WRITTEN SUBMISSION OF THE NATIONAL FOREIGN TRADE COUNCIL

Comments Regarding the Compilation of the National Trade Estimate Report on Foreign Trade Barriers

Docket No. USTR-2024-0015

October 17, 2024

National Foreign Trade Council

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Table of Contents

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INTRODUCTION

These comments are submitted by the National Foreign Trade Council (NFTC) in response to the notice entitled *Request for Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers* (Notice) which was published in the Federal Register on September 3, 2024. Pursuant to the Notice, The Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), publishes the National Trade Estimate Report on Foreign Trade Barriers (NTE Report) each year. The Notice invites comments to the TPSC in identifying significant barriers to U.S. exports of goods and services, U.S. foreign direct investment, and the protection and enforcement of intellectual property rights for inclusion in the NTE Report.

The National Foreign Trade Council is the premier business association advancing trade and tax policies that support access to the global marketplace. Founded in 1914, NFTC promotes an open, rules-based global economy on behalf of a diverse membership of U.S.-based businesses.

NFTC is dedicated to making America more competitive in the global economy by ensuring the adoption of forward-looking tax and trade policies, by strengthening global rules and by opening foreign markets to U.S. products and services. Our strong support for these objectives, and our belief that their fulfillment is essential to our members' success in a globalized economy, have been unwavering for over a century. We, therefore, believe that it is critical to provide policymakers in the administration with our clear views about the role trade and tax policies play with respect to U.S. competitiveness in the global economy, and the critical importance of USTR in eliminating foreign trade barriers that undermine U.S. market access abroad.

At the outset of our comments we want to express our deep disappointment that USTR has, for the second year in a row, dropped core digital trade barriers, such as barriers to cross-border data flows, data localization requirements, requirements to disclose source code for commercial access to markets, and discriminatory practices affecting trade in digital products and services from the NTE. Recent polling by Morning Consult showed that 82% of voters, on a bipartisan basis, are concerned that foreign regulators are discriminating against U.S. businesses to protect their markets from American competitors.

NFTC is pleased that the Department of Commerce's International Trade Administration (ITA) recently announced a new initiative to track these barriers and empower overseas digital attachés to assist U.S. companies in combating these barriers abroad. However, successfully confronting these barriers requires a united front across the U.S. government and USTR's failure to even identify significant digital trade barriers in the NTE report sends mixed signals to foreign governments about the seriousness with which the U.S. government views these issues and emboldens countries whose digital policies target leading U.S. companies, for example the European Union's (EU) adoption of the Digital Markets Act (DMA) and Digital Services Act (DSA).

NFTC will continue to elevate in this submission all digital trade barriers that are adversely affecting our member companies. As the next Administration formulates its trade

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policy, NFTC hopes the U.S. government will reverse course, defend U.S. companies when they face discriminatory treatment abroad, and re-engage in driving strong digital trade provisions across regional and multilateral fora.

SPECIFIC BARRIERS

Digital Trade Barriers

As emphasized in the introduction, digital trade is a key driver of U.S. economic growth. It is also an area where governance frameworks continue to evolve. Given that the United States is the global market leader, American businesses are most at risk from protectionist barriers. As one example, the OECD highlights the rise in data localization requirements globally which has consequences for all digitally-enabled companies.[1] As countries develop their national governance frameworks for innovative technologies, including for artificial intelligence, it is particularly important that the U.S. exert leadership on digital trade to be at the table developing the international frameworks that will guide national rulemaking. The Council of Economic Advisors have made the case that "Digitally-enabled services represent the fastest growing segment of global trade" which is why the President's Export Council on June 11, 2024, also called for renewed U.S. leadership on digital services and emphasized the importance of addressing digital barriers such as many of the irritants highlighted in our submission.[2][3]

EU "Technology Sovereignty"

Notably, over the past three years, EU leaders have actively promoted an aggressive, multi-pronged approach towards "technology sovereignty" as one of the two main policy objectives to be pursued by the current EU Commission. Under this new policy umbrella, the EU has enacted a sweeping Digital Markets Act that applies almost exclusively to U.S. platforms and has pursued new restrictions on U.S. cloud services, artificial intelligence, and data. EU officials have stated that the purpose of digital sovereignty is to create a "new empire" of European industrial powerhouses to resist American rivals. These unilateral regulations discriminate against U.S. companies and appear designed to transfer a portion of the $517 billion U.S. digital export market to their EU competitors. The European Commission's own report from Mario Draghi highlights the costs of European over-regulation which creates opportunities to engage on EU digital policies.[4]

Unilateral and Discriminatory Digital Services Taxes

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[1] https://www.oecd-ilibrary.org/trade/the-nature-evolution-and-potential-implications-of-data-localisation-measures_179f718a-en

[2] https://www.whitehouse.gov/cea/written-materials/2024/06/10/what-drives-the-u-s-services-trade-surplus-growth-in-digitally-enabled-services-exports

[3] https://www.trade.gov/sites/default/files/2024-06/PEC%20Services%20Recommendation%20-%20Final%20Draft%20for%20Meeting.pdf

[4] https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en

An increasing number of foreign trading partners have proposed or imposed unilateral digital services taxes (DSTs) that unfairly target U.S. companies for discriminatory taxation. While many DST proposals mostly emanated from EU countries in the past, governments outside of the EU have followed suit, underscoring the growing risk of contagion if such discriminatory proposals are not stopped before they are adopted. Many governments initially justified DSTs as necessary to address budgetary pressures linked to COVID-19 economic recovery efforts. While many countries agreed to suspend their DSTs while the Organization for Economic Cooperation and Development attempts to reach consensus on a global approach to address these challenges, some countries have gone ahead and implemented their DSTs. This list of countries that have enacted DSTs has grown to include Argentina, Austria, Canada, Colombia, France, Hungary, India, Indonesia, Italy, Kenya, Nepal, Poland, Sierra Leone, Spain, Tanzania, Tunisia, Turkey, Uganda, and the United Kingdom, among many others who have proposed new DSTs or similar relevant measures (i.e., a DST by another name). Of these, some such as Canada, who implemented a 3% DST on covered activities expecting to generate more than $1 billion in revenue annually, have enacted plans to apply a retroactive DST that seizes billions of dollars from the U.S. tax base.

It should be noted that U.S. companies pay the overwhelming majority of revenues generated by foreign DSTs. Taking the UK DST as an example, 18 companies paid the entire £358m tax bill in the first year of the DST, of which only 5 companies paid 90%.[5]

Discriminatory Foreign Regulations

As the EU's Digital Markets Act (DMA) has come into effect, it is important to raise the significant risks of other countries following Europe's model. Several countries are taking the basic DMA approach and are seeking to regulate platforms through their own policy proposals. The proposals largely target specific U.S. service providers and products through thresholds or a designation process that often excludes local companies and products. This raises concerns about protectionism and potential harm to competition.

These policies are unsupported by evidence of consumer harm and have led to digitally focused ex-ante regulations around the world. In many cases, such rules are tailored to specifically impede the legitimate business models of U.S. companies, including their administration of app stores. Policymakers are not separating procompetitive conduct from the hypothetical harms they seek to regulate. While these prescriptive laws state that they seek to promote competitive digital markets, countries contemplating such rules should consider the potential adverse consequences that raise prices and limit choice for consumers and small businesses.

Companies are concerned that the EU DMA will reduce the ability for companies to address the needs and interests of a broad group of European consumers in order to protect the narrow interests of a few competitors. This raises concerns about innovation and economic dynamism in Europe, and in additional countries considering DMA-like policies.

[5] *https://www.nao.org.uk/wp-content/uploads/2022/11/Investigation-into-the-digital-services-tax-summary.pdf*

Barriers to the Development of AI

Several countries have developed or are considering developing AI regulations that would adversely impact the development of A.I. through limiting the cross-border supply of AI-enabled services and investment in these technologies. Some governments are seeking to develop regulations that go beyond legitimate safety concerns and focus on limiting foreign competition. As leaders in AI development, many U.S. companies' risk being impacted by these discriminatory regulations.

Some of these regulations include forced disclosure of source code, algorithms, and commercially sensitive data, country-specific technical requirements, misapplication of copyright law, and discriminatory treatment of service suppliers.

It is critical for the U.S. to maintain its leadership in A.I. Thus, the U.S. government should continue to work with allies to build consensus on the best practices for governing AI to prevent foreign governments from imposing measures that disproportionately restrict AI innovation and American companies' market access.

Other Digital Trade Barriers

Some foreign governments have also devised new ways of targeting U.S. digital companies and reducing their space to operate in foreign markets while protecting their domestic industries. For example, Canada's *Online News Act* and Australia's *News Media and Digital Platforms Mandatory Bargaining Code* require U.S. digital companies to carry domestic news content, transfer revenue to competitors, and in some cases disclose proprietary information related to private user data and algorithms.

Australia

Bargaining Code

Australia's News Media and Digital Platforms Mandatory Bargaining Code requires U.S. digital companies to carry domestic Australian news content, transfer revenue to Australian competitors, and disclose proprietary information related to private user data and algorithms. Countries such as Canada and Czechia have pursued similarly discriminatory measures, with more intrusive revenue expropriation requirements aimed solely at U.S. companies. In December 2023, the Canadian Online News Act, Bill C-18 received Royal Assent and came into force. Like the Australian bargaining code law, this bill exacts significant funds from U.S. digital companies.

Proposed Investment Obligation for Streaming Services

Australia's Minister for the Arts Tony Burke is consulting on a bill targeted at U.S. streaming providers, which will require them to invest at least 10% of their local program expenditure on creating new Australian drama programs. The definition of Australian content is still uncertain, but will likely be very difficult to meet. It would also include

additional sub-quotas, including to produce children's content – even if the streaming provider does not produce that sort of content. This is discriminatory against U.S. businesses, because the level of obligation being proposed is higher than the current scheme that applies to Australian subscription TV services. Additionally, the expenditure percentage increases with the number of subscribers – 1m-3m is 10%; 3m-5m is 15%; 5M+ is 20%. There is suspicion that this is a design feature aimed at keeping the investment obligation to 10% (or possibly 15%) for local streaming services. An obligation in this form could put Australia in breach of its obligations under the Australia-United States Free Trade Agreement. The government can only impose measures if Australian content is not readily available to Australian consumers. This is clearly not the case given the large investments in Australian content that U.S. streamers are already making.

ATO Draft Taxation Ruling on Royalties – Character of Receipts in Respect of Software

In June 2021, the Australian Taxation Office (ATO) issued a draft taxation ruling (TR 2021/D4) that proposed an updated domestic interpretation of what constitutes a "royalty" and has considered certain software payments made by distributors and resellers, including through updated methods of software delivery, as royalty, subject to withholding tax in Australia. While TR 2021/D4 would be a reinterpretation of domestic copyright law, its result is in fact a significant departure from global norms regarding the tax characterizations of software payments made by distributors and resellers. The ATO does not consider its view to be out of step with its taxing rights under the Double Taxation Avoidance Agreements ("DTAA") (including with the U.S.) and is expected to apply this new interpretation to the US-Australia DTAA as well.

Specifically, Australia's long-standing guidance, TR 93/12 – Income Tax: computer software (which was withdrawn on July 1, 2021 with the release of draft TR 2021/D4) makes clear that a payment by a distributor for a license of a simple use of software does not constitute a royalty if it is licensed to end-users, as the distributor is not exploiting a software copyright right. The simple use of software means that a licensee or end-user is using the product as intended (and therefore not using the copyright in the software). This is the approach taken in the OECD Model Tax Convention on Income and on Capital and related commentary, which acknowledges that "distributors are only paying for the acquisition of the software copies, not to exploit any right in the software copyrights," and therefore relevant transactions should not be treated as royalties.

TR 2021/D4, however, would expand the scope of payments made by distributors and resellers of software that may constitute a royalty. Under the approach in TR 2021/D4, a distributor/reseller is considered exercising an ancillary "authorization" copyright right in a software program, even though the copyright owner has not granted any of the principal copyright rights in the software (e.g., modify, reproduce, etc.) to the distributor. This means that certain customary commercial elements of computer software distributor and reseller arrangements (e.g., authorizing the user to download software onto its server) would be considered as the distributor or reseller exercising a copyright right rather than transferring a copyrighted article or providing a service. While this is on hold pending proceedings before the courts there is continued concern should it move forward.

Audio Visual Services - Streaming Content Quotas

On January 30, 2023, the Government of Australia published the National Cultural Policy. The Policy recommends that the Australian Government introduce "requirements for Australian screen content on streaming platforms to ensure continued access to local stories." In September 2023, the Australian government announced it would delay introducing legislation to impose local content quotas on streaming platforms until 2024. However, the Australian government missed the July 1st deadline this year to implement a framework for content quotas. If the Australian government were to mandate that streaming platforms invest a percentage of their Australian revenue in Australian online content, it would prima facie appear to contravene Australia's commitments under the U.S.-Australia Free Trade Agreement, which discipline measures that discriminate in favor of domestic content.

Brazil

Over-the-Top Regulations

Brazil has contemplated measures to apply ill-fitting or cumbersome regulations to value-added services, such as video-on-demand, streaming, or other over-the-top services (OTTs). Consultations by both ANATEL and ANCINE question how to regulate these services under existing frameworks or the need to create new regulatory models, without due consideration of specific market and service characteristics, as well as the technical feasibility of the requirements on these services. Specifically, ANATEL is reviewing its Competitive Market Plan and plans to include OTT as a relevant market in order to apply ex-ante regulation. NFTC encourages Brazil to take an approach rooted in good regulatory practices that considers the innovative nature of Internet-based business models and the overall consumer welfare, incentivizing less prescriptive regulations across all services and avoiding any potentially overly burdensome rules that would limit access to these services. NFTC also encourages the permanent prohibition of customs duties for digital products and electronic transmissions to ensure that added costs do not impede the flow of music, video, software, games, or information. Additionally, ANATEL has indicated that it intends to regulate the administrative blocking of piracy content. (replace or in addition to previous sentence) Approved in January 2024, Brazilian Law No. 14,815 equips ACINE with greater authority over Brazilian media piracy. If ANATEL decides to go in this direction, the agency should consider safe harbors for platforms that are committed to preventing piracy in their services.

Digital Platform Regulations

In November 2022 Brazil's Congress introduced Bill 2768, inspired by the European Union's Digital Markets Act (DMA), that designates the National Telecommunications Agency (ANATEL) as the primary regulator of "digital platforms" in Brazil. The bill remains under consideration in the Brazilian House of Representatives. The bill also establishes a regulatory framework for the organization, functioning, and operation of "digital platforms" that offer services to users in Brazil. The bill uses vague terminology

and does not clearly describe the specific requirements needed to comply. Instead, it grants ANATEL significant discretionary authority to define terms and create rules. While the vague language in the bill makes it hard to determine the specific obligations that would apply to U.S. companies, the bill would at minimum increase compliance costs and may require the restructuring of business operations.

Network Usage Fee

ANATEL launched a consultation exploring the possibility of requiring over-the-top providers to bear the cost of the development of telecom infrastructure in Brazil. ANATEL's consultation echoes calls by European and Brazilian telecommunications companies to require six U.S. companies to directly pay telecommunications operators to support infrastructure development. Introducing an Internet levy to subsidize local telecommunications companies would have significant consequences for the digital economy and would directly discriminate against U.S. companies who are already significantly invested in Brazilian networks and Internet infrastructure. ANATEL's consultation ran from March - August 2023. Despite strong opposition to the idea of a network fee through the consultation, ANATEL is expected to push forward with the proposal. In June, Brazil's communications minister announced the government's intentions to send a proposal to congress which is anticipated to occur this year.

Data Economy

The Department of Innovation of the Ministry of Development, Industry, and Trade (MDIC) is considering policies and legislative proposals related to the "data economy" modeled after the European Union's Data Act, which impose discriminatory obligations on U.S. companies regarding the use of non-personal data. Although a formal proposal has not been released, there will likely be a public consultation on the matter by the end of the year with questions about how Brazil should implement a similar Data Act in the country. There are concerns that this proposal could unfairly target U.S. companies through specific thresholds.

Data Protection

The Brazilian Congress introduced Bill of Law N° 4097, DE 2023, which would introduce new "digital sovereignty" measures into the General Data Protection Law. It appears to require IT companies providing services in Brazil to have a substantial percentage of Brazilian ownership and control (e.g., 25% of the voting share capital held by Brazilian nationals, be incorporated under Brazilian law or headquartered in Brazil).

Brazilian Artificial Intelligence Strategy

In April 2021, the Federal ICT Ministry published the Brazilian Artificial Intelligence Strategy (EBIA), which guides the actions of the Brazilian government in favor of the development of initiatives to stimulate research, innovation and development of AI

solutions, as well as their responsible use. At the legislative level, some bills that intend to regulate the development and use of AI have been presented. Bill 2.338/2023, proposed in May 2022, outlines three levels of risk for AI systems, similar to the European Union AI Act: (i) excessive risk, in which the use is prohibited; (ii) high risk; and (iii) non-high risk. Before deploying or using the AI system, it shall pass a preliminary self-assessment analysis conducted by the AI provider to classify its risk level. In July 2024, the Temporary Commission for AI in Brazil published an updated report analyzing amendments to Bill 2338/2023. Despite amendments, the bill worryingly, the bill applies a blanket approach to AI regulation that does not narrowly focus on high-risk use cases and instead captures low-risk applications, including everyday business functions. Among other issues, the bill does not clearly differentiate between the developer and the deployer of high-risk AI systems, which threatens to significantly impede the ability of businesses of all sizes from developing innovative AI applications. The bill also contains copyright provisions that go way beyond what any other country is proposing. It would force developers to pay for any Brazilian content used to train AI models, which could essentially prevent generative AI features from being developed or used in Brazil.

Digital Services Taxation

Under the Ministry of Economy's tax reform proposal, the Ministry proposed establishing the Social Contribution on Transactions with Goods and Services (CBS), a federal contribution similar to the Value Added Tax (VAT) that could introduce significant new obligations for online service providers and marketplaces if not carefully crafted. This tax reform manifested as Constitutional Amendment No. 132, which was enacted on December 20th 2023. The new tax system will be a phased introduction starting in 2026. In April, Brazil's Finance ministry submitted the government's first proposal to regulate the tax reform amendment, which provides for an extensive list of provisions including general rules for taxation definition, exemptions, and rate reductions.

