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EXECUTIVE OFFICE OF THE PRESIDENT

Fact Sheet: Key Barriers to Digital Trade

The Office of the U.S. Trade Representative (USTR) works to identify and reduce obstacles for U.S. companies operating in the digital economy. Beginning this year, USTR is putting a special emphasis in its National Trade Estimate (NTE) on barriers to digital trade.

Digital trade has grown exponentially in recent years. According to McKinsey, cross-border data flows grew by 45 times between 2005 and 2014, and will grow another nine-fold in the subsequent five years. These data flows generated $2.8 trillion in economic value in 2014—a greater impact on world GDP than global trade in goods. Such growth reflects not just the dynamism of the technology industry, but also the digitization of the economy as a whole. Digital trade is crucial for nearly all firms, from large multinationals to small businesses that rely on online platforms to connect and trade with customers around the world.

As the global economy goes digital, information, goods, and services traverse political boundaries more frequently and easily than ever before. Firms selling goods or providing services digitally have taken local and national markets to a global scale. Many governments have responded to these changes by seeking to control digital trade in blunt and disruptive ways. Some rules are responsive to legitimate public policy goals; others are explicitly protectionist. USTR works to monitor all measures restricting digital trade and remove barriers where appropriate so that U.S. companies can continue to compete and win in a 21st century global economy.

This is also the rationale for including in the Trans-Pacific Partnership (TPP) the most comprehensive set of rules ever negotiated addressing issues of the digital economy, including commitments to maintain an open and free Internet. TPP combats restrictions on cross-border data flows, data localization requirements, and other barriers to digital trade with cutting-edge obligations designed to promote the digital economy.

The NTE highlights trade barriers faced by U.S. suppliers of digital goods and services, and identifies specific issues on which USTR will allocate monitoring and enforcement efforts over the coming year. These are some of the key barriers to digital trade identified in the <u>2016 NTE: *Internet Services & E-Commerce*</u>

- **<u>Arbitrary Blocking of Cross-Border Data Flows in China</u>: For over a decade, China's filtering of cross-border Internet traffic has posed a significant burden to foreign suppliers, hurting both Internet services and users who often depend on them for their business. Outright blocking of websites appears to have worsened over the past year.**

- **<u>Data Localization Requirements in Russia:</u> Russian law requires that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. For many U.S. companies, ensuring local storage and processing is either technically or economically infeasible, forcing them to operate with significant legal uncertainty.**

- **Data Localization Requirements in Indonesia: Indonesian regulations require providers of a "public service" to establish local data centers and disaster recovery centers in Indonesia, and defines the term "public service" broadly and vaguely. The Indonesian government may pursue regulation or national legislation on personal data protection in 2016, both of which could further define requirements for data localization. Localization requirements could prevent service suppliers from realizing economies of scale, discourage investment, and inhibit the cross-border data flows that are essential to electronic commerce.**

- **News Aggregation Fees in several EU Member States: Certain EU Member States have instituted measures that require news aggregators, which provide snippets of text from other news sources, to remunerate those other sources for use of the snippets. These measures serve as an arbitrary tax on firms that help drive traffic to publishing sites, thereby increasing viewership and revenue—a valuable service. After Germany implemented such measures, some aggregators dropped links to sites seeking compensation for use of the indexed extracts and related links, causing many publishers to opt out of requiring such payments. In late 2014, Spain passed a similar measure which made such payments mandatory. Elements of the EU publishing industry are advocating adopting similar measures EU-wide.**

<u>Telecommunications Services & Equipment</u>

- **<u>Foreign Investment Restrictions in China:</u> China continues to impose foreign equity restrictions on value-added (50 percent) and basic (49 percent) telecommunications services. In addition, with respect to value-added telecommunication services, China severely limits access of foreign providers through a non-transparent and overly rigid licensing process. With regard to basic telecommunication services, China only permits foreign suppliers to enter into joint ventures with state-owned enterprises and imposes exceedingly high capital requirements ($145.9 million).**

- **Restrictions on Satellite Television Suppliers in Argentina: Argentina issued a presidential decree prohibiting satellite television suppliers from also providing (1) telecommunications**

services, including broadband Internet access; (2) video-on-demand services; and (3) bundling of satellite television with any telecommunications services. This measure hurts the ability of satellite services providers in Argentina to compete against cable or telecommunications suppliers, which do not face similar restrictions.

- **International Termination Rates in the EU: Telecommunications operators in several EU Member States, including Portugal, Czech Republic, Croatia, Greece, and France, are charging higher rates for delivering international phone calls originating outside the EU than for international traffic between EU Member States. These actions adversely affect the ability of U.S. telecommunications operators to provide affordable, quality international call services to U.S. businesses and consumers.**

- **Local Content Requirements in Brazil: The rules governing a recent spectrum auction in Brazil appear to require winning bidders to provide a preference for technology, services, equipment, and materials produced in Brazil, as they build out their networks. Previous auctions held in 2012 and 2014 likewise appear to mandate the purchase of domestically-produced and domestically-developed goods during network build-out.**

- **Local Content Requirements in Indonesia: Indonesia requires that equipment used in certain wireless broadband services contain prescribed percentages of local content, and that telecommunication operators expend half of their total capital expenditures for network development on locally sourced components or services. In 2015, Indonesia issued a regulation that appears to require all 4G enabled devices to contain 30 percent local content, and all 4G base stations to contain 40 percent local content.**

- **Telecommunications Equipment Restrictions in China: China's 2015 banking and insurance regulations relating to information security measures, if finalized in their current form, would impose far-reaching and onerous restrictions that affect imported ICT products and services in China. China also imposes onerous, redundant, and frequently-changing testing requirements on mobile phones.**

- **Telecommunications Equipment Restrictions in India: India's regulations governing the licensing of certain ICT products do not accept test results from internationally accredited labs, instead requiring domestic testing of these products. Further, newly increased tariffs on ICT equipment and technologies impose an onerous burden on ICT product vendors.**

BACKGROUND

Our review of barriers to digital trade includes a review of ongoing and emerging barriers to U.S. telecommunication services and goods exports, which are a significant source of American jobs. Under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, USTR reviews annually compliance by trade partners with trade agreements regarding telecommunications products and services (mainly WTO and FTA commitments).

International trade agreements, including the WTO's *General Agreement on Trade in Services* (GATS) and U.S. free trade agreements, provide rules designed to ensure that companies have reasonable access to telecommunications networks, that competitive conditions are maintained, and that regulators act in a transparent and effective manner. These agreements, along with the *General Agreements on Tariffs and Trade 1994* (the GATT 1994) and the WTO *Agreement on Technical Barriers to Trade*, also address conditions affecting the competitive supply of telecommunications equipment in foreign markets. USTR will continue to use these tools to ensure that U.S. companies maintain the access to supply new and innovative goods and services abroad.