USTR Highlights Telecommunications-Trade Barriers in 2013 National Trade Estimate and Section 1377 Reports

In early April, the Office of the United States Trade Representative ("USTR") issued two annual trade reports addressing foreign trade barriers to U.S. telecommunications and media companies, content providers, equipment manufacturers, and investors. These congressionally-required reports are entitled the National Trade Estimate Report on Foreign Trade Barriers ("NTE") and the Report on the Section 1377 Review of Telecommunications Trade Agreements ("1377 Report"). The NTE is a comprehensive and voluminous annual report on significant foreign trade barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights and covers all economic sectors. It provides a potential roadmap for future trade negotiations and market-opening measures. The 1377 Report assesses compliance by U.S. trading partners with telecommunications-trade agreements, including World Trade Organization ("WTO") agreements and regional and bilateral free-trade agreements. It provides a basis for further negotiations and enforcement action.

1. Themes Common to the National Trade Estimate Report and Section 1377 Report

In 2013, the two reports both highlight a number of telecommunications-related barriers to trade, including the following:

- ***Foreign Investment Limits***: USTR cited foreign investment limits, typically in the form of limits on the percentage of equity a foreign firm can control, in Canada, Ethiopia, India, Indonesia, Kazakhstan, Korea, Malaysia, Philippines, Russia, Taiwan, Thailand, United Arab Emirates, Venezuela, and Vietnam.

- ***Restrictions on Foreign Components in Telecommunications Equipment***: USTR cited restrictions on the use of foreign-origin products in domestic telecommunications infrastructure or equipment adopted by Brazil, China, India, Indonesia, and Korea. Such restrictions take one of two forms. First, some governments specifically restrict the use of foreign components in the construction of domestic telecommunications infrastructure, citing national security concerns. Second, governments also impose local content requirements for telecommunications equipment.

- ***Restrictions of Satellite Services***: USTR cited restrictions on the ability of U.S. operators to offer satellite capacity to customers in China, India, Korea, Mexico, and Singapore.

- ***Mobile and International Call Rates***: USTR cited high termination rates for both mobile and international calls, as well as discriminatory taxes on international telephone calls, in Chile, El Salvador, Ghana, Japan, Pakistan, and Tonga.

2. Specific Concerns in the NTE

In addition to the issues common to both reports highlighted above, the NTE highlights the following telecommunications trade barriers:

- ***Local Content Requirements for Broadcasters***: USTR cited requirements that broadcasters transmit a certain amount of local content—which acts a barrier to entry for foreign television providers—in Australia, Brazil, Canada, China, European Union, Korea, Malaysia, South Africa, Ukraine, and Venezuela.

- ***Issues Affecting Telecommunications or Information Technology Equipment Trade***: USTR cited countries where the importation of certain telecommunications or information technology products requires government authorization or is outright prohibited, including Angola, Argentina, Bolivia, Ghana, Jordan, Qatar, Saudi Arabia, and Vietnam.

3. Specific Concerns in the 1377 Report

In addition to the issues common to both reports, the 1377 Report addresses a wide range of concerns, including:

- ***Internet-Enabled Trade in Services***: USTR expressed general concern regarding restrictions on data access and transfers and with respect to VoIP services.

- ***Independent and Effective Regulator***: USTR noted that while WTO Members' commitments under the General Agreement on Trade in Services' Annex on Telecommunications and WTO Reference Paper require a party to establish an independent telecommunications regulator, China's regulator does not "act as a neutral arbiter among market participants and has effectively shielded state-owned Chinese operators from competition."

- ***Competition***: The 1377 Report highlights several competition problems in specific markets. USTR noted that Colombia's unequal regulatory treatment of mobile operators and carriers' difficulty obtaining roaming agreements in Colombia may violate the U.S.-Colombia Free Trade Agreement. USTR also noted Mexico's high level of concentration in the telecommunications and video services markets. With respect to China, USTR welcomed China's proposal to implement a pilot program to license resellers of mobile services but criticized China for limiting participation to Chinese operators.

- ***Issues Affecting Telecommunications Equipment Trade***: As in past Section 1377 reviews, USTR cited the use of equipment standards, conformity assessment procedures, and testing requirements that bar entry for U.S. telecommunications equipment:

  - ***China***: USTR cited a multi-level protection scheme ("MPLS") and government-developed 4G LTE encryption algorithm (the "ZUC standard"), which China was considering mandating for use in network equipment and mobile base stations. USTR noted that at the December 2012 meeting of the U.S.-China Joint Commission on Commerce and Trade, China agreed to discuss U.S. concerns related to the MPLS and agreed not to mandate any particular encryption standard for commercial 4G LTE equipment.

  - ***India***: USTR cited local testing requirements, mandatory inspections of manufacturing facilities for imported information and communications technology equipment, and the imposition of strict liability or blacklisting for vendors that do not take adequate security measures.

  - ***Brazil, China, Costa Rica, and India***: USTR cited mandatory certification requirements and requirements for local testing.

- ***Submarine Cable Systems***: USTR noted that India has made improvements in ensuring timely and competitive access to cable stations, but USTR urged India's telecommunications regulator to amend the proposed methodology for reducing access and collocation charges to ensure that the charges do not include costs for unnecessary equipment.

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For more information regarding the USTR reports or Wiltshire & Grannis LLP's international trade and investment practice, please contact **Kent Bressie** at +1 202 730 1337 or kbressie@wiltshiregrannis.com or **Tricia Paoletta** at +1 202 730 1314 or tpaoletta@wiltshiregrannis.com.