Canada

Digital Services Tax

On June 20, 2024, Canadian Bill C-50 implementing their Digital Services Tax Act received royal assent, and entered into force on June 28th. The DST imposes a 3% tax on revenue from certain digital services provided by businesses with gross revenues of at least €750 million and in-scope Canadian revenues of at least $20 million (CAD). The tax which comes into force in 2025 applies retroactively to relevant revenues earned as of January 1, 2022, and is not creditable against Canadian income tax. Canada moved forward with the DST despite the agreement from nearly all 140 economies participating through the Organization for Economic Cooperation and Development's (OECD) negotiations on international tax rules to extend a moratorium on DSTs through December 31, 2024. Canada's DST discriminate s against U.S. companies and contravene Canada's obligations under both the U.S.-Mexico-Canada Agreement (USMCA) and the WTO General Agreement on Trade in Services (GATS). NFTC supports the USTR announcement that the U.S. had requested dispute settlement consultations with Canada under USMCA and urges continued engagement to seeing the discriminatory tax removed.

C-11 - Online Streaming Act

In April 2023, the Government passed Bill C-11 Act to amend the Broadcasting Act, aimed at extending CRTC regulatory authority over online services and imposing various parameters for regulation aimed at requiring "web giants" to contribute to the creation, production, and distribution of Canadian content in English and in French. The Act gives significant power to an unelected regulator (Canadian Radio-television and Telecommunications Commission – CRTC) to collect information, set rigid investment quotas, and impose fines.. In June 2024, the CRTC released Broadcasting Regulatory Policy 2024-121 which set the threshold for applicability at $25 million or more in annual contribution revenues, and imposes a base contribution level of 5% on both audio-visual and audio online activities. U.S. streaming services already invest billions of dollars annually into Canada's creative sector, but there are no requirements in the Act for the CRTC to recognize these investments when setting mandatory contribution requirements. Resulting regulations could disincentivize existing investments, and negatively impact customer choice, affordability, and the ability for companies to innovate on behalf of their Canadian customers.

Online Publications Bill (Bill C-18)

The Canadian Online Publications proposal (Bill C-18, aka Online News Act) is an effort by the Canadian Government to subsidize the Canadian news industry in a manner that violates the principles of nondiscrimination and national treatment underpinning USMCA. The bill requires compensation for facilitating access to news in any way and seeks to require payments for links served on Internet platforms. (It is worth underscoring how damaging a link tax would be. The open web is built on links; requiring payment for them would have a significant negative effect on how the Internet operates). Bill C-18 targets a handful of U.S. platforms while exempting foreign rivals from its regulatory scope including companies like Bytedance/TikTok that are competing aggressively in the Canadian news market. The legislation also applies to a broader range of services than any similar measures in the EU and other markets – not just search engines and social media providers but also podcasting services, voice assistants, app stores, cloud providers, and ads platforms. Bill C-18 includes overbroad language on "unjust discrimination," "undue or unreasonable disadvantage," and "undue preferences" that would subject U.S. platforms to liability for any type of ranking or moderation of content from a news outlet, or any action that might have a negative impact on any outlet, even if that outlet is known to produce propaganda or disinformation. Any attempt to elevate authoritative information (including government information) or reduce and remove low quality information – including from eligible foreign state media outlets – is effectively prohibited under C-18. Meanwhile, the bill does not require eligible news outlets, including foreign state media, to adhere to accepted journalistic standards to qualify for remuneration requirements.

Bill C-18 creates a link tax by requiring U.S. platforms to negotiate payments even when they are merely facilitating access to news "by any means, including an index, aggregation or ranking of news content." U.S. platforms are willing to contribute to Canadian publishers but are not able to operate under a regime that forces unprecedented

payments for the act of linking to content. Unfortunately, the structure of the final offer arbitration clause in Bill C-18 includes vague and unbalanced criteria that strongly incentivize the arbitration panel to require the highest level of payment for such activities.

The Parliamentary Budget Office Cost Estimate[6] for C-18 indicated that the PBO "expects news businesses to receive from digital platforms a total compensation of $329.2 million per annum under the Bill" primarily to broadcasters. The Online News Act entered into force December 19th, 2023.

Since entering into force certain market participants have decided to exit the Canadian market for online news.

Privacy

Bill C-27, federal privacy legislation, is currently being studied by the House of Commons Industry Committee. The bill aims to update Canada's current privacy law for the private sector, bringing it in closer alignment with European data protection and privacy standards, and introduces new privacy protections for minors. While the government has stated a desire to prioritize interoperability with new regulations, there is still work to be done at the committee level to ensure consistency and predictability for businesses operating across Canada. This includes introducing a consistent definition of a minor (which currently varies across provinces), adding clarity on consent exceptions, and confirming a 2-3-year implementation process. Once approved by the House of Commons Committee, the bill will be studied in the Senate.

Artificial Intelligence

In June 2022, the Government of Canada tabled the Artificial Intelligence and Data Act (AIDA) as part of Bill C-27, the Digital Charter Implementation Act, 2022. AIDA proposes significant new powers for the government to regulate 'high-impact' AI systems, but includes overly broad definitions of 'high-impact' systems that may capture low-risk use cases and poses significant risks to U.S. companies and the U.S.-led risk-based approach to AI governance. The proposal also includes monetary penalties of up to 3% of global revenues and introduced a first of its kind criminal enforcement provision for non-compliance. This regulatory approach will create a massive compliance burden on leading U.S. AI researchers and developers and threaten interoperability across North America. AIDA has attracted controversy since its introduction, with criticism from stakeholders over its vague drafting, lack of proper consultation, and misalignment with global standards.

Chile

Data Localization

[6] https://www.pbo-dpb.ca/en/publications/RP-2223-017-M--cost-estimate-bill-c-18-online-news-act--estimation-couts-lies-projet-loi-c-18-loi-nouvelles-ligne

The Chilean financial regulator (CMF) has rules related to the general IT outsourcing of services (RAN 20-7) that allow cloud adoption in country and abroad, but require financial institutions to have local data centers for contingency purposes, when processing relevant data / critical workloads abroad. The 2017 version of the regulation issued by the CMF did not allow for an exception to requirements on local infrastructure for contingency purposes. Following a public consultation process in 2019, the CMF agreed to create an exception for the aforementioned requirement. However, the regulator authorized a narrow exception exclusively for banks that maintain adequate operational risk management per CMF's assessment. Many financial institutions in Chile cannot benefit from the exception, as they do not meet CMF's requirements on "adequate" operational risk management. This has become a blocker for the advance of data hosting services in Chile, as it effectively funnels financial institutions to local infrastructure offerings. During June 2023, the CMF committed the review of RAN 20-7 as part of 2023 priorities but has not been able to deliver.

Express delivery shipments

Under the U.S.-Chile Free Trade Agreement (FTA), Chile committed to expedited customs procedures for express shipments and to allow a shipper "to submit a single manifest covering all goods contained in a shipment transported by the express shipment service, through, if possible, electronic means" . However, the current customs systems cannot process all the data from different carriers, causing delays at the border.

Additionally, under the FTA, Chile agreed to "their desire to maintain the level of open market access existing on the date this Agreement is signed". The Chilean government had in place a trade facilitation mechanism for shipments under $41, excluding those shipments from VAT and customs duties. However, on September 25, 2024, Chile passed a bill that eliminates the VAT exemption on shipments under $41 USD, reducing the prior open market access policies for express delivery shipments, contrary to the FTA.

China

Market Access for Cloud Services

China implements a licensing system for telecommunications business operations. Only companies established in China, after obtaining a telecom business license, can engage in telecom business activities. Foreign companies' participation in the value-added telecommunication (VAT) sector is highly restrictive. Based on *Telecommunications Regulations of the People's Republic of China, Classification Catalogue of Telecommunications Services, and Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Version)*, foreign companies are still denied access to the business sectors critical to cloud services, namely B11 Internet data center business, and B12 content distribution network service. There has been little or no progress on this long-standing obstacle and the opening up of IDC and CDN services was neither mentioned in President Xi's latest speeches nor in the *Opinions on Further Optimizing the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment policy document.*

While foreign service suppliers can earn a licensing or revenue-sharing fee through a contractual partnership with the Chinese company, the existing laws and regulations (1) prohibit licensing foreign cloud service providers (CSPs) for operations; (2) actively restrict direct foreign equity participation of foreign CSPs in Chinese companies; (3) prohibit foreign CSPs from signing contracts directly with Chinese customers; (4) prohibit foreign CSPs from independently using their brands and logos to market their services; (5) prohibit foreign CSPs owning and operating its own data centers; (6) prohibit foreign CSPs from contracting with Chinese telecommunication carriers for Internet connectivity; (7) restrict foreign CSPs from broadcasting IP addresses within China; (8) prohibit foreign CSPs from providing customer support to Chinese customers; and (9) require any cooperation between foreign CSPs and Chinese companies be disclosed in detail to regulators.

On December 31, 2020, the National Development and Reform Commission and the Ministry of Commerce released the Special Administrative Measures for Foreign Investment Access to Hainan Free Trade Port (Negative List) (2020 Version), which opened offshore data center business to foreign CSPs. President Xi said China will unswervingly promote a high level of opening up, and both the central government and some local governments announced plans to open up the VAT sector in pilot FTZs (Free Trade Zones) such as Beijing and Shanghai Lingang, yet the proposed market opening was delayed continuously.

Digital Trade Barriers/ Data Localization and Cross-border Data Flow

China imposes complex restrictions on the storage, movement, and access to data across borders, making it very difficult and costly for foreign companies to manage their global operations. In 2021, China released Personal Information Protection Law (PIPL) and Data Security Law (DSL), which, along with the Cybersecurity Law (CSL) implemented in 2017, established an overarching regulatory framework on data. The framework sets out three pathways for the cross-border data flow, namely security assessments, protection certification and standard contracts.

On security assessment, the Cyberspace Administration of China (CAC)'s Measures on Data Exit Security Assessment, effective since September 1, 2022, stipulate the requirements for cross-border transfer of important data and personal information by Critical Information Infrastructure (CII) operators and other companies that reach certain thresholds of data. The Measures put forward specific requirements for data exit security assessment, stipulating that data processors shall conduct a data exit risk self-evaluation before applying for data exit security assessment. Alongside the Measures, the regulations and standards on protection certification and standard contracts of personal data cross-border flow were also promulgated, forming a cross-border personal data flow management mechanism.

Noting that the existing data transfer framework is impeding economic growth and impractical for domestic and foreign businesses operating in the global economy, on March 22, 2024, CAC promulgated new provisions on promoting and regulating and cross-border data flows, which would limit instances in which the aforementioned cross-border personal

data flow mechanism would apply or a data exit security assessment would be necessary. In particular, the new provisions allow that personal data transfers due to human resource management and contractual transactions, such as cross-border e-commerce, cross-border payments, plane ticket purchases and hotel bookings, and visa applications be exempted under the cross-border personal data flow management mechanism. While the new provisions do not further elaborate on the scope of "important data", they stipulate that data processors are not required to apply for a data exit security assessment if they have not been notified by the relevant authorities, or if the data has not been publicly declared as important data. Pilot Free Trade Zones within Beijing, Tianjin, Shanghai and Hainan may also develop their own negative list of data for which the cross-border personal data flow mechanism would not apply. Beijing, Tianjin and Shanghai authorities have started to publish such negative lists.

Critical Information Infrastructure

The CII Security Protection Regulation, effective from September 1, 2021, requires reinforced protection of CII. This regulation promotes the procurement of "secure and trustworthy" network products and services, which would result in unequal treatment between Chinese and foreign companies' products. If a company is identified as a CII, other obligations under Chinese security legislation, such as mandatory certification and assessment, and cybersecurity review have to be imposed, which creates compliance cost and potential entry barrier to certain sectors. Over the past 2 years, regulations and standards relating to CII have been rolled out steadily by relevant authorities. In May 2023, China's first national standard for CII security protection GB/T 39204-2022 Information security technology – Cybersecurity Requirements for CII Protection became effective. The Administrative Measures for the Security Protection of CII for Highways and Waterways promulgated by the Ministry of Transport also became effective on June 1, 2023.

Cybersecurity Review

The Cybersecurity Review Measures (CSRM) were revised on January 4, 2022, making it mandatory for CII operators procuring network products and services, and online platform operators conducting data handling activities that influence or may influence national security, to proactively apply for a cybersecurity review. The review is an opaque process, presumably assessing a host of factors, including the security, openness, transparency, and diversity of sources of products and services; the reliability of supply channels, as well as the risk of supply disruptions due to political, diplomatic, and trade factors. For example, CAC launched and failed a cybersecurity review of Micron in early 2023, resulting in a demand for CII operators to stop purchasing its products. With vague criteria and broad scope, China's cybersecurity review regime could be abused and used to discriminate against foreign technology providers, thus creating entry barrier for many MNCs.

Secure and Controllable ICT Policies

The Chinese government has implemented secure and controllable ICT policies through various laws and regulations, including the Cybersecurity Review, the Critical

Information Infrastructure Protection Measures, and the Cryptography Law. These policies have been reinforced under the banner of technological self-reliance and security since the14th Five Year Plan in 2021. In practice, these policies have been widely used, creating obstacles for foreign ICT products to get into sectors ranging from government, CII operators, and even State-Owned Enterprises (SOE). In the past year, the concept of SOE Cloud and State Cloud in China has further exemplified the policy.

Cryptography Law

China's Cryptography Law, enacted on October 26, 2019, and effective starting January 1, 2020, classifies encryption into three categories: "core," "common," and "commercial" encryption. "Core" and "common" encryption categories are used to protect information considered to be "state secrets," while commercial encryption is used to protect information that is not a state secret. In April 2023, Commercial Cryptography Administrative Regulations was amended. The amended regulations fail to support the interoperability of inter-national standards and use of internationally standardized encryption algorithms, suggest an extensive import license/export control scheme, include ambiguous clauses that potentially enforce a de facto mandatary certification instead of a voluntary one, and impose requirements applicable only to CII and party and government organs to networks above MLPS level three. Furthermore, on October 7, 2023, the State Cryptography Administration (SCA) published the Administrative Measures for Security Assessment of Commercial Cryptography Applications (Measures), which came into effect on November 1, 2023. The Measures proposed the concept of Important Network and Information Systems without providing definitions. If the above issues are not clarified, the regulations will impose high compliance cost and create entry barrier for MNCs who heavily rely on encryption algorithms that comport with international standards.

Colombia

Digital Services Tax

In November 2022, the Colombian government approved a tax on gross income derived by overseas providers of goods and digital services into Colombia based on the concept of "significant economic presence" (SEP) (Law 2277/22, Article 57). The tax entered into force on January 1, 2024 as the first digital services tax (DST) in Latin America. For goods and services, a person is in scope if it has a deliberate and systematic interaction with the Colombian market (maintaining a marketing interaction with 300,000 or more users or customers located in Colombia) and if it obtains gross income of approximately USD 300,000 or more from users in Colombia. The tax applies to both the sale of tangible goods, but also to an enumerated list of digital services, including cloud services. As such, the SEP provisions apply to more than companies operating in the digital services sector.

The rule imposes a 10% withholding tax on a non-resident with a deemed SEP in Colombia. The tax is imposed at the source, on the total payment made to the non-resident for the sale of goods and/or provision of services. Using other enacted DSTs and other

relevant similar measures as a benchmark, the 10% proposed rate for withholding is unusually high. There is an elective, alternative regime, whereby the non-resident can elect to pay a 3% tax on the gross income derived from the sale of goods and/or the provision of digital services from abroad, sold, or provided to users in Colombia when registered.

The Colombia proposals represent significant departures from international tax norms, which allocate taxing jurisdiction on the basis of nexus (i.e., the concept of permanent establishment, physical operations, workforce, etc.) or source (the location of income-generating activity), rather than destination-based criteria. The proposal does not align with the current ongoing negotiations at the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework and violates the spirit of both the 2021 DST standstill agreement, and the conditional, one-year extension reached in July 2023. The Colombia government agreed to both extensions, but still moved forward. This gross-basis tax imposed on non-residents of Colombia on income derived from sales to the Colombian market creates barriers to trade to U.S. companies engaging with the Colombian market.

The SEP provisions may constitute a violation of the trade principles of non-discrimination and not requiring a local presence, as well as the provisions of the United States-Colombia Trade Promotion Agreement (USCTPA), which provides for duty-free treatment on U.S. exports to Colombia. The new tax imposed on a U.S. company that is deemed to have an SEP is the equivalent of a tariff in that it raises the price of imported goods and does not affect domestically produced products. With regard to the SEP imposed on providers of digital services, the tax de facto discriminates against U.S. service suppliers of digital services. These features of the new tax potentially violate several commitments under the USCTPA including Articles 2.3 (no new customs duties on originating goods), 2.8 (no restrictions on the importation of any goods of another party) and 15.3 (no new customs, duties, fees, or other charges on digital products) under the USCTPA.

In addition, Article 11.5 of the USCTPA prohibits Colombia from requiring that U.S. service suppliers have a local presence as a condition for the cross-border supply of a service. The decreased 3% tax rate for those non-residents who elect to file a return creates an incentive to establish a local presence, as Colombian legislation does not have procedures for foreign entities without a permanent presence in Colombia to file an income tax return. Consequently, in order for a non-Colombian to benefit from the lower rate, it is de facto necessary for the non-resident to establish a local presence.

Data Localization

In May 2023, the Government of Colombia contracted through the Inter-American Development Bank (IADB) a technical analysis in strengthening the governance and deployment of the necessary data infrastructure to improve the administration, storage, analytics, availability and sovereignty (security) of the State's data, ensuring the massification of public services to citizens and massifying the use of information exchange

systems between public entities through the creation of a Private Cloud for the Government. This project seeks to determine the current and projected 10-year needs for the storage, analysis and management of data for 100% of the national government entities, in order to safeguard data and protect critical infrastructures and achieve efficiency in the investment of public resources. As of fall 2024, the project remains in its implementation phase, with the IADB having posted a Request for Expression of Interest from firms to engage in the consultation process.

Most recently, in September 12, 2023, a cyber-attack targeted IFX Networks, a local IT service provider to 46 public entities in Colombia, 21 of which use its data center services purchased through the Private Cloud Framework Agreement. The attack took the form of ransomware and affected more than 700 machines, encrypting information from approximately 762 companies in Latin America (mainly Colombia and Chile). Chile's public procurement platform - http://www.mercadopublico.cl/ - suffered downtime due to the attack. In Colombia, government agencies, including the Superior Council of the Judiciary, the Ministries of Health and Culture, and the Superintendence of Industry and Commerce, also had their websites affected. This cyber-attack has led to confusion and misinformation about the differences between private, public cloud and traditional infrastructure; statements that promote the idea of minimizing cloud in favor of "on-premises" infrastructure for critical government services; and, positioning data sovereignty as the solution to cybercrime. In Colombia, following these attacks, René Guarín, Chief of Technology and Information Systems of the President's Office, added to the confusion as he called for further data localization.

