclude the use of foreign products by identifying the "the risk of supply disruptions due to political, diplomatic, and trade factors." This is most likely to impact U.S.-origin technology specifically because of company compliance with U.S. export control rules. Article 9 also creates uncertainty with a vague catch-all category of "other factors that could harm CII security and national security."

While some progress was made by removing references to "secure and controllable" technology in the final draft, the law continues to be of concern to industry because of its possible discriminatory impact, particularly in light of MIIT's announcement on Oct. 12 to launch a wide-ranging cybersecurity inspection enforcement campaign.

Recommendation: We recommend that implementation of the Cybersecurity Review Regime be scoped narrowly and use risk-based assessment criteria that do not discriminate against products produced by non-Chinese companies.

Full Market Access for Products Listed in Telecommunications Services Catalogue

China's 2019 update to the Telecommunications Service Catalogue continues to impose significant 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, 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

Article 15 of China's revised 2019 Foreign Investment Law (FIL) marked rhetorical progress in the ability of foreign enterprises to participate in standards development in China. This rhetorical progress, however, has not been matched by results. While U.S. companies are able to participate in some cases, in many others they continue to be excluded from participation in government-affiliated working groups deemed sensitive by the Chinese government. In other cases, companies are able to join certain standards development technical committees but are subsequently excluded from certain working groups.

More broadly, progress is undermined by the reality of a Chinese standards-setting regime that has traditionally distinguished 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."

Finally, it is unclear the extent to which foreign companies will be able to fully participate in the development "social organization standards," which are primarily generated by groups of Chinese companies and may later be incorporated into Chinese laws and regulations.

Measures implementing key provisions of China's revised *Standardization Law* also continue to raise concerns in the U.S. business community. For example, requirements that companies disclose "enterprise standards" in effect require companies to share proprietary product or service specifications. These details often contain confidential patents, copyrights, and trade secrets which are protected by a range of intellectual property rights. While final measures implementing the forced disclosure requirements in the law continue to be forthcoming, the Chinese government has developed a government-led "pioneer system" to rank 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 ask that China fully implement its commitment in the FIL to allow for full foreign participation in Chinese standards technical committees. We also ask that China employ international standards as the basis for mandatory standards whenever possible, provide adequate time for comment on new draft standards, limit disclosure requirements and unfair treatment related to the implementation of the enterprise standards system, and ensure that social organization standards are not incorporated into Chinese laws and regulations in such a way that creates market access barriers for foreign companies.

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.

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. As an example, press reports note that the Chinese government is currently considering one such case against Google on behalf of Huawei Technologies.

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 sixth) submitted in October 2019, 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 and other computing devices below a specified price, equivalent to 50 UVTs, or COP 1,780,350 in 2020. A similar provision applies for tablets and smartphones if the price falls below the 22 UVTs, or COP 783,354 in 2020. 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 2019, for example, the dollar equivalent of 50 UVTs varied from a low of US\$480 to US\$560. 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 19 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: The Colombian government should extend the VAT exemption to apply to all smartphones as well as other digital devices.

Public Consultation on Regulatory Requirements

Over the past two years, Colombia 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 Colombia-specific obligations that are inconsistent with global practices or standards.

In a number of cases, these regulations appear to have been published without seeking public input. Some agencies failed to conduct an impact regulatory analysis in its regulations, such as the Superintendency of Industry and Commerce, which is in charge of competition issues, consumer protection, and data protection.

Recommendation: Colombia should provide a public consultation process with affected stakeholders prior to finalizing and enacting regulations, particularly for Superintendencies that have rule-making authority but are not bound by the rules applicable to the Regulatory Commissions. This will offer industry an opportunity to bring important feedback and experience into the regulatory process.

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.

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.

In 2019, the Communications Regulatory Commission (CRC) launched a general Regulatory Impact Analysis on these measures. It is expected that this analysis will show minimal effectiveness and additional burdens from this regulation on the industry. During 2020, though CRC has demonstrated little progress in developing this analysis.

Recommendation: We recommend the government repeal the import requirement to register all IMEI numbers before import and instead focus police enforcement on the places where organized crime tampers with IMEI systems.

Mobile Phone Label Requirements

In November 2019, the Superintendency of Industry and Commerce (SIC), acting as the consumer protection authority, issued regulation (Circular Externa No. 002 – November 2019) asking all mobile phone sellers and manufacturers to 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. The draft guidelines further delineate the label specifications, including content, colors, size, and placement. Labels must be placed on the front of the mobile terminal equipment packaging, in places either online or in-store, where they are exhibited, and when nontraditional or remote selling

methods are used. In addition, sales representatives have to provide this information to potential buyers.

Requiring country-unique labels requires suppliers to exactly predict market demand, with the likely consequence that they will underestimate the supply available in a country. Specifically, on packaging, consumers often do not see packaging until after they have purchased a device so a label has no informational value. Analyses have shown that the label is most effective when displayed in the Point-of-Sale and online sites, but it has lower effectiveness when displayed in the packaging box.

A public consultation period of longer than two weeks and a regulatory impact analysis in this case might have explained what market failure was intended to be corrected by this regulation. It is important for any transparency policy to have a main objective that advances the public interest, which may be different from merely providing information to customers

Recommendation: SIC should revise its regulation and limit pervasive labelling mandates. TIA also supports the use of global standards for e-labelling.

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

In 2018, local regulator *ARCOTEL* 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. Fortunately, in August 2020 ARCOTEL expressed its to eliminate required homologation fees and implement an online process.

Recommendation: TIA recommends the government of Ecuador avoid mandating in-country testing for mobile phones and instead continue to recognize certifications from internationally recognized labs. TIA also encourages the government of Ecuador to move forward with its plan to implement an online process.

Regulatory Fees

ARCOTEL 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. ARCOTEL has recently issued a draft that amends these licensing regulations in a way that eliminates the authorization of user terminals and distinguishes between providers of satellite internet and other satellite services, but this regulation remains in draft form.

Recommendation: The government of Ecuador should move forward with adopting regulations that substantially reduce spectrum fees and remove burdensome licensing requirements. We recommend that the U.S. government provide technical or other necessary support to the government of Ecuador as they continue to make headway in addressing this issue.

Piracy and Use of Inappropriate Enabling Titles (Licenses) to Provide Internet Services

In Ecuador, a number of telecommunication service providers in rural areas offer internet access services without authorization (no license at all) or use other licenses or enabling titles that are not suitable for such activity. This includes service providers offering internet services using enabling titles for the provision of different services, e.g. fixed telephony, wireless access, private radio, etc. The providers of these services have an unfair advantage as they are neither subject to the payment of taxes, nor to the payment of spectrum and concession fees, which creates an unfair competitive environment for duly authorized internet access service providers.

Recommendation: The government of Ecuador should tighten its enforcement policies, applying the law evenly to discourage this anti-competitive and illegal behavior.

Tariffs on Equipment and Components Used in the Installation of Satellite Internet Services

Tariffs on the import of technical equipment and components used in the installation of satellite user terminals are extremely high making the installation of user terminals more expensive. This is particularly harmful for services such as satellite internet access, which are very sensitive to installation costs and end up being reflected in the service price to users. Relevant imported equipment includes:

- parabolic plates for user terminals
- outdoor units (satellite radio transceivers)
- antenna structure supports
- RF coaxial cables
- IF coaxial cables

Much of this equipment cannot be sourced locally and must be imported to support the provision of satellite services.

Recommendation: The government of Ecuador should lower import tariffs for technical equipment used in the installation of satellite internet in order to avoid increasing costs for users.

Egypt

Egyptian Customs authorities are not following the WTO Customs Valuation Agreement by imposing duties and other taxes on the price of goods found on the internet, which is often not the correct customs value. The WTO Valuation Agreement contains provisions that allow for a “fall-back” method to determine the proper valuation, but Egypt is not recognizing such legitimate methods when used by exporters.