Trade Facilitation

Under the USCTPA, Colombia committed to modernize their customs procedures through automation and the use of electronic systems. For example: Article 5.3 states that each party shall "provide for electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival" and "employ electronic or automated systems for risk analysis and targeting." Colombia also committed to adopt expedited customs procedures for express shipments, including the full incorporation of express shipments into Colombia's Single Window (Articles 5.2, 5.3, and 5.7). This includes providing for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives, as well as allowing for a single manifest through electronic means, if possible. However, the Colombian government have yet to implement these commitments and still require physical documents at the border.

Network Usage Fee

During its annual workshop, the Colombian Communications Regulation Commission (CRC) discussed the possibility of introducing a network fee tax that U.S. content providers and technology companies would have to pay to local internet service providers to fund telecommunications infrastructure. While there is not a formal proposal, there is a high risk that Colombia implements a fee that would target U.S. companies and cause a significant financial hit, reducing their competitiveness versus foreign technology

companies. The Ministry of Information and Communications Technology (ICT) has invited debate on this proposal.

Croatia

Public Procurement Barriers

U.S. companies face significant barriers in Croatia's public procurement market due to technical standards favoring EU-based suppliers. Tenders often require compliance with EU certifications, such as CE-marking and data residency, particularly for cloud services, infrastructure and technology projects. These requirements force U.S. companies to adapt their offerings to meet EU specifications, incurring additional costs and operational complexity. In addition, procurement processes are primarily conducted in Croatian, adding language and procedural barriers, and the slow, bureaucratic nature of the system further complicates participation for foreign bidders.

Croatia Media Act

Croatia has separated digital and print media, with digital media regulated by The Electronic Media Act which was amended in 2022 to reflect changes in the market. Now, a new Croatian Media Act is also being drafted to answer to the challenges and opportunities of the modern media. While this proposed legislation is still in the discussion draft stage, it could lead to government censorship and greater control over what is published online. In September 2024, an international media freedom mission concluded a fact-finding mission in Croatia, which studied the ongoing efforts of media reform. The proposed legislation remains in its draft stage, with a new draft version expected in the fall of 2024.

Cyprus

Data Sovereignty Barriers

U.S. CSPs face significant barriers in Cyprus due to strict data sovereignty rules, particularly when providing services to the public sector or regulated industries such as healthcare and financial services. These rules require sensitive data, such as personal health records or financial transactions, to be stored and processed within Cyprus or the EU. These requirements mean that U.S. CSPs must either establish local data centers or partner with local providers to offer their services to covered entities. Additionally, Cyprus's public procurement framework often specifies data residency requirements for government contracts, making it difficult for U.S. providers to compete.

Czech Republic

Cloud Technology Usage Barriers

Czech law requires CSPs to register under a Cloud Computing Catalog, which is onerous for U.S. companies. With a new Cybersecurity Law being adopted, users will face further administrative burdens when using U.S. cloud services.

Czech Cybersecurity Act

The Czech government, through the National Cyber and Information Security Agency (NÚKIB), is currently implementing the EU NIS 2 Directive with a new draft Cybersecurity Act. The current version of the draft will determine the requirements for servicing public administration information systems and has proposed to categorize data workloads from public administration information systems at security level 4 (critical) on the risk scale, thereby limiting the storage of this data to servers located in the Czechia. On July 17th, 2024, the Czech government approved a draft of the Cyber Security Act with amendments, which was then submitted to the Czech Parliament. Among other changes, the number of regulated entities rose from 400 to 6,000. The bill is expected to enter into force in Q4 2024.

European Union (EU)

Ex-Ante Regulation

The Executive Vice President of the European Commission has pursued a more assertive and targeted approach consisting of three branches for the EU's competition policy. The three-pronged approach would include continuous rigorous enforcement of existing rules, new structural measures and an ex-ante regime. Some of these plans are targeted exclusively at U.S. tech companies while others are due to apply across the board. In recent years, the EU environment has already been marked by aggressive enforcement where U.S. tech companies have been subject to Europe's highest-profile competition enforcement cases. The European Commission has imposed record fines and essential facility-style rules on U.S. companies for conduct most other regulators and courts have found to be legal. The Commission has also required record repayments of tax revenues as part of its state aid cases. As the Digital Markets Act and Digital Services Act are implemented NFTC encourages USTR to work with the EU to uphold principles of non-discrimination and technology neutrality in laws and regulations. It is important that regulatory approaches impacting digital services and technologies are not protectionist, but rather developed in a deliberate and consultative manner subject to traditional trade principles, including non-discrimination and national treatment.

Digital Markets Act (DMA) Implementation

The DMA, which was concluded in the first half of 2022 and entered into force in November despite U.S. government concerns regarding the discriminatory treatment of U.S. companies, creates significant and burdensome requirements for the small set of companies that the measure targets, all but one of which are American firms. The regulatory approach to impose "one-size-fits-all" obligations to different digital services with different business models is inadequate and could hamper innovation. The DMA restricts the use of data, creates new data access and portability obligations, and introduces interoperability requirements with a short implementation period and the threat of significant penalties. Despite commitments the European Commission (EC) made to the Biden administration before finalizing the DMA, no European companies were designated

as “gatekeepers”. On September 6, the EC designated 22 core platform services from 6 companies as gatekeepers: Amazon, Alphabet, Apple, ByteDance, Meta and Microsoft. Gatekeepers will need to comply with DMA’s substantive obligations within six months, with the EC as the main enforcer. On March 7th, 2024, the DMA took effect, with the EC opening investigations into Apple, Google, and Meta for suspected compliance breaches soon after on March 25th. In June, Apple updated its rules for EU developers in response to the DMA non-compliance investigations.

DSA Implementation

The DSA, adopted in July 2022, creates new rules for the handling of illegal third-party content on cloud hosting and intermediary services in Europe, such as video-sharing services, social networks, and online marketplaces. The DSA has a particular focus on content-sharing platforms and marketplaces. Additionally, the DSA creates a new classification of companies called Very Large Online Platforms (VLOPs), a grouping that is almost entirely made up of U.S. companies, based on a presumption that services with more than 45 million active users present “systemic risk” irrespective of any specific risk assessment. The DSA imposes additional restrictions on targeted advertising and obligations for VLOPs and VLOSEs to provide alternative recommendation systems, despite the lack of any clear evidence that the size of a company indicates additional risk. The EU announced the designation of VLOPs on April 25, and of the 19 services announced, 16 were American, two were Chinese (AliExpress and TikTok), and just one was European (Zalando). The EU required the 19 designated VLOPs to come into full compliance by August 25, 2023, seven months earlier than all other companies, even though VLOPs and VLOSEs face a significantly larger compliance burden. The EC sent requests for information to certain companies during summer 2024 to provide details concerning compliance obligations and transparency. During that same time, the EC also brought infringement cases against numerous EU members including Spain, Sweden, Poland, and others for failing to designate or appropriately empower authorities to execute the DSA, a task which was due by February 2024.

Internet Infrastructure Levy

The European Commission launched a consultation exploring the possibility of requiring over-the-top providers “of a certain size” to bear the cost of the development of telecom infrastructure in Europe. The Internet infrastructure levy, supported by European telecommunications companies, would initially require six U.S. companies to pay €20 billion annually to telecommunications operators to support infrastructure development. Introducing an Internet levy to subsidize EU telecommunications companies would have significant negative consequences for the digital economy and would directly discriminate against U.S. companies that are already significantly invested in European networks and Internet infrastructure. The EC opened a consultation on this proposal on February 23; comments were due on May 19. Despite strong opposition to the proposal through the consultation, including from the National Telecommunications and Information Administration, and opposition from a large group of EU Member states, the EC approved the final version of the proposal, dubbed the Gigabit Infrastructure Act, on April 29th, 2024. The GIA will be applicable in all member states starting in November 2025.

EU Telecoms Strategy

In 2022, the European Commission launched a consultation to evaluate the possibility of requiring content and application providers "of a certain size" to bear part of the cost of the development of telecoms infrastructure in Europe. This levy, supported by European telecoms operators, would initially require six U.S. companies to pay €20 billion annually to telecoms operators to support infrastructure development.

Despite strong opposition from a majority of stakeholders, including EU Member States, consumer associations, telecoms regulators and industry, the Commission developed a similar proposal in a more recent White Paper on the future of Europe's digital infrastructure, published in February 2024. In it, the Commission proposes extending the EU regulatory framework for telecoms to CSPs (including an arbitration mechanism requiring them to pay interconnection fees to telecoms operators) and establishing 'universal service obligations' requiring 'digital players' to co-finance telecoms infrastructure in remote and rural areas. Despite continued opposition, the Commission is being supported by strong lobbying from large European telecoms operators, as well as two recent reports on the competitiveness of the EU authored by former Italian Prime-Ministers Enrico Letta and Mario Draghi.

Data Act

The Data Act, introduced by the EC in February 2022, regulates access to and transfer of data generated by connected products and related services. It will force sharing of data and the transfer of trade secrets under certain conditions. It also creates new discriminatory barriers for "gatekeepers" designated under the DMA. In particular, users will not be able to utilize a new portability right established by the Data Act to transfer their data to "gatekeepers." The Data Act also creates new obligations on cloud service providers on the access and transfer of non-personal data following third country access requests, leading to a new potential conflict of EU and third-country law. According to the Data Act's impact assessment, concerns over unlawful access to data by authorities not subject to EU legislation is one of the main drivers for the data access and transfer restriction, which implies an equivalence between U.S. and Chinese governments. Lastly, it imposes switching obligations on cloud service providers where the associated costs will disproportionately fall on U.S. CSPs because of their customer base and the maturity and complexity of their service portfolio. The EU Institutions reached a final political agreement on the Data Act in July 2023, was published as law in December of 2023, and will become applicable in September 2025.

EU Foreign Subsidies Regulation (FSR) Implementation

In July 2023, the EU's FSR entered into force, giving the EC new powers to target economic distortions in the EU market caused by foreign subsidies. While the EC claims that the FSR targets subsidies from non-market economies, the FSR will subject U.S. businesses to the same procedures as companies from non-market economies that unfairly

compete in the EU market. From October 2023, for example, any company operating in the EU market will be required to disclose "financial contributions" from non-EU governments (e.g., subsidies, certain fiscal incentives, capital injections) granted up to three years prior to their participation in the following activities: (i) public procurement procedures where the tender exceeds €250M and (ii) mergers and acquisitions in which parties' aggregate EU revenues exceed €500M. In addition, the FSR also provides the EC with an ex officio tool to investigate financial contributions on an ad hoc basis from July 2023. If the EC finds businesses to have benefitted from "distortive" subsidies, it could (i) disqualify them from public tenders and M&As in the EU and (ii) apply regressive measures such as subsidy repayments. Failure to disclose financial contributions or to comply with regressive measures may result in fines up to 10% of companies' global revenue.

In July, the EC published an Implementing Regulation (IR) laying out procedural mechanisms for the application of the FSR. The IR significantly reduced the scope of the FSR by, inter alia: (i) limiting the most onerous and in-depth reporting obligations to a narrow range of subsidies considered "most likely to distort"; (ii) excluding from the reporting obligations all contracts for the supply/purchase of goods/services on market terms; and (iii) exempting the notification of general tax measures and incentives valued below €1M. While these changes are a significant step in the right direction, and will help reduce unnecessary red tape for businesses, there are still some problematic elements in the FSR. Most significantly, there are certain incentives that fall within the scope of the FSR but would not have to be notified if granted by an EU Member States (e.g., certain audiovisual incentives and R&D tax credits). In addition, the EC has failed to offer any guidance on how it will operationalize the FSR's ex officio tool; thus, creating significant uncertainty for businesses and opening the door for discriminatory enforcement.

On September 24th, 2024, the EC completed its first investigation into a covered acquisition under the EU FSR between a Czech telecom group and UAE state-controlled company. Following the results of its investigation, the EU announced it would conditionally approve parts of the acquisition, citing high-risk foreign subsidy concerns relating to the state-backed nature of the UAE firm.

Revision of the EU Procurement Directives

The EU Procurement Directives establish core requirements for public procurement procedures across all EU Member States and public entities. In a Mission Letter sent to the Executive Vice-President-designate for Prosperity and Industrial Strategy on 17 September 2024, President von der Leyen outlined her plan to "revise the Public Procurement Directives to [...] enable preference for European products in public procurement for certain strategic sectors and technologies".

EU AI Act

The EU AI Act establishes a horizontal risk-based framework to regulate AI systems in the EU. The Regulation entered into force in August 2024, triggering the gradual phase-in of its provisions over a 36-month period. It will now be supplemented by

Implementing Acts and standards to operationalize its requirements for general-purpose AI, foundation models and high-risk AI.

CEN and CENELEC, the European standardization bodies, have launched a dedicated technical committee (JTC 21) to develop harmonized standards that will support the implementation of the AI Act, including a framework for AI trustworthiness and standards for AI risk management and quality assurance. It remains unclear whether these standards will be consistent with existing ISO standards (e.g., ISO 42001). Divergent standards would require businesses to adapt to EU-specific requirements.

The AI Act will also require providers of general-purpose AI models to disclose a "sufficiently detailed" summary of their model training data. The European Commission is currently developing a template for these disclosures. If the template requires granular disclosure of training data, it could impinge on the IP and trade secrets of model developers. Moreover, Recital 106 of the AI Act also foresees that "any provider placing a general-purpose AI model on the Union market should comply with [the Regulation's copyright obligations] regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of those general-purpose AI models take place". If the AI Act imposes more stringent requirements or compliance costs on AI models trained outside the EU, this could contravene WTO MFN principles.

Cloud Services

The EU Agency for Cybersecurity (ENISA) has been developing a European Cybersecurity Certification Scheme for Cloud Services (EUCS) since 2020. The EU's 2019 Cybersecurity Act established a legal basis for EU-wide cybersecurity certification schemes. In a February 2022 Commission Staff Working Document, the EU identified "cloud and edge computing" as a strategic dependency for Europe, noting that "the EU cloud market is led by a few large cloud providers headquartered outside the EU." In June 2022, ENISA amended the draft certification scheme to introduce four new criteria – including immunity from foreign law – for CSPs to qualify for the highest cybersecurity certification level in EUCS. If this proposal were adopted, only companies with their head office and global headquarters in an EU Member State would be eligible to certify at the highest level of EUCS, which will likely be a prerequisite for providing cloud services to the public sector and select private sector organizations. This would effectively prevent U.S. companies from providing services to covered entities in the EU. In March 2024, due to pushback from industry and a majority of EU Member States, ENISA proposed removing the sovereignty requirements from EUCS, but the process has stalled due to French opposition. Provisions that discriminate on the basis of ownership violate the EU's trade obligations under the World Trade Organization (WTO) Government Procurement Agreement (GPA) and the General Agreement on Trade in Services (GATS).

Data Localization

In Hungary, the rules on the data management of state and local government bodies and organizations providing essential services are governed by Act No 50 of 2013 on the

Electronic Information Security of State and Local Government Bodies ("Act"). The data managed by the state and local government bodies under the Act, which form part of the national data assets, may only be processed in electronic information systems operated and stored in the territory of Hungary, and in closed electronic information systems used for defense and diplomatic information purposes. This type of data may be processed in electronic information systems operated within the territory of the EEA States, if authorized by the supervisory authority for the security of electronic information systems or by an international treaty. This restriction applies to the following state and local government bodies: central government administration bodies,"Sándor-palota" (the office of the President of Hungary), Office of the Parliament (National Assembly), Office of the Constitutional Court of Hungary, National Office for the Judiciary and courts, Prosecution offices, Office of the Commissioner for Fundamental Rights of Hungary, State Audit Office of Hungary, Central Bank of Hungary, Metropolitan and county government offices, Offices of the representative body of local governments, Hungarian Defence Forces. Any entity not registered in Hungary operating an electronic information system under the Act must appoint a representative based in Hungary, who is responsible for the implementation of the provisions of the Act in accordance with the rules applicable to the head of such organization. The electronic information systems of organizations providing crucial services may also be hosted in the European Union Member States. Organizations providing crucial services include those in the energy, transport, agricultural, and health sectors.

Digital Services Taxes (DST)

The United States and EU Member States are among the 147 member jurisdictions to have joined the October 8, 2021, OECD/G20 "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy". On October 21, 2021, the United States, Austria, France, Italy, Spain, and the United Kingdom issued a joint statement that describes a political compromise reached among these countries "on a transitional approach to existing Unilateral Measures while implementing Pillar 1." According to the joint statement, DST liability that accrues to Austria, France, Italy, Spain, and the United Kingdom during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods of Austria, France, Italy, and Spain and committed not to take further trade actions against these countries with respect to their existing DSTs until the earlier of the date the Pillar 1 multilateral convention came into force or December 31, 2023. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on the OECD/G20 Two-Pillar Solution as pertaining to DSTs, the commitments under the joint statement, and associated measures.

SecNumCloud

France's national cybersecurity agency, Agence nationale de la sécurité des systèmes d'information (ANNSI), revised its cybersecurity certification and labeling program, known as SecNumCloud , in March 2022 to disadvantage—and effectively

preclude—foreign cloud firms from providing services to government agencies as well as 600-plus firms that operate "vital" and "essential" services. France's "Trusted Cloud Doctrine" and SecNumCloud require that cloud providers must be "immune to non-EU laws" and, per Article 19.6 explicitly disqualify any company that is more than 39 percent foreign-owned (i.e., non-European) from eligibility for certification. As a result, U.S. companies must partner with, and transfer technology and control to, a local company in order to compete for cloud contracts with French public sector agencies and commercial entities considered "operators of vital importance.". The EU's and France's international trade commitments under the WTO GPA and the GATS include the principles of non-discrimination and national treatment in terms of the nationality of persons, products, services, or technologies. Article 19.6 of SecNumCloud appears to be a clear violation of Article 3 of the WTO GPA and Article XVIII of the GATS, both of which stipulate that signatories shall not discriminate against suppliers on the basis of nationality. The French legislature is currently contemplating an amendment that would extend SecNumCloud requirements to private entities in the healthcare sector.

Proposal for a Foreign Investment Screening Regulation

In January 2024, the European Commission published a proposal for a new foreign investment screening Regulation. The Regulation seeks to harmonize core requirements for national FDI screening procedures across all EU Member States, and would require Member States to create new filing requirements and regulatory clearance procedures for certain investments. Most significantly, the Regulation would require all Member States to impose an ex ante authorization requirement on all foreign investments targeting companies that (i) are active in one of 42 listed "critical technology areas", (ii) are subject to dual-use or military export controls, (iii) provide critical financial or healthcare services, or (iv) participate in a listed EU funding program. Given the breadth of the sectors targeted by the proposal, and the lack of differentiation between the risk profiles of investors, the Regulation would likely impose a large burden on U.S. investors.