Recommendation: The Government of Egypt should follow the WTO Customs Valuation Agreement and allow importers to use the fall-back method when valuing imports.

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 seven 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 percent⁶ and impose a new 10 percent duty on parts and components of telecom products⁷ that were previously not subject to duties.
- In February of 2020, India's Union Budget proposed increasing customs duties on mobile phones and mobile phone components including fingerprint scanners, printed circuit board assemblies, by 10%.

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 businesses and 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, India's Department of Telecommunications (DoT) subsequently delayed implementation. By October of 2019 the Department of Telecommunications made MTCTE mandatory for 2-wire telecom equipment, modems, G3 fax machines, ISDN CPE, private automatic branch exchange (PABX) systems, and cordless telephones. Since that time, DoT has continued to expand the requirements under "Phase II" of the plan to cover areas including Transmission Terminal Equipment, the PON family of Broadband Equipment, and feedback devices as laid out in TEC/01/2017-TC on June 23, 2020. These requirements were notified to the WTO under G/TBT/N/IND/158, G/TBT/N/IND/159, and G/TBT/N/IND/160 in August of this year. These rules became compulsory as of October 1, 2020.

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 conduct 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 indefinitely allow telecom equipment vendors use internationally accredited labs in any global location to conduct testing. Where such tests focus on security issues, India should recognize Common Criteria certifications from countries that are parties to the Common Criteria Recognition Arrangement of which India is one. To the extent that testing continues to be required, the government of India should also give companies the option to either conduct in-country testing in India or submit test reports from an accredited global test lab. This will help the government to ensure quality and safety along the various parameters will be met. 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.

Source Code Disclosure Requirements as Part of Security Testing

As part of security testing under the India Telecom Security Assurance Requirements (ITSAR)¹, DoT has asked OEMs to share the source code of equipment used in telecom networks, including servers and mobile phones. This source code constitutes commercially valuable, confidential, and sensitive information. Divulging proprietary information to testing labs and agencies could lead to the leakage of business confidential information to the competition and endanger the privacy and security of individuals and the OEMs.

Recommendation: TIA strongly recommends that the Indian Government remove language requiring source code disclosure in all draft ITSARs.

Country-Specific 5G Standards Favoring Domestic Manufacturers

India is pushing forward with domestic 5G New Radio standards with the goal of supporting its Make in India program. In late 2019, India's TSDSI submitted their own candidate 5G New Radio specifications to the ITU IMT-2020 evaluation process. These specifications use a modulation technique known as $\pi/2$ BPSK to address Low-Mobility-Large-Cell (LMLC) scenarios that TSDSI says is important for rural India. These techniques deviate significantly from the harmonized Global Core Specification (GCS) developed within 3GPP. If India succeeds in mandating the use of this standard in India, it will fracture the telecommunications equipment market and dramatically slow the deployment of 5G in India as carriers will be unable to easily iterate on their existing equipment.

Recommendation: The government of India should refrain from imposing a mandate to use the TSDSI Radio Interface Standard (RIT).

TIA further recommends that the U.S. government oppose the RIT and other India-specific standards advanced in the context of international standards development organization. TIA also recommends that the U.S. government raise this issue in the context of talks between the two countries, including in the U.S.-India ICT working group, in continuing bilateral trade talks, and as appropriate in the context of relevant multilateral talks.

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. In September 2017, the Ministry of Electronics and Information Technology issued a [lengthy list of cybersecurity](#)

¹ These source code disclosure requirements are spelled out specifically in ITSAR for E-Node B in Para 3.3 on Page 12, ITSAR for UICC (SIM and USIM) in Para 2.3.2 on Page 22, ITSAR for Packet Data Network Gateway in Para 2.3.3 on Page 21 and ITSAR for Mobile Device at Section 6.17, Page 40.