EU Space Law

The European Commission is expected to publish a draft EU Space Law in H1 2025. Although there is relatively little information regarding the content of the Law, the Commission has publicly stated its intention to create an asymmetric regulatory regime where 'small' satellite operators are subject to a lighter regime than 'larger' operators (e.g., constellations). This asymmetric approach would impose higher compliance costs on U.S. constellations (e.g., Starlink, Kuiper) than EU operators. The EU Space Law may also restrict certain communications services to EU-headquartered satellite operators (similarly to EUCS).

Egypt

Licensing

In May 2020, Egypt's top media regulator, the Supreme Media Regulatory Council (SMRC), issued Decree No. 26 of 2020 which enforces a strict licensing regime on Media

and Press outlets, in addition to online platforms. The regulation requires a 24-hour window for removal of harmful content. It also requires international companies to open a representative office in Egypt and identify a liable legal and content removal point of contact. The regulation lacks safe harbor protections for international companies and stipulates an average of $200,000 of licensing fees. The fees exceed the ceiling for such fees stipulated in the Media Law of 2018 and therefore unconstitutional.

Egypt's VAT

In their bid to raise fiscal revenues, the Egyptian Government proposed Amendments to the Value Added Tax Law No. 67 for 2016, to include taxation of advertising revenue, including digital advertising through a proposed stamp tax in addition to the VAT. While the stamp tax was dropped, companies are still liable for the currently proposed fourteen percent VAT. Online platforms suffer from the lack of distinction between digital and non-digital services for VAT liability, while international companies face the uncertainty of how the VAT will be applied to their services. Other issues of concern include designating an account point of contact and e-billing (online transactions are automatically registered at the authority and VAT value is determined).

Egypt's Data Protection Law

In July 2020, Egypt enacted its first general privacy legislation, the Data Protection Law. The Law imposes significant administrative and regulatory burdens on all entities operating in Egypt, with no exemptions on the basis of an organization's size. Key problematic requirements of the Data Protection Law include:

- Sensitive Personal Data, including financial data, requires explicit consent to process (exemption for entities under Central Bank supervision);
- Accountability, including Data Protection Officer (DPO) appointment requirement and data breach notification obligations;
- Records of Processing required;
- Grounds for processing and cross-border data transfers are limited;
- Restrictions on re-use of data by organizations; and
- Licenses are required for several activities.

Imprisonment and fines for non-compliance are up to USD 320,000 per violation and the law contemplates personal criminal liability for responsible managers and for the DPO.

Hong Kong

Data Localization

There have been concerns about the ability of Hong Kong to maintain a free and open digital ecosystem after the imposition of a national security law on Hong Kong since June 30, 2020. The Internet serves as a platform for the exchange of information and knowledge and drives collaboration between the public and private sectors. With the national security law in effect, the free and open Internet, which is foundational to digital

trade, is at risk. In October 2019, the Hong Kong Securities and Futures Commission (SFC) issued a circular that requires financial institutions to store data in Hong Kong with locally registered external electronic service providers (EDSP) -- a de facto data residency requirement -- or requires the financial institution's internationally registered EDSP to sign an undertaking to provide the SFC unrestricted access to a financial institution's data hosted with the EDSP as a condition for doing business. The circular, as written, bypasses existing legal processes and provides blanket authorization for the regulator to access customer records. The circular mandates EDSPs to respond to the SFC's request for customer data in contradiction with the EDSPs' legal obligation to their customers.

Hungary

Data Localization

In Hungary, data management rules for state and local government bodies providing essential services are governed by Act No. 50 of 2013 on the Electronic Information Security of State and Local Government Bodies (Act). The data managed by state and local government bodies under this Act may only be processed and stored on Hungarian territory, except where the supervisory authority authorizes the processing on the territory of another EEA country. Any entity not registered in Hungary handling data covered by the Act must appoint a representative in Hungary.

India

Equalization Levy

In March 2020, India adopted an additional two percent equalization levy (EL), expanding on an earlier equalization levy that targeted digital advertising revenue earned by non-resident providers. The tax applies only to non-resident companies with annual revenues over approximately Rs. 20 million (approx. US$267,000) and covers online sales of goods and services to, or aimed at, persons in India. In July, India's finance minister announced the abolishment of the 2% EL on digital companies, education-providing firms, and SaaS providers that are not physically established in India, effective August 1st. India will continue to levy an EL of 6% on online advertisement services.

Digital Services Tax

India has failed to adopt international tax norms, including by continuing to maintain a DST despite the OECD agreement to halt DSTs until Pillar One of the Inclusive Framework is entered into force. In late June 2024, the U.S. and India agreed to extend a standstill agreement on U.S. retaliation for India's DST amid continuing negotiations. This extension has since expired.

Special Economic Zones

There are several concerns related to the Special Economic Zones (SEZ) which allow for exempt units and/or developers in SEZs from paying any duties or taxes on

goods and/or services procured from Domestic Tariff Area (DTA) for authorized operations. Under the regime the endorsement process for goods must be completed within 45 days. However, most DTA suppliers provide a credit period beyond 45 days. Furthermore, tax authorities in certain zones are refusing to endorse the invoices where the payment is not made for the invoices. Further, India's Development of Enterprise and Service Hubs Bill should be simplified so it does not impede ease of doing business within the SEZs.

E-Commerce Restrictions

The Indian government is in the final stages of finalizing its new E-commerce policy which will implement a number of changes that are explicitly discriminatory, including: (1) broad-based data localization requirements and restrictions on cross-border data flows; (2) expanded grounds for forced transfer of intellectual property and proprietary source code; (3) preferential treatment for domestic digital products and incentives for domestic data storage in India (e.g., provision of infrastructure, incentives to domestic data center operators). The policy requires e-commerce portals to identify goods on the country of origin and include a filter mechanism and display notification to suggest domestic alternatives to imported goods. The policy also introduces the notion of community data as a "national resource" where countries are "custodians" over data.

Media reports have suggested that: (i) certain categories of data such as defense, medical records, biological records, cartographic data, and genome mapping data should not be transferred outside India; and (ii) certain categories of e-commerce data should be mirrored/stored in India (with the government/a proposed e-commerce regulator deciding the categories). Such proposals, if implemented, would significantly affect cross-border flows of data and pose barriers to free trade. The rules also impose obligations on all e-commerce entities without regard to unique e-commerce models and relationships between the entities, buyers, and sellers. It is also unclear how the requirement for every e-commerce entity to register itself with the Department for Promotion of Industry and Internal Trade (DPIIT) is connected with protection against unfair trade practices by e-commerce entities and creates an arbitrary and artificial distinction between offline sellers and e-commerce entities, as registration requirements do not apply to offline sellers. Such additional non-tariff barriers have a dampening impact on the market access of foreign players into the Indian e-commerce market. India is taking a European-like approach to competition in digital markets, including "ex ante" regulations that target U.S. tech companies, changing the basis for competition penalties from 'India-specific turnover' to 'global turnover,' and issuing orders affecting how operating system creators can market mobile apps in India. Following a slowdown in progress during July 2024, India's Commerce and Industry minister announced in late August that the e-commerce policy was expected to be released soon.

Import Authorization

In August 2023, the Indian government announced that beginning November 1, 2023, import authorizations are needed to import laptops, tablets, all-in-one personal

computers, and ultra-small form factor computers and servers. This new import authorization requirement could potentially delay and is likely to disrupt imports of in-scope information and communication technology (ICT) equipment into India. In a Stakeholder Consultation by the Directorate General for Foreign Trade (DGFT) in September 2023, DGFT verbally confirmed that servers and server racks are subject to the import authorization requirement. DGFT also noted that while applying for an authorization, the applicant will be required to provide the manufacturing turnover, trading turnover, import turnover and export turnover for the prior three years. The authorization requirement, which was due to expire at the end of September 2024, has been extended till 31 December 2024. As part of this measure, India is also considering the institution of an annual quota on these products that may start in 2025, which will cause supply chain disruptions and deny companies access to ICT equipment that is not locally available. Introducing such a quota would also be a violation of India's WTO obligations.

Data Localization and Data Flows

In October 2018, the Reserve Bank of India (RBI) implemented a requirement for all foreign payment system providers to ensure that data related to electronic payments by Indian citizens are stored on servers located in India. The requirement for local storage of all payment information is explicitly discriminatory as it raises costs for payment service suppliers and disadvantages foreign firms, which are more likely to be dependent on globally distributed data storage and information security systems. Government data on the cloud is also localized in India and the upcoming privacy bill might impose further data localization requirements for all companies, including U.S. CSPs.

The Draft Digital Personal Data Protection Bill is based on the creation of a 'positive list' of countries where data can be transferred. Industry prefers a 'negative list' approach so that data can be transferred anywhere that is not on the negative list. The bill also could be strengthened through, among other things, aligning rules for children's data with global standards, tightening the definition of "data breach" to avoid over-reporting, and removing the exemption for India's Central Government.

In February 2021, MeitY released the 2021 Intermediary Guidelines and Digital Ethics Code (Guidelines), which impose significant and burdensome requirements on a wide range of Internet-based service providers, particularly those that operate social media, messaging, and streaming news and entertainment services. The Guidelines were notified to the Gazette of India without public consultation and are significantly different from the version MeitY had initially released for public comment in December 2018. Many of the new requirements entered into effect immediately, while "significant social media intermediaries" (5 million or more registered users in India) were given only three months to comply with sweeping regulatory changes that in some cases require significant technical re-structuring of services. These changes include the appointment of a Chief Compliance Officer, who can be held legally liable if the intermediary fails to observe the "due diligence" requirements. In addition to concerns over the lack of comprehensive stakeholder engagement, the Guidelines contain many troubling elements that could undermine privacy, security, and freedoms of speech and expression. There are also

concerns about whether the Guidelines force the localization of company operations and restrict market access for non-Indian companies through the imposition of burdensome regulatory requirements that erode safe harbor protections in India's Information Technology (IT) Act and significantly overstep international best practices. Additionally, the Indian government is reported to be working on a significant revision to the IT Act governing intermediary liability protections in India (the "Digital India Act"). However, the working group process was delayed as of August 2024, and a draft of the proposed legislation has yet to be released.

Requirement to Report Importation of "Non-physical Imports"

Indian banks have a requirement to advise Indian Customs of the importation of "non-physical imports" when related to Direct Import Remittances. This requirement appears to originate from a 2010 Circular "*Master Circular on Import of Goods and Services"*[7] of the Reserve Bank of India. Specifically, the requirement is: *"Payment for software download If the import payment is towards design and drawing, advance payment for Software import, a Declaration from the importer is required confirming that they will inform customs of such import."* Therefore, a U.S.-origin sale to an Indian buyer of downloaded software would be considered a capital good under Indian regulations. Thus, the payment is leaving India to the U.S, and the requirement forces the importer to obtain specific certifications in order to release funds from the bank.

The specific requirement is below:

C.7.3. Non-physical Imports

> *"(i) Where imports are made in non-physical form, i.e., software or data through internet / datacom channels and drawings and designs through e-mail / fax, a certificate from a Chartered Accountant that the software / data / drawing/ design has been received by the importer, may be obtained.*
> *(ii) AD Category – I bank should advise importers to keep Customs Authorities informed of the imports made by them under this clause."*

Mandatory Telecom Certification Framework

Indian Telecom licensees are required to connect their networks only with telecom equipment that has been tested and certified under the Mandatory Testing and Certification Framework (MTCTE). The mandatory testing and certification scheme is operational for certain IT and telecom products on parameters of safety, functionality and potentially security as well. The scope of this requirement was recently increased to include cloud software (Hypervisors), which goes beyond telecom products.

Indonesia

Digital Services Tax

[7] https://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=5792

Under Law 2/2020, Indonesia introduced a series of changes to its tax code, including an expansion of the definition of permanent establishment for purposes of Indonesia's corporate income tax and a new electronic transaction tax (ETT) that targets cross-border transactions where tax treaties prohibit Indonesia from taxing corporate income from the transaction. The ETT blatantly discriminates against foreign companies as it only applies to non-Indonesian operators. This effort to deem foreign companies with SEP as permanent establishments undermines the traditional definition of a permanent establishment and creates a significant barrier to cross-border trade. The Ministry of Finance would need to issue additional legal measures for these new taxes to go into effect. Such proposals are based on an unprincipled and unsupported distinction between digital and non-digital companies.

E-Commerce Barriers

Indonesia's GR80/2019 on Electronic Commerce (followed by the Trade Minister Regulation No. 50/2020) requires any e-commerce provider passing a set of thresholds (i.e. more than 1000 transactions or more than 1000 delivery packages in 1 year) to set up or appoint a local trade representative to act on behalf of the foreign entity. No. 80/2019 (GR80) on E-Commerce draws a clear distinction between domestic and foreign e-commerce business actors and prohibits personal data from being sent offshore unless otherwise approved by the Ministry of Trade through a list of countries which can store Indonesian e-commerce data. This effectively requires e-commerce business actors to locally reside personal data for e-commerce customers. The local trade representative's office is required to handle consumer protection, promotion of domestic products, and dispute resolution locally. This requirement effectively forces U.S. businesses to establish a local presence without a business need which also triggers unintentional tax consequences. To strengthen consumer protection, Indonesia should follow international best practices and consider alternative measures to ensure consumer protection without forcing a local presence for digital products and services.

Trade Regulation 50/2020 (TR50) on E-Commerce, an implementing regulation of GR80, also requires e-commerce providers with more than 1,000 domestic transactions annually to appoint local representatives, promote domestic products on their platform, and share corporate statistical data with the government. Both GR80 and TR50 pose de facto data localization measures and local content requirements, which increase overhead costs for foreign entities and create undue market barriers.

Indonesia's Data Flow Restrictions

While the government of Indonesia has introduced Government Regulation 71/2019 to revise the earlier GR 82/2012, forced data localization measures remain. In the draft implementing regulations of GR71/2019 (in the form of Communications & Informatics Ministerial Regulation on the Governance of Electronic Systems Providers for Private Scope), storing and processing of data offshore by any Electronic Systems Providers (ESPs) require prior approval from the Minister. These measures reflect market access barriers, which require foreign services to undergo additional red tape when delivering products and services online.

While Indonesia's GR71 provides greater visibility on its data localization policy (i.e. only Public Scope Electronic System Providers (ESPs) are required to store and process data onshore), the ensuing implementing regulations (or the lack thereof) continue to be a significant barrier to digital trade and is inhibiting foreign firms' participation in Indonesian e-commerce. Public Scope ESPs are defined to also include public administration which goes beyond national security and intelligence data. No further clarity has been made on the circumstances by which data can be stored and processed offshore in the case of Public Scope ESP including the guidelines that the Minister of Communications and Informatics will use when reviewing every individual data offshoring request by Private Scope ESPs. Indeed, U.S. firms have lost, and continue to lose, business in Indonesia from customers due to the ambiguity in the data localization requirements.

GR71 was a step in the right direction toward reforming Indonesia's data localization policy and strengthening international trade. But the lower-level regulations are at risk of resurfacing significant market access barriers because of the incongruent approach with GR71 as the umbrella regulation. For instance, certain types of data, e.g., civil registration, immigration, health, or financial data, to be processed and stored within Indonesia. We expect the revisions to be passed before the new administration takes office on 20 October 2024. We urge USTR to strongly encourage Indonesia to prohibit data localization in GR71.

Financial Services Data Localization

The Bank of Indonesia still requires core/important financial transactions to be processed domestically. The Financial Services Authority (OJK) has incrementally allowed some electronic processing systems to be based offshore for banking services, insurance services, multi-financing services, and lending based technology, but for the most part, the policy remains highly restrictive and burdensome for global companies trying to operate within Indonesia.

Indonesia's Personal Data Protection Bill

Indonesia ratified and enacted a Personal Data Protection bill in October 2022 which presently differentiates the responsibilities between data controllers and data processors with major references from EU GDPR. Cross-border data transfer is currently limited to countries that have the same standard of data protection but there are no guidelines on assessing the data protection level across countries. The bill imposes extraterritoriality as a cross-jurisdictional basis similar to the EU GDPR. NFTC urges USTR to encourage Indonesia to remain consistent with its cross-border data flow principles in its personal data protection bill in order to promote international digital trade.

Customs Declarations on Electronic Transmissions

In 2018, the MOF issued Regulation 17/2018, which established five HS lines at the 8-digit level (with import duty rate currently set at zero percent) for software and other digital products transmitted electronically, including applications, software, video, and

audio ("intangible goods"). In December 2022, the Indonesian Minister of Finance (MOF) issued Regulation No. 190/PMK.04/2022 ("MOF Regulation 190"), which came into force on 13 January 2023, requring an import declaration for intangible goods. This measure effectively established a customs administrative regime that would enable Indonesia to start collecting duties on intangible goods if Indonesia decides to increase the applicable duty rate from zero percent, and would result in significant compliance costs and administrative burdens for businesses of all sizes operating in Indonesia. Imposition of any duties on digital products under this regulation would raise serious concerns regarding Indonesia's longstanding WTO commitment, renewed on a multilateral basis in February 2024, not to impose duties on electronic transmissions. In addition, using a tariff schedule for the application of such duties on non-physical products raises fundamental questions and challenges related to the harmonized tariff system, the role of customs authorities in the digital space, and the determination of country of origin for electronic transmissions. If implemented on a mandatory basis, these customs duties would be levied on the same electronically supplied services (ESS) that are subject to VAT in Indonesia.

WTO Information Technology Agreement Commitments

Indonesia continues to contravene its WTO binding tariff commitments by charging tariffs on a range of imported information technology (IT) products that are covered by Indonesia's commitments under the Information Technology Agreement (ITA) and should receive duty free treatment. Indonesia has only implemented ITA commitments that fall under 5 categories of goods/HS codes (Semiconductors, Semiconductors Equipment, Computers, Telecommunications Equipment and Software, and Electronic Consumer Goods). Further, Indonesian Customs has also sought to re-classify IT products into dutiable HS codes that are outside of the 5 categories as a means to raise revenue, but in most cases the reclassified dutiable HS codes are also themselves covered by Indonesia's ITA commitments. For example, Indonesia continues to impose duties on printers and related parts, data center and networking equipment (e.g., routers, switches, servers and server racks, optical modules, and optical cables), and other ICT products, such as solid state drives, that are covered by the ITA. This practice widely affects the IT industry and negatively impacts U.S. investors and their workers.

Local Content Requirements

Indonesia's Ministry of Industry issued regulation No.22/2020 (IR22) on the Calculation of Local Content Requirements (LCR) for Electronics and Telematics, with a government target to achieve 35% import substitution by 2025. IR22 provides specific and extensive requirements for manufacturing and development for both digital and non-digital physical products. The policy will have an additional administrative burden to physical ICT products that are needed for ICT companies to operate in Indonesia. There are also indications that the Indonesian government may also introduce an importation threshold for ICT equipment. The government has also signaled intention to build on this LCR requirement and add similar LCRs for software and applications, which would impact companies that provide services over the internet, including cloud services. In particular, the Ministry of ICT indicated that the revision of Government Regulation no. 71 2019 will include the LCR requirement for the data center industry. In addition to that, Presidential

Instruction Number 2 Year 2022 requires government agencies to plan, allocate, and realize at least 40% of the national budget for goods/services to utilize MSMEs and Cooperative products from domestic production.