[products](#) that will be subject to this order. The agency subsequently updated and re-iterated these requirements in procurement orders issued in [2018](#) and [2019](#).

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 when 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 or 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.

Duplicative Security Certification Schemes Being Promoted by the Indian Government

In July 2019, India's Ministry of Electronics and Information Technology (MeitY) released a duplicative security certification known as the "Trusted Electronics Value Chain – Compliance Scheme" (TEVCCS). TEVCCS is technically equivalent to IEC/ISO 20243 -1 & 2 (Information Technology - Open Trusted Technology Provider Standard or OTTPS) but stipulates certification by MeitY's Standardisation, Testing and Quality Certification (STQC) Directorate. The draft scheme envisages certifying the processes that apply to commercial, off-the-shelf ICT hardware and software throughout the entire product life cycle encompassing the areas of technology development and supply chain. Currently, the certification scheme is voluntary, but there are significant indications that it may be converted to a mandatory certification requirement. This new requirement will add to the long list of existing certification schemes in India and potentially subject confidential elements of product design and supply chain to additional government audits.

Recommendation: We request that MeitY avoid formally or informally mandating the use of the TEVCCS.

Delays in Wireless Planning Commission (WPC) Certifications

Since March-April of this year, there has been a significant delay in the processing of applications for WPC Equipment Type Approval (ETA) certifications. Prior to this, applications typically took 3-4 days of processing time. However currently, the duration of ETA application processing has increased drastically. It is now taking 4-5 weeks, effectively increasing quadrupling or quintupling the processing time. This is impacting the import of ICT equipment, including end-user devices.

Recommendation: We request that the Indian government expedite the process to reduce the processing time. To enable the ease of doing business and meet market requirements, our request is to aim to deliver a decision on WPC ETA applications within a week's time.

Delay in Bureau of Indian Standards (BIS) Applications

Applications for BIS registrations under the Compulsory Registration Scheme for Electronics and IT products are facing undue delays in approvals especially for the products manufactured in China. This may be due to India-China bilateral tensions; however, the cascading effect of the delays is felt by all OEMs, including U.S. companies. This lack of predictability with respect to the time it will take to receive approvals delays time to market for product launches and in general negatively impacts the ability to do business.

Recommendations: We request that BIS process approvals for relevant products in a timely manner, keeping in mind the collateral damage to U.S., European, Japanese, and other global firms as a result of these delays.

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.

Assessing Customs Duties in Excess of its Bound Rates

Since 2018, Indonesia has been assessing customs duties on ICT products that are in excess its obligations under its WTO Goods Schedule. For example, certain routing and switching products under HTS Code 8517.62 are being assessed a 10% duty, when Indonesia has committed to provide duty-free treatment in its Good Schedule.

Recommendation: The Government of Indonesia should restore duty-free treatment to products that are bound at zero under Indonesia's WTO Goods Schedule.

Mexico

Local SAR Testing Requirements

In February of 2020, Mexico's Instituto Federal de Telecomunicaciones (IFT) published new guidelines pursuant to Technical Provision IFT-012-2019 (to take into effect in February 2021) that pose a significant barrier to trade for mobile telecommunications products. These guidelines restrict the sales of U.S. companies by requiring in-country testing for Specific Absorption Rates (SAR). These testing requirements are not only redundant and have no conceivable benefit to Mexican consumer safety, but also they also refer to out-of-date standards instead of recent guidance from the IEC/IEEE and ICNIRP. These requirements also lack the normal clauses exempting retroactive compliance, raising the specter that not only would new products require testing but also all existing products would require testing. Mexico currently has zero accredited facilities able to do this testing; based on the IFT's database we estimate that they would need to operate 29 SAR systems around the clock for a full year just to clear the existing backlog, not to mention begin clearing new products. Mexico did not engage with the WTO TBT process in the course of promulgating this new requirement.