Restrictions on E-Commerce Imports Under $100

On September 27, 2023, the Ministry of Trade (MOT) issued Regulation No. 31/2023 ("Reg 2023"), which prohibits foreign merchants from selling any goods valued below $100 to Indonesian customers via online marketplaces and includes several other discriminatory requirements that will restrict imports and foreign investment in Indonesia. For example, the regulation requires foreign ecommerce platforms to receive a permit from the Ministry of Trade in order to conduct business activities in Indonesia and mandates that platforms that meet certain criteria appoint a locally based representative. Additionally, it prohibits companies with a marketplace business model from acting as a manufacturer and selling their own branded products. Reg 2023 appears to violate Indonesia's international trade commitments, including under the WTO, and will directly affect U.S. exports and the ability of U.S. companies to operate in the country.

Japan

Platform to Business Regulation

Japan's new regulation on "platform-to-business" (P2B) relations that would require online intermediaries to meet onerous transparency obligations concerning differentiated treatment and access to data went into effect in February 2021. These rules targeted to "specific digital platforms" that will be assigned by the Ministry of Economy, Trade and Industry (METI) under certain thresholds. The Japanese government says this new law only targets App Markets and Online Shopping Malls at the moment, but METI is able to assign other types of platforms like Digital Ads without changing the law.

Kenya

Data Localization

The Data Protection Act which was passed in 2019 and gives the government some residual power to mandate that certain types of data shall be processed through "a server or data centre located in Kenya." The Data Protection Act does not require the localization of personal information, and Section 50 leaves it to the Cabinet Secretary (CS) to stipulate which personal data should be stored and processed in Kenya on grounds of strategic interests of the state or for the protection of revenue. However, the Data Protection Regulations of 2020 mandates the localization of a broad set of data including national civil registration systems, population register and identity management, primary and secondary education, electronic payment systems, revenue administration, health data, and critical infrastructure. The Regulations require that at least a copy of the data falling under these categories to be stored in a data center located in-country. The law also requires that, before data may be transferred outside of Kenya, the Data Commissioner must be provided with proof of the security of the data. Data localization undermines product design, user

experience, and the local industry's access to global infrastructure while not materially improving privacy or security.

Digital Services Tax

NFTC members have serious concerns with Kenya's DST. Kenya's 2021 Finance Act applies a 1.5 percent DST to nonresident businesses. The DST taxes gross revenue accrued through any "digital marketplace," defined as "an online platform which enables users to sell or provide services, goods, or other property to other users." Kenya has not expressed support for the OECD/G20 Inclusive Framework's October 8, 2021, Statement that commits participating governments to provide for the removal of unilateral DSTs for all companies.

In 2024, Kenya introduced the Finance Bill 2024 to parliament, which would have repealed the DST and replaced it with a Significant Economic Presence Tax ("SEP") on non-residents whose revenue is generated through the digital marketplace. While the Finance Bill 2024 was withdrawn due to widespread protests and all provisions were officially removed, there are reports the government is attempting to reintroduce some of the more domestically palatable provisions, though it is not clear what provisions may be revived.[8] If approved, the SEP tax would have been levied at a rate of 30 percent of deemed taxable profit, which would be equal to 20 percent of gross turnover.

Withholding Tax on Creators

Kenya has adopted a tax of 5% gross withholding on creators in Kenya. The tax is payable even by nonresidents and creates significant burdens. The tax can be read broadly enough to include many types of contractors who perform services for nonresident companies.

Malta

Data Mirroring and Hosting Requirements

Malta's gaming regulations, enforced by the Malta Gaming Authority (MGA), require gaming operators to mirror critical data – including financial transactions and player activity – on servers physically located within the country. The MGA claims this is required to access real-time data for audits, regulatory supervision and compliance checks. U.S. companies are required to submit detailed documentation regarding server locations, replication processes and data transmission protocols. The replicated data must be continuously accessible to the MGA, making it costly for non-EU companies to become compliant. Moreover, operators using U.S. cloud services must demonstrate that data stored outside national borders is mirrored in Malta, adding another layer of operational complexity for U.S. companies.

[8] https://www.bloomberg.com/news/articles/2024-08-12/kenya-to-revive-some-tax-measures-from-abolished-finance-bill

Mexico

Cloud Services Restrictions

Mexico continues to enforce a 2021 regulation which requires electronic payment fund institutions maintain a business continuity plan in the case of disaster recovery that relies on either 1) a multi-cloud approach with at least two cloud service providers from two different jurisdictions, or 2) an on-premise data center in country that doesn't depend on the primary (foreign) cloud provider. The approvals process run by the National Banking and Securities Commission (CNBV) that is required for financial services companies to use cloud services is resource intensive and is discriminatory towards foreign cloud providers, whereas existing local on-premise data centers merely need to complete a shorter, simpler notification process. This de facto data localization requirement is in addition to an already complex and time-consuming process that electronic payment fund institutions face in order to gain regulatory approval to use offshore cloud infrastructure whereas in-country infrastructure enjoys an expedited process.

The United States has raised concerns with the Mexican government that the requirements relating to use of cloud service suppliers by electronic payment fund institutions have a negative competitive impact on the business of U.S. service suppliers. This should remain a priority under the new Mexican government.

Nepal

Digital Services Tax

Nepal passed a law on May 29, 2022, that introduced a 2% DST on a specified list of digital services provided by non-residents to consumers in Nepal. The DST became applicable shortly from July 17, 2022, onwards without any public consultation on the law or the implementing procedures. The DST: (i) discriminates against non-resident companies; (ii) is inconsistent with existing international tax principles; (iii) imposes an additional tax burden and potential double taxation on non-resident companies; and (iv) creates a disproportionate compliance burden as additional resources are required to comply with the DST's payment and reporting requirements.

New Zealand

Digital Services Tax Bill

On August 31, 2023 the Digital Services Tax Bill was introduced by the outgoing government. The proposed Bill would allow the government to impose, at an appropriate time, a three percent tax on gross revenues of large multinational entities with highly digitalised business models that earn income from New Zealand. The effective date is expected to be January 1, 2025. The date can be extended by an Order in Council, which the Government would do if it was satisfied with the progress of the Pillar One of the OECD's multilateral solution.

Nigeria

Data Protection

The Nigerian National Information Technology Development Agency's (NITDA) Content Data Development Guidelines of 2019/2020 require all "sovereign data" to be stored within the country. While the scope of 'sovereign data' remains undefined in the Guidelines, it is understood that all public sector data is captured. In 2023, a NITDA Amendment Bill and a National Shared Services Corporation (NSSC) Bill were presented to the National Assembly. The NITDA Bill aimed to (i) extend NITDA's supervisory rights over digital services providers and the private sector's use of ICT, (ii) extend NITDA's 1% tax on foreign digital platforms, (iii) introduce new ICT compliance requirements, and (iv) grant NITDA oversight rights over the telecoms industry. The NSSC Bill aimed to centralize the provision of ICT infrastructure and services to Nigerian government bodies under a single state-owned corporation (Galaxy Backbone). The NITDA Amendment Bill and the NSSC Bill met with opposition from the telecoms and ICT industries, and, although approved by the National Assembly, were not signed into law by President Buhari. The Bills have yet to be re-tabled in Parliament under the new administration of President Bola Tinubu.

Significant Economic Presence Tax/DST

The Minister of Finance, Budget and National Planning issued the Companies Income Tax (Significant Economic Presence) Order, 2020 (SEP Order), which sets out the conditions under which non-resident companies that provide digital services; or technical, professional, management, or consultancy services (TPMC); to Nigerian customers, from outside Nigeria will be deemed to have a taxable nexus, and therefore be liable to tax, in Nigeria. The SEP runs contrary to Nigeria's commitment to the OECD process on DSTs.

Norway

Digital Sovereignty and Ownership Requirements

The Norwegian government plans to create a national cloud solution for a broad range of critical entities, requiring public sector companies to store over 60% of data using this national service. The government is also applying pressure to extend this to sectors such as energy, telecoms and financial services. The national cloud solution can only be developed by Norwegian providers within Norwegian borders.

Pakistan

E-commerce Policy Framework

In October 2019, Pakistan's cabinet approved an E-commerce Policy Framework. The Framework states that "Consumer/Business payments from Pakistani banks and payment gateways to unauthorized and unregistered (GST non-compliant) websites/applications will be barred". This would appear to prohibit payments to U.S.

businesses unless they are registered with provincial tax authorities. NFTC encourages USTR to monitor the implementation of this policy and to promote a light-touch framework for regulating online services that is consistent with the U.S. approach, and that encourages innovation and investment. As of 2024, the framework remains in development as the government tries to coordinate regulation of e-commerce.

Internet Services

In October 2021, Pakistan issued the Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules 2021" (Rules) which superseded the 2020 version of the Rules. The Rules apply to the removal and/or blocking of online content that is deemed unlawful on any "information system". Local and international industry players have expressed concerns regarding provisions that would pose significant barriers to operating in Pakistan, including requirements to deploy mechanisms to monitor and block livestreaming content, remove content within short timeframes when ordered by the authorities, and provide data to authorities in decrypted and readable format.

Data Localization

In 2022, Pakistan also launched a Cloud First Policy. This policy imposes data localization requirements on wide and open-ended classes of data ("restricted", "sensitive", and "secret"). In the financial sector, the State Bank of Pakistan (SBP) prohibits financial sector institutions from storing and processing core workloads on offshore cloud. These data localization requirements are ineffective at enhancing data protection, and significantly increase costs for U.S. firms, potentially deterring market entry.

Panama

Data Localization

Resolutions 52 and 03 of the Government Innovation Authority AIG (former Government, 2021 and 2024) order that any government entity that uses cloud services for critical mission or state security platforms or sensitive institutional data hosted on servers outside the Republic of Panama must make the necessary adjustments and change the location to the Republic of Panama before 31 December 2024. In order to continue to support the government in serving its citizens and businesses, these resolutions should be removed. In an increasingly globalised world, and one in which Panama seeks to become a regional hub, data localisation could inhibit open data flows and new innovations such as generative AI, and create cybersecurity risks.

The Philippines

Internet Transactions Regulation

The Philippine Congress passed and enacted the Internet Transactions Act in December 2023, after it was reintroduced in July 2022 and was certified as a priority legislation by the Office of the President. Its implementing rules were signed in May of

2024. The legislation aims to promote the development of e-commerce in the country, establish stronger online consumer protection, safer e-payment gateways, easier online business registration, and formulate other policies and programs to increase the number of online merchants and consumers. Industry stakeholders have expressed concerns related to the imposition of onerous obligations on electronic commerce platforms to have regulatory oversight, e.g. collection of valid business certificates of merchants, and submission thereof to the government authority on a regular basis.

Data Localization

The Philippines' President's Office is considering a draft Executive Order that would mandate data localization for its public sector, healthcare and health insurance sector, any financial service institutions supervised by Bangko Sentral, and any private sector entity that processed sensitive personal information or subscriber information. If issued, the draft Executive Order would be a significant step back in the country's digital trade policy, which historically has been one of the more progressive in the ASEAN region. While the Executive Order appears to have lost much of its traction for now due to industry outcry, there remain significant concerns that the proponents of the measure will attempt to move this policy through the Philippines legislature or as an Executive Order at a later time. As of December 2023, the executive order remains in deliberation within the Department of Information Communications and Technology (DICT).

Poland

Polish Cybersecurity Act (NIS 2 Directive Implementation)

The draft law will update and expand existing cybersecurity regulations in Poland, and will introduce the possibility for the Minister of Digital Affairs to designate High Risk Vendors (HRV). If an entity is designated as an HRV, it would be required to remove its equipment or software from the systems of essential entities, important entities and telecommunications operators within a designated time period. As the rules are broad, there is a risk of arbitrary designation of non-EU providers as HRVs. The draft has undergone a public consultation and is now awaiting further review, but these controversial provisions are likely to be maintained.

Saudi Arabia

Data Localization

The National Cybersecurity Authority (NCA) has implemented data localization under the form of Essential Cybersecurity Controls (ECC-1: 2018) for government- and state-owned enterprises and Critical National Infrastructure (CNI). This regulation has a data localization requirement for these entities, stating that an "organization's information hosting and storage must be inside the Kingdom of Saudi Arabia" (ECC-1:2018, 4-2-3-3). ECC-1:2018, 4-1-3-2 sets another localization requirement relating to cybersecurity services, stating that "cybersecurity managed services centers for monitoring and operations must be completely present inside the Kingdom of Saudi Arabia". This covers a

broad spectrum of customers from financial services and aviation to oil and gas that by their nature need the safe and free flow of data across borders to maintain and enhance their operations and keep them safe and secure from cyber threats.

There are additional localization requirements, including in the Cloud Cybersecurity Controls (CCC-1:2020) issued by the NCA. CCC-1:2020 2-3-P-1-10 & 11 require that companies provide cloud computing services from within KSA, including systems used for storage processing, disaster recovery centers, and systems used for monitoring and support. While it does allow for level 3 and 4 data to be hosted outside KSA, this is heavily reliant on the entity seeking this exception.

South Africa

Cloud Computing

South Africa's National Policy on Data and Cloud bill was published by the Department of Communications and Digital Technologies on May 31st, 2024. It contains references to data sovereignty and explicitly encouraged the use of local providers ("indigenous providers") in government cloud outsourcing. The bill has yet to be approved by the Cabinet.

Taiwan

Digital Intermediary Services Act

Taiwan's National Communications Commission (NCC) has previously released the draft of the Digital Intermediary Services Act in 2022 for public consultation. The draft would impose content moderation and services design requirements on online platforms and Internet providers and directly cites the EU's Digital Services Agreement on numerous provisions. The bill would empower the regulator with arbitrary authority over the scope of compliance, *i.e*. the government can impose more obligations on platforms or exempt platforms from certain requirements at its own discretion. The bill would mandate "digital intermediary service providers" to implement uniformed mechanisms of user takedown requests and government orders for content removal, onerous user appeal interface, mandatory user data disclosure upon government orders, local representation, and more stringent risk assessment and management requirements for larger firms. In the public consultation, the government content takedown provisions were heavily criticized by the public, resulting in the legislative process being postponed due to political pressure. The industry remains concerned that similar onerous content moderation and services design obligations could be proposed in other forms, i.e. enacting content removal provisions in regulations dealing with specific content, and be implemented in Taiwan. We urge U.S. trade officials to continue monitoring developments.

Digital Advertising Competition and News Bargaining Code

Taiwan's Ministry of Digital Affairs (MODA) has been leading policy discussion on how "very large cross-border digital platforms" should compensate or subsidize news

publishers suffering from the declined advertising revenue, including enacting laws similar to Australia's News Bargaining Code or Canada's Online News Act, which impose a mandatory revenue sharing mechanism. The policy or eventually, regulations, will go against the longstanding international trade principles of national treatment and most favored nation (MFN), by unfairly discriminating against foreign digital service suppliers and providing preferential treatment to local advertising and other digital service providers.

Ban on China-Branded Goods

On September 22, 2023, the Taiwanese Government announced a draft amendment to the Cybersecurity Management Act (CSMA) that would ban the use of 'China-Branded' Products by its agencies. The ban applies directly to Taiwanese government agencies, with indirect implications to its solution providers who will be contractually required to comply with the ban. Terms used in the measure are vague or not clearly defined, e.g., the definition of "China-branded" and the scope of ICT products. The draft also does not define "products that endanger national cyber security" as well as the criteria and process to decide whether a product endangers national cyber security or not. Most important of all, a supplier may not know its products are banned in the public sector and has no means to ask for an appeal. The vagueness and uncertainty have created practical impediments to doing business in Taiwan. There is currently a 60-day consultation period ongoing.

Data Residency / Data Localization

Taiwan's financial services regulatory agency and healthcare services regulatory agency have promulgated data residency and data localization regulations and requirements governing the use of cloud services provided by third parties. In the financial services sector, regulations require that material financial customer data be stored within the country, unless an exemption has been obtained from the regulatory agency. In the healthcare sector, regulations governing Electronic Medical Records Management require medical data be stored within the country unless an exemption has been obtained with the governing agency. In both cases, the regulations governing how to obtain an exemption are vague and unclear.

Draft Amendments to Cybersecurity Management Act

In September 2023, the Taiwan government announced the draft of amendments to Cybersecurity Management Act (CSMA) for a 60-days public consultation. The draft requires sectoral regulators to issue rules governing the criteria and the process to designate a critical infrastructure (CI) provider. The draft defines CI as "physical or virtual systems or networks, used in the critical fields formally announced by the Cabinet, once discontinued from operation or becoming less effective, would lead to significant negative impact upon the national security, public interests, living standard of citizens and economic activities." The draft does not specify the process and criteria how the Cabinet selects and decides the so-called "critical fields". A private entity may be designated as a CI provider by a sectoral regulator and thus to be subject to obligations under CSMA. However, the criteria and process to select and decide the "critical fields" lack transparency and creates uncertainty. This measure goes against the principle of good regulatory practice, but also raises compliance costs and potential barriers to potentially impacted sectors.

Tanzania

Digital Services Tax

On 28 June 2022, the Tanzanian Parliament passed the Finance Bill, 2022. On 30 June, the Bill obtained assent by the President to become the Finance Act, 2022 and went into effect July 1, 2022. The regulations amended Income Tax Act, CAP 332 by imposing income tax by way of single installment on a nonresident who receives a payment that has a source in Tanzania from an individual, other than in conducting business, for services rendered through a digital marketplace. A simplified registration process will apply to nonresident suppliers of electronic services to account for income tax and value-added tax and nonresident suppliers of electronic services are required to register within six months from 1 July 2022. There is no threshold for registration.

Turkey

Additional E-Commerce Regulations

A new set of e-commerce regulations in a law dubbed the Law on Amending the Law on Regulation of Electronic Commerce was adopted in July 2022 and went into effect on January 1, 2023. Firms that facilitate sales equaling or topping ten billion Turkish lira net ($538.3 million) annually and over one hundred thousand executed transactions are required to obtain a license to operate in the country and renew that license when the Ministry of Commerce dictates. Further, the law requires a restriction on e-commerce providers selling goods of their own brand or brands with which they have economic associations. E-commerce providers are also subject to obligations to take down illegal content and ads, ensure information is correct, obtain consent before using brands for promotions, and refrain from anticompetitive practices. For firms with a net transaction of over 60 billion liras ($3.3 billion), there are additional restrictions regarding banking, transportation, and delivery.

Data Localization

A 2019 Presidential Circular on Information and Communication Security Measures introduced localization requirements on government workloads deemed “strategic”. In 2020, the Digital Transformation Office published Guidelines clarifying that the scope of the localization requirements included critical information and data; however, the loosely defined residency obligations under the Presidential Circular remains a regulatory challenge as the legislation overrides the DTO Guidelines. Strict data localization also applies in the financial services sector, where the Banking Regulation and Supervision Agency requires primary and secondary information systems to be hosted in Turkey. The Central Bank of Turkey implements similar restrictions on cloud outsourcing, and prohibits the use of cloud for certain workloads.

The Turkish Data Protection Law (DPL) permits the transfers of personal information to jurisdictions deemed adequate, subject to the explicit consent of the data

subject or after obtaining permission from the data protection authority (KVKK). However, Turkey has not yet made a determination on countries deemed adequate for international transfers. The adequacy decision has been postponed several times.

Digital Services Tax

Turkey's DST imposes a tax on revenue generated from a broad range of digital services offered in Turkey, including digital advertising, digital content sales, and digital platform services. The current tax rate is 7.5%, but the Turkish President has the unilateral authority to increase that rate up to 15%, or to decrease it as low as 1%. The DST only applies to companies that generate revenues from covered digital services of at least: (i) TRY 20 million (about €2 million) in Turkey; and (ii) €750 million globally. NFTC encourages USTR to continue working with Turkey to address the discrimination against U.S. companies under Turkey's DST.

Ex ante Regulation

Turkey is considering the adoption of an ex-ante regulation similar to the EU DMA which is discriminatory against U.S companies. We encourage USTR to educate Turkish counterparts on the impact that these types of regulations could have on trade and investments to the detriment of Turkish economic growth. The draft amendment of the Turkish Competition Act, which captures the ex-ante regulation similar to the EU DMA, is expected to be discussed in Turkish Parliament in Q4 2024 and enacted by the end of the year.

Personal Data Protection

The March 2024 amendments to the Law on the Protection of Personal Data marked progress in aligning Turkey with GDPR standards. These changes introduced mechanisms such as standard contractual clauses to ease cross-border data transfers. Before these amendments, transferring data abroad from Turkey was constrained by stringent requirements. Although the latest changes have made the regulatory environment more lenient, particularly in terms of data transfers abroad, full compliance with EU legislation remains incomplete.

Ukraine

Data Localization

Ukraine's Martial Law (a special legal regime introduced in February 2022 after Russia's invasion) temporarily suspended restrictions on the use of public cloud services by the public sector and certain private sector entities (e.g., banks). This allowed the Ukrainian Government to safeguard its data with support from U.S. CSPs under a range of laws - Cloud Law, Public Procurement Law, Public Electronic Registers Law, Information Protection Law, Law on Protection of Personal Data, National Bank of Ukraine Regulations. However, Ukraine's cloud adoption may be hampered once the Martial Law is

withdrawn, as its outdated legislation poses challenges for both U.S. CSPs and their Ukrainian customers. Key concerns regarding the legislation include: (i) a lack of recognition of international cybersecurity standards (e.g. ISO) obtained by CSPs, and a preference for local technical requirements; (ii) the exclusive application of Ukrainian law to govern cloud service agreements, which is incompatible with the cross-border nature of cloud services; (iii) restrictions on the ability of non-Ukrainian CSPs to provide services to public institutions involving the processing of personal data; (iv) requirements to re-migrate certain categories of data to Ukraine (temporarily allowed by the Martial Law to be stored abroad); and (v) a lack of clear data classification regulations.

United Arab Emirates

Data Localization

The UAE Cybersecurity Council (CSC) requires government workloads at the federal (UAE) and emirate-level to be hosted in-country. This long-standing requirement applies to government agencies and state-owned commercial enterprises alike. Similar localization obligations apply to the financial services and healthcare sectors. While the UAE Central Bank's outsourcing rulebook prohibits the storing and processing of personal information outside the country by financial services organizations (excluding subsidiaries of foreign banks), the 2019 Health Law also requires the processing of health data to be conducted in-country. Abu Dhabi ADHICS Standards further prohibit the hosting of information sharing systems on cloud.

Additionally, the UAE Government introduced strict sovereignty controls, requiring CSPs that serve the public sector and regulated industries to: (i) be under the sole jurisdiction of UAE law; (ii) not fall under foreign jurisdiction and applicable laws; and (iii) have data centers, engineering, security, maintenance and support operations and respective personnel physically located in the UAE. These controls, shared by the UAE Cyber Security Council privately with CSPs, are linked to concerns over U.S. law enforcement access under the CLOUD Act, and prevent U.S. CSPs from serving government and regulated customers. In practice, the government may certify U.S. CSPs that provide local ring-fenced infrastructure or work through government-linked technology companies such as G42.

United Kingdom

Digital Services Tax

In July 2020, the UK Government adopted a digital services tax, which began to accrue retroactively on April 1, 2020. The digital services tax imposes a two percent tax on the revenues of search engines, social media services, and online marketplaces, as well as associated online advertising services. It applies to businesses that provide a covered service when the business's worldwide revenues from these digital activities are more than £500 million (approximately $694.4 million) and more than £25 million (approximately $34.7 million) of these revenues are derived from the UK. A UK National Audit Office report

noted that 18 companies paid the entire £358m tax bill in the first year of the DST, of which only 5 companies paid 90%.[9]

Vietnam

Artificial Intelligence and Data Rules

The draft Digital Technology Industry (DTI) Law sets up a legal framework for the digital technology industry (DTI), including but not limited to cloud, artificial intelligence (AI), big data, blockchain, artificial reality (AR), and virtual reality (VR). The broad definition of "digital technology" encompassing diverse and rapidly evolving technologies such as artificial intelligence (AI), big data, and blockchain raises concerns about the potential for overly prescriptive regulations. The draft law's intention of prioritizing investment, lease and procurement of domestically produced digital technology products and services may result in unfair treatment of the foreign businesses. The draft law assigns Ministry of Information and Communications (MIC) to promulgate technical regulations and regulations on the compulsory application of international, regional, foreign and national standards in the digital technology industry, which might lead to the risk of undermining global commerce and hamper technology evolution as well as creating barriers for local organization in most up-to-date technologies.

Law on Cybersecurity and Data Protection

Vietnam issued Decree 53/2022/ND-CP guiding the Law on Cyber Security in August 2022, effective in October 2022, requiring foreign enterprises working in several sectors, including the payments industry, must store the Vietnamese users' data in Vietnam ONLY IF (i) their services are used to commit illegal cybersecurity activities AND (ii) they fail to comply with written requests by the management agencies of the Ministry of Public Security (MPS) for coordination in prevention, investigation and handling of violations. This regulation creates a potential risk of data localization for U.S. companies which fail to comply with Vietnamese law enforcement agencies' requests. Decree 13/2023/ND-CP on Personal Data Protection, issued in April 2023, and effective in July 2023, without any transitional period, requires personal data controllers, processors, and transferers to prepare, make available for inspection and submit to MPS a dossier for assessment of the impact of personal data processing and overseas transferring. We encourage the U.S. Government to continue to reiterate with the Vietnamese Government and require its long-term commitments on the importance of the ability to move data and access information across borders which is essential for businesses of all sizes, sectors, and geographies. It is important to secure the essential nature of free data flows which is recognized in Vietnam's international trade obligations and in global best practices for data protection and remove all barriers for cross-border data movement.

Personal Data Protection Draft Decree

[9] https://www.nao.org.uk/wp-content/uploads/2022/11/Investigation-into-the-digital-services-tax-summary.pdf

In April 2023, Vietnam's Government promulgated Decree 13/2023 (Personal Data Protection Decree-PDPD), imposing onerous obligations on the processing of personal data – both within and beyond Vietnam, that would impede the ability of companies that need to process cross-border data from continuing to offer services to individuals. The decree also contains overly broad, disproportionate audit and reporting requirements and enforcement measures.

Draft Decree on Internet Services and Online Information

After several attempts to amend Decree 72/2013, Vietnam's Ministry of Information and Communication (MIC) released a new draft decree on the management, provision and usage of Internet services and online information to replace Decree 72/2013 in July 2023. The new draft decree transfers most of the direct oversight of data centers and cloud services to the draft Telecommunications Law. It also broadens the scope of services subject to various obligations related to user data and account registration, proactive screening of online content, and online content removal. The draft decree was set to expire in September 2023, although the government discussed plans to submit the draft for issuance in October 2023.

Telecommunications Services

The National Assembly approved the New Telecommunication Law, effective in July 2024, amending the 2009 Law. The law redefines value-added telecommunication service so as to extend regulatory coverage intended for traditional telecommunications service providers to in-country and cross-border suppliers of cloud computing services, data center colocation services, and over-the-top Internet-enabled services. Data centers were defined to be a type of telecommunications facility. While the September draft included a statement (Article 29-1(a)) that investments in data center and cloud computing services providers are not limited, the regulatory expansion of the telco laws exposes future risks that limitation may be reinstated in the future in its implementing decree or other relevant legislations. Furthermore, as such services now fall within the definition of a telecommunication service, that statement in Article 19-1(a) does not completely displace the foreign investment limits set out elsewhere in the same law (Article 12-4) nor does it extinguish the potential for new limits to be imposed in the future consistent with Vietnam's various trade allowances in respect of telecommunications services. This has increased uncertainty around future investments in Vietnam's traditionally unrestricted computer services sector.

Technical Barriers to Enforce Digital Protectionism

On 3 June 2020, Vietnam's Prime Minister signed Decision 749/QD-TTg, which announces the country's National Digital Transformation Strategy, and specifically calls for the introduction of technical and non-technical measures to control cross-border digital platforms. The Ministry of Information and Communications (MIC) has subsequently issued Decisions 1145 and 783 which sets out technical standards and considerations for the use of cloud services by state agencies and smart cities projects that favor local private

cloud use. These decisions clearly intend to create a preferential framework for local CSPs, creating de facto market access barriers. Furthermore, the MIC Minister has made public statements noting that "as Vietnamese firms are getting stronger hold of physical networks, [Vietnam] must do the same for cloud computing and digitalization infrastructures […]". While these standards are technically "voluntary," in practice, this will be adopted by the Vietnamese public sector as if it is mandatory.

Civil Cryptography Trading and Import License Requirements

The Government Cipher Committee (GCC) requires that the importation and exportation of any product containing cryptographic functionality obtain specific permits and licenses. Importers and exporters entering IT products with data encryption capabilities must obtain Cryptography Trading License ("CTL") and Cryptography Import License ("CIL"). Time taken to obtain CTLs and CILs are inordinately long – taking approximately six months to obtain. They also require detailed information alongside the application, including detailed product information, defined technical plans, information regarding the cryptographic function of the equipment, information regarding local personnel, as well as additional information. In implementation of these requirements, companies often experience delays and inconsistent application of approval processes by GCC. These burdensome requirements, and their routine follow-ups, limit the ability for companies investing in Vietnam to import critical hardware. The new regulation (Circular 23/2022/TT-BQP of Ministry of Defense) for cryptographic certification requirement was passed in 2022, but the Vietnamese government is still working through the enforcement mechanism, which will likely introduce additional burdens to importers once it comes into force although its degree of complexity is unclear at this time.

Cross Border Provision of Advertising Services

Decree No. 181/2013/ND-CP (Decree 181) significantly restricts the supply of online advertising. The decree requires Vietnamese advertisers to contract with a Vietnam-based advertising services provider in order to place advertisements on foreign websites. It also requires any foreign websites with advertising targeting Vietnam to notify the Ministry of Culture, Sports and Tourism in writing of the name and main business lines of the Vietnamese agent who has facilitated the advertising service in Vietnam at least 15 days before publishing an advertisement.

Services - Electronic Payment Services

U.S. companies are leaders in the electronic payments services (EPS) sector but face discriminatory treatment in a number of foreign markets as discussed in more depth below.

Bangladesh

Payment systems

The Bangladesh Payment and Settlement Bill, 2024, which was passed by the Bangladeshi parliament on July 2, 2024, stipulates that any payment system operator would

be required to obtain a license from the Bangladesh Bank to offer services within the country. We ask that USTR remain vigilant of these policies and any regulations – including pricing interventions – that may favor use of local brands and urge Bank of Bangladesh to consult with U.S. payment companies as it develops policies intended to facilitate a robust, secure, and inclusive ecosystem for digital payments, e-commerce, and financial inclusion.

Brazil

Mandatory Participation in National Payment Scheme

In the past few years, the Brazilian Central Bank's (BCB) role as a regulator and a competitor has created a conflict of interest. The BCB's Competitiveness and Market Structure Department (Decem) oversees not only the development of policy that affects all payment schemes in the Brazilian market, but also the development and regulation of PIX, a real-time payment scheme (including its participation rules and licenses), which went live on November 16, 2020. All Brazilian financial institutions with over 500,000 accounts were mandated to participate in the PIX scheme by November 2020. On June 15, 2020, U.S. payment networks partnered with WhatsApp and launched a new payments solution to enable WhatsApp users in Brazil to transfer money and pay businesses. However, the BCB immediately suspended the payments program by abruptly modifying the payments regulation (through BCB Circular 4031 dated June 23, 2020), without notice or opportunity for public comment. Since then, the Central Bank's conflict of interest between a regulator and a product manager has intensified. Given the over-regulated environment of Brazil's payments industry, the Central Bank controls time to market, and can determine sector economics. Additionally, the Central Bank has been increasingly delegating supervisory functions to industry players instead of undertaking these itself.

Cambodia

Privacy Laws

The draft Personal Data Protection Law (drafted by Ministry of Post and Telecommunications) restricts transfer of personal data outside of Cambodia in Article 22 which is not only rare for privacy laws to include but will inhibit the growth of cross border businesses that involve personal data (i.e. e-commerce, remittances) in Cambodia.

Chile

Digital payments

In June 2024, the Supreme Court issued its opinion following a broad market review of Chile's digital payments landscape, including a finding that requires payment networks to agree with clients on future rule changes. On August 30, 2024, the Court affirmed a ruling that the National Economic Prosecutor will be the decider in the event of a rule dispute.

China

Compliance with China-EPS Dispute

When China joined the WTO in 2001, it committed to allowing non-Chinese EPS companies to compete and do business in its domestic market on equal terms with Chinese companies, including by processing renminbi-denominated transactions in China. While U.S. EPS suppliers have continued to process "cross-border" transactions in China for decades, which primarily involve purchases by individuals traveling to and from China as of May 2024, only two EPS suppliers have secured the license to operate in the domestic market.

Colombia

Online Payment Fees

The tax regulation establishes income, VAT and other municipal withholding taxes applicable to credential payments. However, this regulation has not evolved with the financial industry and has not been applied to identical payments made by newer payments systems such as digital wallets, QR code payments, e-commerce payment buttons, the public real-time payment system (Bre-B), which is in the process of being implemented, and other payment methods such as cash. This discourages the adoption of card acceptance among merchants. Withholdings sum up to ~5% of transaction amount: Income: 1.5%, VAT: 2.85%, Municipal Tax: ~0.4%. The reduction in cash flow for merchants derived from accepting credential payments constitutes a significant barrier to the general adoption of credential payments acceptance. These tax asymmetries create unjustified advantages for companies participating with other payments methods (cash, QR, transfers) and prevents the fully successful deployment of US credential companies in the country´s payment ecosystem.

Costa Rica

Payment Card Price Controls

Costa Rica imposed caps on the fees that U.S. EPS suppliers may charge for certain cross-border transactions. In March 2020, the Congress of Costa Rica enacted Law 9831 granting the Central Bank of Costa Rica (BCCR) authority to set price control measures to the card payments system, including a wide range of electronic service providers with operations in Costa Rica. In November 2022, the BCCR updated its regulation and capped among others, the international Interchange Reimbursement Fee (XB IRF), and the international Merchant Discount Rate (XB MDR). The BCCR regulation affects contractual agreements signed between each financial institution (issuer) outside Costa Rica and its corresponding payment network. Costa Rica is the only country in the world that has adopted regulation that imposes caps on international interchange fees and goes against international best practices. Costa Rica should clarify that Law 9831 applies to domestic transactions and not to international transactions and revoke caps on fees charged by U.S. EPS for cross-border transactions now and in the future. We recommend a more active participation from the American Government with the Government of Costa Rica, to

support the legislative initiatives that seek to provide a solution to this issue and to find a solution in line with global best practices.

Tax asymmetry

The tax regulation establishes that payments to merchants using cards are subject to a tax withholding which accounts up to 8% of the transaction value. However, this regulation has not evolved with the financial industry and does not consider newer payments systems. While designed as a P2P platform, Sinpe Movil, the Central Bank's mobile platform for Costa Rica's National System of Electronic Payments (SINPE), is increasingly utilized by local merchants and competes with other payment methods, including debit and credit cards on the payment to merchant market and it is not subject to such tax withholding. This creates a significant uneven playing field as users are encouraged to use those systems that generate lower economic burdens, leading to a competitive disadvantage for US card companies. This is aggravated as the Central Bank is simultaneously a competitor as operator of Sinpe Movil and also the payments sector regulator, creating a conflict of interest.

Discriminatory practices

US based card companies are subject to regulation and supervision, including systemic and price control regulations, by a government agency (Central Bank of Costa Rica), while our competitor Sinpe Movil is not subject to equivalent regulation and supervision by a third-party agency. This creates a discriminatory effect as the burden of regulation and supervision only falls on US based companies and not similarly on its domestic competitor.

Ecuador

Digital Payments Acceptance

Current tax regulation establishes income and VAT withholdings applicable to credential payments which discourage the adoption of card acceptance among merchants. Simplified tax regimen "RIMPE" establishes an exemption from these withholdings only for taxpayers (individuals and legal persons) with an annual income ranging from USD 1 to USD20.000, but any other taxpayer is subject to withholdings up to ~13% of transaction amount. The reduction in cash flow for merchants derived from accepting credential payments constitutes a significant barrier to the general adoption of credential payments acceptance and prevents the fully successful deployment of US credential companies in the country´s payment ecosystem.

Egypt

Payments Infrastructure

Central Bank of Egypt (CBE) ambitions to promote domestic payment infrastructure (scheme) and push for co-badge with international payment networks is forcing such

networks to adjust their business models in accordance with the government's political ambitions to enhance domestic payment infrastructure rather than independent / market-led commercial ambitions.

Ethiopia

Licensing Fees

Despite 2023 regulation to open the digital payment market to foreign operators to issue payment instruments and operate payment systems, only Kenya-based Safaricom has obtained a license to issue payment instruments with a reportedly high investment protection fee (USD 150m). Such a high expectation of a fee to allow international payment networks to obtain a license to operate payment systems is a barrier to allowing more international companies the opportunity to operate in the market and generate economic growth.