Recommendation: We recommend that the Government of Mexico (GOM) eliminate these duplicative and unnecessary domestic testing requirements. At a bare minimum, we recommend that GOM notify the WTO through the relevant TBT enquiry point and use the latest testing standards (IEC/IEEE 62209-1528:2020) and the 2020 version of ICNIRP guidelines. TIA also recommends that the U.S. government push Mexico to engage further on this issue in the context of ongoing USMCA implementation discussions with the goal of having Mexico accept test results from U.S. accredited labs possibly through the inclusion of SAR testing in the U.S.-Mexico telecom MRA.

Duplicative Conformity Assessment Procedures with IPR Disclosure Implications

Conformity procedures published by the Instituto Federal de Telecomunicaciones (IFT) on February 25, 2020 and set to take effect in 2021 contain worrying language requiring the sharing of test reports that may contain in-depth confidential information about ICT products. Articles of concern in this respect include:

- Chapter 3, Section I, Article 11, Number 8 requires the sharing of test reports containing business proprietary information about ICT products destined for the Mexico market.
- Chapter 4, Section 1, Article 26, Number 3 and Chapter 6, Article 29, Number 1 jointly contain language requiring manufacturers to provide several models of ICT equipment to the IFT. Further, to establish products as part of a family a manufacturer is required to present schematic diagrams, photographs, and other information to the certification body which will be shared with the IFT.
- Further enumerations of requirements to provide business confidential schematics and / or block diagrams as well as brochures, photographs, and images (internal and external) showing the technical design characteristics, such as: transceiver card or radio transmitter with the layout of tracks, integrated circuits, components, antennas, etc. in Annex A.1.2, Annex A.1.4, and Annex A.1.6.

Elements of these new conformity assessment procedures are also duplicative and would make import operations complex and unfeasible. Under the new definitions of “Family” and “Model” in Chapter 4, Section 1, Article 26, Number 2, any product model that is not included in a Family would have to be certified under the certification scheme called “Sample by Product Model and Surveillance for More than One Lot.” This procedure requires that the certificate of conformity indicate the number of products that make up the lots, resulting in continuous and even parallel updates of the certificate of conformity.

Further, if conformity certificates become non-transferable – as established in Chapter 3, Section 1, Article 7 – new conformity certificates would have to be issued to both manufacturers and distributors of products, thereby delaying the entry of products into the Mexican market.

Recommendation: The Mexican government should alter these provisions to protect business confidential information and work with industry to streamline and rationalize the elements of these procedures that create costly and duplicative requirements.

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.

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

Abrupt Changes to Import and Tax Rules Leading to Delays

On October 1, 2020 the Ministry of Economy issued modifications to the Foreign Trade Rules (Annex 2.4.1) related to changes in the process followed by the Accredited Verification Units to issue Labeling verification requests. These changes were put into place the same day they were announced, affecting the cycle time of bulk shipments by up to 24 hours. At the same time, the system established by the Ministry of Economy was not integrated properly with the Tax Authority, resulting in delays of several days. As a result of industry pressure, the Ministry of Economy added new criteria for a simplified process for Authorized Economic Operators and importers with operations of more than 200,000,000 Mexican pesos on October 9th which has proven more efficient.

Recommendation: The Ministry of Economy and Tax Authority should test systems and processes, estimate the impact on trade, and where appropriate consult with industry before bringing such modifications into force.

Satellite Capacity Reserve

Article 150 of the Federal Law on Telecommunications and Broadcasting (the Law) establishes the obligation for all satellite capacity providers using a Mexican orbital location to reserve capacity in their satellites to be facilitated free of charge for Federal Government use. There is no law or regulation that sets forth how to fix the amount of such reserve capacity. This situation practically impedes the use of Mexican orbital slots and therefore preventing U.S. satellite operators to access valuable orbital resources due to the extremely high level of uncertainty.

Recommendation: Permanently eliminate Article 150 of the Federal Law on Telecommunications and Broadcasting, or alternatively issue secondary regulation that establish clear criteria and procedure for the definition of a reasonable amount of satellite reserve capacity for the Federal Government.