European Union

European Retail Payments Strategy

The European Commission and the European Central Bank are continuing to drive a European payment sovereignty agenda that is geared at making instant payments the "new normal", reducing reliance on International Card Schemes, and Europeanizing the payment value chain in Europe. This has been evident in the political support for the European Payment Initiative, which notably excludes non-European players from participating. The finalization of the negotiations on the instant payments regulation in 2024 has also been a step forward, with some of its measures already starting to apply in January 2025. Discussions continue on the European Commission proposals to review the Payment Services Directive (PSD3/R), and a proposal for Financial Data Access (FIDA) framework, with the aim to improve consumer protection and competition in electronic payments as well as to develop fairer access and use of data in the EU Digital Single Market. Separately, both the Council of the EU and the European Parliament continue discussing the regulation on a retail Digital Euro, with political skepticism over the project still present. As currently envisaged, it gives extensive power to the ECB as both the issuer of the Digital Euro and the scheme manager while also overseeing most of the competitors to the future digital currency. Despite little progress on the legislative side in Brussels, the European Central Bank has vowed to keep advancing across several key elements of the digital euro project. In fact, it is currently in the "preparation phase," focusing on finalizing the scheme rule book and selecting providers for developing parts of the needed infrastructure.

India

Preferential Treatment for National Payment Schemes

The National Payment Council of India (NPCI) is a quasi-government agency that operates the largest domestic payment system in the country, including United Payments Interface (UPI) and RuPay (debit and credit) cards. In the past several years, the Government of India has taken many direct and indirect actions that give preferential treatment to NPCI, some of which are described below and give an unfair advantage to NPCI, creating a non-level playing field for U.S. EPS providers.

In April 2018, the RBI issued a directive for payments firms to store data solely in India and ensure that any data processed abroad be deleted within 24 hours. The payment networks have complied with the RBI directive, despite the short deadlines, by investing significant capital. In a recent development, the RBI in a submission to the Personal Data Protection (PDP) Parliamentary committee, requested that financial data not be classified as Sensitive Personal Data. However, it also requested that RBI be exempted from the PDP bill, which could further lay the stage for soil data processing and/or access requirements.

In August 2018, the Finance Ministry's Department of Financial Services issued a circular requiring any re-carding or issuance of new cards by banks to comply with the standards defined for the National Common Mobility Card (NCMC). Subsequently the Ministry of Housing and Urban Affairs (MoHUA) mandated that the NPCI qSPARC standards would be the NCMC standards. In July 2023, the DFS issued another circular instructing all banks to issue only NCMC compliant contactless cards. The banks view the circular as a mandate which directly impacts their ability to issue contactless cards from international card networks, hence creating an unlevel playing field.

Rupay and NPCI are the de facto solutions for any Government disbursement programs, known collectively as Direct Benefit Transfers (DBT), and are now being aggressively also pushed in government-driven credit and commercial transactions, keeping the international networks out of consideration. Storage of cards on file and tokenization are globally recognized to offer faster, more secure, and seamless customer experiences where B2C or Account to Account transactions are concerned. In September 2020, the RBI issued guidelines disallowing storage of cards on file by merchants and payment aggregators. Given that this ban did not extend to the UPI network it provides NPCI with an unfair advantage.

A January 2020 circular from the RBI mandated that, effective October 1, 2020, all cards being reissued would need to be switched off for e-commerce, contactless, and international usage, effectively targeting international networks because RuPay has minimal international acceptance and a very limited number of contactless cards in circulation.

Indonesia

Localization of Payments

Bank Indonesia (BI) issued its 2030 Payment System Blueprint (BSPI 2030), a continuation of the Indonesia Payment Systems Blueprint (IPS) 2025. BSPI 2030's vision and mission remain similar to IPS 2025, although its focus shifts from growing to protecting the ecosystem, with heavy emphasis on risk and security from its 21 deliverables.

Restrictions that were presented in implementing regulations to the IPS 2025, however, persist in the BSPI 2030, with measures mandating initiation, authorization, clearing and settlement of transactions to take place locally. While 100% foreign ownership of U.S EPS companies is grandfathered, BI regulations of 23/6/2021, 23/7/2021, and PADG 24/7/2022 all reiterate BI's authority to expand the domestic processing mandate to credit and e-commerce, which are currently still allowed to be processed offshore.

The inability for U.S EPS companies to access data from transactions presents substantial challenges to investment and innovation which are beneficial to improving and securing the ecosystem. This is counterintuitive to the objectives of the BSPI 2030 which aims to improve fraud detection systems and security of transactions as digitization has significantly increased volumes of electronic payments.

Kenya

Digital Markets Tax

NFTC notes the tragic riots and loss of life in Kenya during the summer of 2024 that were associated with anti-tax demonstrations regarding the 2024 Finance Bill. That bill has been withdrawn but NFTC notes that Kenya may still be seeking to implement a unilateral Significant Economic Presence Tax (SEP) on gross profits from services carried out over a digital marketplace. As the US Government pursues a trade initiative with Kenya, a work stream on this tax should be opened. Kenya has not joined the OECD/G20 on unilateral DSTs but is among a group of nations working in the United Nations on taxation of cross border services.

Malaysia

Payment Processing Approval

Bank Negara Malaysia's (BNM) Interoperable Credit Transfer Framework (ICTF) was finalized in March 2018 and came into effect on July 1, 2018. The ICTF applies to certain credit transfers, specifically payment services that allow a consumer to instruct the institution with which the consumer's account is held to transfer funds to a beneficiary (also known as push payments). In December 2019, Bank Negara Malaysia reversed a policy that would have only allowed a single operator, i.e. local network PayNet (partially owned by Bank Negara Malaysia), to process all domestic credit transfer transactions. This change is a welcome development as it enables U.S. providers to compete on a level playing field, in alignment with Malaysia's WTO GATS commitments. However, payment providers have to obtain approval from BNM and these approvals are subject to meeting conditions such as safeguards to protect and access data located offshore, enabling interoperability and reducing fragmentation of multiple providers and pricing transparency.

Mexico

USMCA Enforcement

Industry urges the U.S. government to prioritize engagement concerning Mexico's policy framework for electronic payment service suppliers. As mentioned in previous reports, current regulatory arrangements continue to limit U.S. suppliers' ability to compete and fully offer their services and differentiate themselves in Mexico, preventing innovations and security solutions that could be adopted by financial institutions benefiting Mexican citizens and small businesses. On Sept. 14, 2023, the Federal Economic Competition Commission (Cofece), issued its final resolution of a 5-year investigation to the card payments system which confirms the lack of effective competition conditions in the market, making a series of recommendations to both the Central Bank of Mexico (Banxico) and the National Banking and Securities Commission (CNBV) to eliminate the existing entry barriers that are hindering the participation of new entrants, including U.S. providers. The United States should urge Mexico to facilitate a competitive market and level playing field for U.S. electronic payment service suppliers, aligned with Mexico's USMCA obligations, and adjust the legal framework to grant the necessary conditions for the interoperability and competition among payment networks. These actions would not only fulfill Mexico's USMCA commitments but will also facilitate digital financial inclusion through payments innovation and fraud prevention.

Myanmar

National Payment System

In February 2021, a military coup ousted the democratically elected government and brought the State Administration Council (SAC) to power. Prior to the couple, the previous government had released the National Payment System Strategy 2020-2025 sets out a five-year strategy to modernize payment system infrastructure, digitize all government payments, and introduce new payment technologies with the aim of expanding financial inclusion. There had also been plans to develop a National Payment Systems Law. It is understood that the SAC is still following the National Payments Strategy though there have been no signs of further development of the National Payments Law. As/when there are developments, we encourage thorough consultation with the private sector (both foreign and domestic) as these policies and strategies are developed.

Nepal

National Payment System

The Nepal Clearing House (NCHL) is amid developing a domestic switch - with a vision to roll out a national payment switch (NPS) in Q4 2024. There is a possibility of a mandate for domestic routing of ATM and POS transactions and the launch of a local currency card (Nepal Pay Card) once the switch goes live. Such data localization and pricing interventions could pose significant concerns for international schemes in Nepal.

New Zealand

Digital Services Tax

In late 2023, the previous New Zealand Government introduced the Digital Services Tax Bill (DST Bill). The Bill proposes to apply a 3% tax on digital service revenues earned from New Zealand customers by large digital services companies. DST levy a tax on revenue rather than the profit of a business. The new Government elected in October 2023 is still deciding whether or how to progress the DST. The implementation date is forecast as January 1, 2025.

Nigeria

Foreign Currency Controls

FX Controls – In June 2023, the Central Bank of Nigeria (CBN) announced the removal of the exchange rate peg and the introduction of the "Willing Buyer, Willing Seller" model. Despite the liberalization of the foreign exchange market, the CBN maintains stringent controls over the repatriation of funds, which are inconsistent with a willing buyer willing seller market. These controls include the requirement for CBN approval to purchase foreign exchange using funds in Non-Resident local currency accounts, despite such accounts being pre-approved by the CBN for the collection of local currency funds by foreign companies. The approval process for the repatriation of funds remains a significant barrier to investment by U.S. entities, as it is frequently subject to delays and denials. It is recommended that the CBN abolish the approval requirement for the repatriation of funds in Non-Resident accounts.

Digital Services Tax

Nigeria has enacted a Significant Economic Presence Tax on gross revenues of foreign companies deriving income from their activities in Nigeria.

Pakistan

Digital Payments Market Access

The State Bank of Pakistan (SBP) is pushing to have its domestic payment system, 1LINK, process domestic transactions despite no regulatory mandate or circular in place. The SBP is driving this through an Industry-Led Steering Committee, which comprises issuing banks, 1LINK, fintech, and the Pakistan Banks Association. This is a marked change from when the SBP was previously allowing banks to choose their payment network rather than be pushed to use one domestic network only. This represents a trade barrier to processing domestic transactions in Pakistan for international payment networks.

South Africa

Prohibition on Domestic Processing

Following multiple consultations with U.S. stakeholders, there was an amendment of the Payment Association of South Africa (PASA) Payment Clearing House (PCH) System Operator Criteria (focusing on domestic processing) effective from August 1, 2023. The policy requires that, for domestic transactions, payment service operators must:

- Render clearing services and transaction authorization through infrastructure that is established and maintained in South Africa.
- Store data and retain records related to these services within the country.

Such a policy may deter and/or limit the ability of international payment players to operate in the market and contribute to economic growth with innovative products and services.

Thailand

National Payments System

The Thailand Payment Systems Act mandates domestic processing of domestic debit card transactions for debit cards issued in Thailand, highlighting cost savings that would be yielded by domestic processing, vs offshore processing.This hinders the evolution of Thailand's payment ecosystem, obstructing alignment with international standards, and limits consumer access to innovative payment solutions, secure and resilient global networks - simultaneously running counter to the Bank of Thailand's (BOT) policy objectives to ensure a future-proof, secure, efficient, and resilient payment ecosystem. In Aug 2024, the BOT issued a consultation seeking suggestions to revise the Payment Systems Act.

United Arab Emirates

Payment Reforms

The Central Bank of the United Arab Emirates is implementing policies to strengthen its domestic payment system. We support and respect these initiatives, and meanwhile urge the U.S. government to ensure that U.S. providers may continue to operate and compete on a level playing field and maintain their ability to operate commercially.

Ukraine

Electronic Payments Systems

The National Bank of Ukraine (NBU) recently started a technical testing project assessing the banks' ability to switch a domestic transaction initiated with a payment card bearing a brand of an international payment system through a national switch, which is owned and operated by the NBU. Currently, such transactions are switched by the infrastructure owned by the operators of the relevant electronic payment systems (EPS) located outside of Ukraine. The NBU's position is that such an emergency arrangement is designed to enable the clients of the relevant Ukrainian financial institutions – members of the above-mentioned systems – to have access to their payment card accounts in case of potential long-term disruption of connection (2-3 days) between the relevant financial institutions and the respective international payment systems. We are concerned about the lack of a clear process to conduct the proposed technical testing. From the perspective of an operator of the EPS, this could be carried out (i) either by client-banks sharing their proprietary data with the NBU or (ii) the domestic switch would need to get certified by the relevant operator of the EPS to be able to "accept" its proprietary formats. The NBU does not currently intend to introduce a dedicated legal framework for the above "emergency switch arrangement", which may result in a legal uncertainty on the payments market whereby in the absence of a clear regulatory framework, the relevant financial institutions might randomly start migration to the domestic switch beyond an "emergency" scenario. In such a case, this could drastically change the existing payments ecosystem and present some significant challenges for the EPS operating model.

Vietnam

National Payment System

Updates to decree 53/2022/ND-CP became effective on October 1, 2022 - with "uncertainty around the scope of specific requirements for businesses." Notably, foreign enterprises working in certain industries, including online payment, must store the following data in Vietnam ONLY IF (i) their services are used to commit illegal cybersecurity activities AND (ii) they fail to comply with written requests by the management agencies of the Ministry of Public Security (MPS) for coordination in prevention, investigation and handling of violations. All domestic companies, including foreign-invested subsidiaries in Vietnam, must store a copy of Vietnamese user data on servers located within Vietnam.

The Ministry of Public Security is drafting a Decree on Administrative Penalties for Violations of Cybersecurity Laws that will impose fines and administrative penalties (including "technical measures," such as bandwidth limits and blocking of sites) for violations of regulations concerning cybersecurity, personal data protection, information security, and network protection.

Update to July 2023 draft measure to replace Decrees 72 and 27 removes note regarding insufficient due process for companies providing "public information across the border" and other requirements.

Vietnam's Personal Data Protection Decree 13/2023/ND-CP, which went into effect on July 1, 2023, does not provide a clear scope regarding which industries or businesses will be subject to it. Decree 13 requires personal data controllers, processors, and transferers to prepare, make available for inspection and submit to MPS a dossier for assessment of the impact of personal data processing and overseas transferring.

Update to Electronic Transactions Law No. 20/2023/WH15 remains ambiguous concerning compliance obligations.

Updates to Decree 52/2024/ND-CP, became effective on July 1, 2024 – it introduces a new licensing requirement for banks and financial switching and electronic clearing service providers to connect with international payment networks, including U.S. electronic payments companies. Specifically, the existing clients must meet specific requirements and obtain State Bank of Vietnam's (SBV) approval/license to connect with U.S. electronic payments companies within a transition period of 24 months. New clients must obtain the approval/license before the connection. These measures would appear to also require NAPAS (a financial switching and electronic clearing service provider) to obtain written approvals from the SBV to connect to U.S. electronic payments companies.

The SBV issued Circular 18/2024/TT-NHNN, which replaces Circulars 19 and 28. The domestic routing mandate remains; specifically, Card Present domestic transactions of U.S. electronic payments companies must be routed via NAPAS.

Import Policies - Customs and Trade Facilitation Barriers

Argentina

Special Customs Areas

Argentina currently has a tax-exempt trading area called the Special Customs Area (SCA), located in Tierra del Fuego province. The SCA was established in 1972 through Law 19,640 to promote economic activity in the southern province. The SCA program, which is set to expire at the end of 2023, provides benefits for established companies that meet specific production, exportation, and employment objectives. Goods produced in Tierra del Fuego and shipped through the SCA to other parts of Argentina are exempt from some local taxes and benefit from reductions in other taxes. Additionally, capital and intermediate goods imported into the SCA for use in production are exempt from import duties. Goods produced in and exported from the SCA are exempt from export taxes. Some products are brought from outside Argentina to facilities in the SCA where they are taken apart and reassembled for sale inside Argentina in order to qualify for tax benefits. In light of the recent WTO Dispute Settlement decisions WT/DS472/R and WT/DS497/R, Argentina should revise its SCA.

Import-Restrictive Currency Controls

In response to the current economic crisis in Argentina (i.e., 113.4% YoY inflation as of Jul-23, ARS devaluated by 159% YoY as of Aug-23, and ~$9B of negative foreign currency net reserves as of Aug-23), over the last 12+ months the Argentine Central Bank (Central Bank) has been tightening FX controls, including restricting access to USD to pay for imported goods and services.

In November 2022, Argentina issued new laws (Communications 5271/2022 and 7622/2022) that expanded licensing requirements to all imports. The laws establish a new framework (SIRA) under which each import requires approval by multiple government agencies based on a review of the importer's proposed payment method, tax status, and financial capability (among other details). For transactions in U.S. dollars, the process has increased approval lead times from 3-15 days to approximately 60 days, preventing businesses from operating at speed. Moreover, if shipment information changes between approval and entry into Argentina, importers may need to reapply for the approval.

Regarding services (such as legal, cloud, software licenses, etc.), the Central Bank implemented an online process to manage the requests to access the FX market to make cross-border payments for imported services called SIRASE (Sistema de Importaciones de la República Argentina y Pagos de Servicios al Exterior). In April 2023, the Central Bank further tightened the FX controls and required that the Central Bank, the Secretary of Commerce (Secretary), and the Argentine Tax authority approve all requests to access the FX market to make cross-border payments for imported services (known as a SIRASE request). The Secretary has up to 60 days to respond to a SIRASE request, which may be extended for an additional 60 days if the Secretary requests additional information. In July 2023, Argentina issued a decree (Decree No. 377/2023) that imposes new value-added taxes on imports and related services paid with U.S. dollars. With limited exceptions, the decree imposes a 7.5% tax on imports under most tariff classifications, for which payment is in U.S. dollars, and a separate 7.5% tax on import/export freight services that are paid for with U.S. dollars. In effect, a single import could trigger an additional tax of up to 15% solely on the basis that its purchase and transport is paid in USD.

Customs Release Delays

In Argentina, Customs detains shipments in "channels" when it has a question about the shipment or import documentation (yellow channel) or decides to perform a physical inspection (red channel). Argentine Customs often detains such shipments for up to one year, even after all inspections are complete and the importer answers all inquiries, resolves any discrepancies or disputes, and pays any fines imposed. This practice causes significant delay to delivery timelines, creating disruption and unpredictability in the supply chain. It also imposes costs on importers, who may need to reorder goods and incur additional fees for storage.

Brazil

Imports Licensing

The imports of products that require import licenses in the current Brazilian licensing system face challenges related to the time it takes to issue the license, which does not keep up with the required for shipments. Air shipments are consolidated with thousands of other products that may not require an import license, but as the license requirement is applied on a per-product and per-shipment basis, a product that requires licensing can interrupt the shipment and delivery of other products to consumers. Brazil should offer the possibility to issue an import license by product through a process that requires categories of information that correspond with those in the product catalog (i.e., there should not be a requirement to specify commercial data). It is also necessary to extend the validity of import licenses from six months to one year, and to allow for their application to multiple shipments with no limit of quantity within the period of validity.

Ex-Tariff Regime

Brazil's customs regime allows for ex-tariff imports of foreign and U.S. manufactured goods under some circumstances. When there is no similar equipment being manufactured locally, an importer can seek import duty waivers to reduce import costs. This reduction is called ex-tariff (ex tarifário) The ex-tariff regulation consists of a temporary reduction on import duties of capital goods and information technology and telecommunications products, when there is no domestic equivalent production.

In August 2023, the Brazilian Government published a new resolution for "Ex-Tariff" concessions, adding requirements to the process for renewal /concession of the regime. For a renewal or future "Ex-tariff" request, importers should present an investment project in addition to the proof of no domestic production of similar/like products. In summary, the investment project needs to justify the creation of the tariff exception by presenting the strategic relevance of the equipment to the development of the internal market. The project should include the function of the equipment in a given production line; the schedule and location of use; the essentiality or productivity gains from the use of the new equipment; the innovative technologies the product presents or improvements in the final product, plus any other information that justifies the duty exemption. This is part of the Administration's strategy to attract more investment and strengthen the local/national industry.

Trade Facilitation

Brazil has advanced its trade facilitation policy by implementing the new Single Window project for imports and exports. The goal of this project is to reduce the average time of customs procedures by implementing one integrated system and cutting bureaucracy and paperwork requirements. The creation of the Product Catalog, a database of products and foreign operators, is an additional component of this proposal aimed at reducing import time and increasing the quality of the product description. NFTC encourages the Brazilian government to consider e-commerce particularities within this process to guarantee a simplified process for products bought online. It is crucial that the government considers the e-commerce contributions to the corresponding public

consultation and ensures that businesses have proportional time to adapt to new requirements.

Importation of Remanufactured Goods

Brazil is one of the few countries in the Western Hemisphere that does not allow the importation of remanufactured goods. The Ministry of Economy issued a Public Consultation (Circular Secex 45/2021) in July 2021 to collect information and investigate the potential impacts on the economy, industry, investments, employment and environment if Brazil were to allow the importation of remanufactured goods. Companies and industry associations sent contributions. While the process is still pending, USTR should encourage Brazil to allow for the import of remanufactured goods and parts, which can reduce consumer costs and company service costs of such goods and help advance environmental goals by facilitating a more circular economy.

Colombia

Performance Requirements for Tax Preferences in FTZs

Article 10 of Colombia's tax bill No. 118 of 2022 would establish cascading tax thresholds for companies operating in Free Trade Zones (FTZs) that do not have an established export obligation (export performance requirement), regardless of if they are a goods or services company. Under the new proposal, in order to qualify for the more favorable 20% tax rate, companies will need to develop and provide an "internationalization and annual sales plan" that demonstrates the "sum of their net income from operations of any nature in the national customs territory and the other income obtained by the industrial user different to the development of its activity for which it was authorized, etc." must be below increasingly smaller thresholds, in order to maintain the FTZ tax rate. While service companies do not historically have minimum export commitments, the article as proposed does not include a carve-out for services industries.

The original text would have applied a 35% rate to non-compliant companies (and effectively eliminated the income tax rate reduction benefit from operating in FTZs), but the revised text provides that "industrial users that do not comply with the provisions of the first paragraph [performance requirements] of this article for three (3) consecutive years, shall lose the qualification, authorization or recognition as industrial users to develop their activity in free zones and shall lose free zone benefits."

U.S. companies obtained FTZ status and corresponding benefits based on specific investment and employment requirements to be performed, which did not include an obligation to draft an internationalization plan or meet a minimum threshold of exports. The imposition of new export performance requirements in FTZs contravenes commitments Colombia made under the WTO Agreement on Subsidies and Countervailing Measures, which prevents governments from creating performance requirements in exchange for receiving a direct tax benefit. It also violates Colombia's obligations under Article 10.9 of the Investment Chapter of the USCTPA, which prohibits the imposition of mandates to export a given level or percentage of goods or services as a condition "in connection with

the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory."

INVIMA delays

In recent years, the pharma industry has experienced worsening delays in regulatory approval times resulting in a significant market access barrier. This has a direct impact on access to medicines and vaccines for patients in Colombia. This also contributes to an unpredictable business environment, which could ultimately impact investments from the pharmaceutical sector.

In June 2024, INVIMA provided industry associations with an update on the progress of the planned procedures within the contingency plan agreed with the Cundinamarca court. Unfortunately, the compliance rate for these procedures was only 63%, falling short of the expected 100% by June. Specifically, within this plan, only 19% (318 out of 1662) of the evaluations for imported chemically synthesized molecules have been completed, and only 24% (27 out of 112) of the evaluations for new biologicals have been completed.

According to industry analysis, there is concern on the difference in approval time between new sanitary registrations of national companies (19 months) vs. those of innovation companies (39 months). This should be reviewed in detail because it could configure a regulatory preference contrary to the provisions of trade agreements signed by the country.

Another issue that deserves attention is the lack of implementation of Circular 07, which is an important part of the contingency plan aimed at improving the operation of the advisory committee. Additionally, there are news about the dismissal of several public servants who were supporting the contingency plan.

Dominican Republic

Customs/Border Closure

The sudden closure of the Dominican Republic/Haitian border in September 2023 is preventing the flow of commercial goods from the Dominican Republic into Haiti, is exacting a heavy human and economic cost in both countries, and that damage is, in turn, gravely undermining the trade and economic partnership each country has with the United States. For example, The Caribbean Basin Initiative, expanded under the U.S./Central American-Dominican Republic Free Trade Agreement and the Haitian HELP and HOPE measures, led to the creation of important co-production models uniting the Dominican Republic and Haiti. These co-production models have led the Dominican Republic supporting many communities on both sides of the border. The Dominican – Haitian border partnership supports an important market for the U.S. textile industry, with the Dominican Republic (primarily because of these border operations) currently positioned as to be the second largest market for U.S. yarn exports. Continued closure of the border puts at risk this important export market and substantial investments made by U.S. companies in the

apparel sector. Reopen the and seek alternative, diplomatic solutions to resolve this crisis as each day this border closure persists greatly offsets the value of any solution with irreversible economic damage.

European Union

De Minimis

The EU is considering significant reforms to its customs procedures that will have long-lasting effects on trade with the EU. The customs reform proposal includes, among other things, the elimination of the EU's duty de minimis. Eliminating duty de minimis would be a violation of the EU's obligations under the WTO's Trade Facilitation Agreement (TFA). Under TFA, article 7, paragraph 8.2(d), signatories are obligated to "provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected…". With a de minimis provision in place since 1983, the EU has proven it more than possible to have and maintain a de minimis provision. Therefore, any elimination of the EU's de minimis provision would be in contravention of its obligations under the TFA. In addition, any elimination would have serious negative effects on U.S. exporters to the EU, disproportionally harming small-and-medium sized traders. Furthermore, the cost of implementation for EU member states would dwarf projected revenue collection increases and likely slow the flow of low-value goods that are exports from the U.S. and inputs for American small businesses.

Retaliatory Tariffs

NFTC urges the administration to secure the permanent return to zero-for-zero tariffs on distilled spirits between the U.S. and EU. Since 1997, the U.S. and EU spirits industries have largely enjoyed duty-free access to each other's markets. This duty-free access was provided for under the "zero-for-zero" agreement negotiated in connection with the Uruguay Round by the U.S. and the EU (and subsequently several other countries) to eliminate tariffs on virtually all distilled spirits products on a most-favored-nation (MFN) basis. However, from June 2018-January 2022, the EU imposed a 25% retaliatory tariff on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. This tariff caused a 20% decrease in American Whiskey exports to the EU, our largest American Whiskey export market, from $552 million to $440 million (2018-2021). Similarly, between November 2020 and June 2021, the EU imposed a 25% tariff on U.S. rum, brandy, and vodka in connection to the WTO Boeing-Airbus dispute. These retaliatory tariffs have been temporarily suspended but could be reinstated in the future. The Biden Administration needs to secure permanent resolution of these conflicts to ensure the EU does not return to retaliatory duties on U.S. distilled spirits exports.

India

Customs and Trade Facilitation

India's customs and import procedures do not fully comply with their WTO TFA and ITA obligations and Indian customs officials do not properly apply their laws. The lack

of an efficient process for resolving customs disputes is a major disincentive for investors seeking to build out supply chains in India.

India imposes duties on products covered by its zero-duty ITA commitments, including a 10% import duty on printer ink cartridges, and is considering duties on other new IT items, such as multifunctional devices (fax/print/scan), that have emerged since the ITA was signed but are covered by the original ITA.

India's timeline for granting advanced customs classification rulings is unpredictable, sometimes taking years, and sometimes rulings are not issued at all. The TFA calls for advance rulings to be provided within a "reasonable, time-bound manner," and India's own law requires rulings within 3 months. Furthermore, India has no process for obtaining rulings for goods already in the market. This means that classification disputes in India are common, but their adjudication is painfully slow (8-10 years for resolution is not uncommon).

Indonesia

Survey Report (SR) Requirement

The Ministry of Trade ("MOT") Regulation No. 87/2015 ("Reg 2015") applies to imports of goods classified in specific HS codes including servers. The importer is required to appoint a company accredited by the Indonesian Government (known as the "Surveyor") to inspect its shipment in the origin prior to Customs clearance. The SR requirement was initially enforced by Indonesian Customs ("Customs"), until MOT Regulation No. 51/2020 ("Reg 2020") introduced a post-entry SR inspection process administered by the Directorate General of Consumer Protection and Trade Compliance of MOT, effective on August 28, 2020. Reg 2015 was repealed and replaced by MOT Regulation No. 20/2021 ("Reg 2021") effective on November 19, 2021 to introduce new HS codes requiring SR. The product scope covers imports including servers, cooling equipment, hard disk drives, network interface cards and battery back-up units. The SR can cost up to USD1,600 per shipment and significantly increase the supply chain costs. Although both Reg 2015 and Reg 2021 allow capital goods to be imported without SR if an exemption letter from the MOT is obtained, there has been limited transparency and timeline provided for applying and issuing such exemption.

Price Controls

Indonesia is moving in the direction of increased state control over drug and medical device prices under the pretext of ensuring equitable and affordable health access for patients, while in fact it could threaten patient access to innovative treatments. The Omnibus Health Law, which was issued in August of this year, gives the government authority to regulate and control the price of drugs and medical devices in the context of securing their accessibility for public health and make necessary interventions. It is unclear how controls will be implemented but several implementing regulations are currently being finalized. The government is also developing an online "pharmaceutical and medical device dictionary" where the public can get access to information about the products, including

their price. With this kind of price transparency policy, the government expects that hospitals and pharmacies will feel discouraged to set high drug prices so that people can buy drugs at affordable prices. In addition, listing decisions on the National Formulary (FORNAS) appear to be primarily based on price, whether the medicine and vaccine is locally produced and the overall National Health Insurance (JKN) budget.

Kenya

Excise Taxes

The Government of Kenya imposes excise duties on certain goods under its *Excise Duty Act of 2015*. Line items to which these taxes are applied include a variety of food, agricultural, and industrial goods. The level of these excise duties has risen consistently since the law was implemented.

Each year, in June/July, as part of its annual budget process, and in October/November, when the Kenyan Revenue Authority (KRA) revises its tax rules based on annual inflation data, the scope of application and level of these excise taxes are revisited. Most recently, in July and October of 2022, the KRA announced increased excise duty rates, and at the same time, the agency *exempted like domestically produced goods*, on the following line items:

- sugar confectionery of tariff heading 17.04;
- white chocolate, chocolate in blocks, slabs, or bars of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00;
- potatoes, potato crisps, and potato chips of tariff heading 0701.10.00, 2004.10.00, and 2005.20.00;
- glass bottles (excluding glass bottles for packaging of pharmaceutical products) provided that the tax shall not apply to glass bottles from any of the countries within the East African Community;
- pasta of tariff heading 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, and couscous, whether or not prepared;
- eggs of tariff heading 04.07;
- onions of tariff heading 07.03;
- motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04;
- SIM cards; and
- cellular phones.

The KRA's exempting domestically produced goods from the application of these excise duties raises serious questions about compliance with international trade rules on treating imports no less favorably than like domestic goods.

Mexico

Energy Sector Barriers

Mexican energy policy makers continue to create hurdles for companies seeking to connect to the electricity grid and purchase clean and reliable energy. These hurdles include directing energy consumers to purchase energy from the state-owned utility, Federal Electricity Commission (CFE), and receiving disproportionate transmission infrastructure requests as part of the process to connect to the grid with the National Center for Energy Control (CENACE). Many of the infrastructure requests are actual recognized obligations of the Mexican State that have simply not been met. This takes place as the government continues to block all possibilities to pursue off-grid and private generation. As a result, U.S. companies are unable to adequately source their energy needs in Mexico and see their clean energy targets compromised. The United States has already requested dispute settlement consultations with Mexico under the USMCA.

Temporary Tariff Increases

In an August 2023 presidential decree, Mexico imposed temporary 5-25% tariff rate increases on various categories of imports. The rate changes cover a broad range of products - including metals, textiles, chemicals, oil, soap, paper, electronics, and furniture - and were imposed without prior public notice or opportunity for interested parties to comment. In addition to imposing the rate increases, the August 2023 decree also suspends previously-planned tariff rate reductions. In sum, the tariff rate changes increase the cost of importing into Mexico with little adjustment time for importers. The decree states these changes are needed to stabilize domestic industry and eliminate distortions in trade, and sets a general expiration date of July 31, 2025 (with certain exceptions).

Full implementation of Mexico's commitments in the USMCA's Custom Administration and Trade Facilitation Chapter, including those related to expediting the release of goods, transparency in customs procedures, communicating with traders, the use of information technology, and the adoption and maintenance of a single window, would address these concerns.

Tax ID registration affecting U.S. SMEs

In 2020, Mexico passed legislation requiring U.S. businesses that store inventory in Mexico to register for a local tax ID with the Tax Administration Service (SAT) and file monthly tax reports. While this process alone is not novel, the process to obtain this tax ID, known as a Registro Federal de Contribuyentes (RFC), is extremely complicated and costly. This process alone has become the primary barrier for U.S. small and medium-sized enterprises (SMEs) that seek to sell their products to Mexican consumers and businesses.

To receive an RFC, U.S. businesses are required to have a local Mexican address and a local Mexican legal representative that shares 50% of the company's tax liability, as well as pay income tax on all income generated in Mexico. The registration process is slow and bureaucratic, and involves 1) apostilling of documentation in the U.S., 2) translating all documentation to Spanish by a certified translator, 3) legalizing documentation with a Mexican Notary, 4) obtaining a SAT appointment (which can take one to four months due to limited availability), and 5) registering the RFC in SAT's offices. All of these steps are

offline and in-person and can take over five months, costing over $5,000, in addition to the costs of complying with income tax obligations.

Trade Facilitation and Border Issues

U.S. exporters continue to face significant challenges at the U.S.-Mexico border. The Government of Mexico has still not fully complied with the letter or spirit of its U.S.-Mexico-Canada Agreement (USMCA) customs obligations, and instead is moving to erect new customs barriers that harm the ability of U.S. small businesses to benefit from the agreement. Specifically, U.S. exporters are experiencing a significant increase in inspections and competing requests for information from multiple agencies at the same time in order to clear customs. SAT's customs automation interface has also repeatedly failed, including after recent changes were abruptly made to tariff levels, which has further increased border crossing times. U.S. companies have also experienced an increase in security incidents in northern Mexico near the border that have endangered employees and business operations. In addition, the government has begun exploring modifying/eliminating de minimis, along with increasing the global rate (Tasa Global) to fight undervaluing of products entering the country. While it's a mid-term strategy, the modification would greatly increase the cost for SMBs to export to Mexico.

Peru

De Minimis

The U.S.-Peru Trade Promotion Agreement (the "Agreement") entered into force on February 1, 2009. Under Article 5.7(g) of the Agreement, the parties established a USD200 de minimis provision, the value threshold below which no customs duties or taxes are charged on imported goods. However, the National Superintendent of Customs and Tax Administration (SUNAT) has implemented restrictions to the number of express delivery shipments (three maximum) that an individual without a tax number (RUC) can receive per year under the de minimis provision. Also, for individuals, it is not clear whether personal shipments beyond the three allowed would be considered commercial transactions that create new income tax obligations. Thus, this RUC requirement limits the ability of individuals to import goods for personal use and constitutes a trade barrier and a limitation to the use of express delivery shipments in Peru.

Various Signatories of WTO TFA

Challenges Accessing Customs Data

Under Article 10.4.1 of the TFA, signatories "shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner."

In many countries, including signatories to the TFA that have established a single window, the government does not make data and entry information available to importers and exporters. Companies in the following countries can only access their own shipment data through their broker: China, India, Indonesia, Ireland, Italy, Japan, Malaysia, Morocco, Norway, the Philippines, Saudi Arabia, Taiwan, and Turkey (all of these countries except Morocco have implemented a single window under the TFA). In other countries (e.g., France, Germany, Israel, Singapore, Spain, and the United Arab Emirates – all of which have established a single window under the TFA), a company can acquire its own data and entry information, but the process is burdensome. In some cases, the information can only be accessed by paying a fee.

The inability of companies to easily access information on their own imports and exports – including through the single window in TFA signatories – creates a trade barrier in these markets. The lack of access to data can cause delays in clearing shipments, increases costs, and generally makes it more difficult to do business and assess compliance in these countries.

In the European Union specifically, the lack of access to data creates difficulties for parties that seek to understand their obligations and exposure to the Carbon Border Adjustment Mechanism (CBAM). USTR discussed the CBAM in the 2022 National Trade Estimate Report on Foreign Trade Barriers,[10] and the CBAM entered into effect (in a transitional phase) on October 1, 2023. As of now, competent authorities must provide CBAM reporting obligations (derived from import data) to what is called the CBAM Competent Authorities Portal. Once again, importers cannot access this portal, and as mentioned above, many European Union countries do not make declaration data available to the importer for use in a program such as CBAM. As a result, importers close the gap by implementing costly solutions to aggregate their government data derived from non-government sources.

Sanitary and Phytosanitary Barriers

India

Health Certificates for Food Imports

Imported consignments of milk, milk products, pork, fish and fish products require health certificates issued by the competent authority of the exporting country. The certificates only will be valid for 90 days from the date of issue. The certificate requirement was adopted to discourage imports to protect domestic producers and make them more competitive.

Technical Barriers to Trade

Canada

[10] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf at 226.

Regulatory Approvals

Beyond the regulatory approval for safety and efficacy, there are additional market access barriers that significantly delay Canadian patients' ability to access new medicines and vaccines. Obtaining market authorization is only the first hurdle in launching a pharmaceutical product in the Canadian market. Once the regulator determines that a product is safe and effective, it is subsequently reviewed by an HTA body (of which there are two in Canada, INESSS (Quebec), CDA (rest of Canada), which informs the negotiations led by the pan-Canadian Pharmaceutical Alliance (pCPA). Following pCPA negotiations, interested public payers enter into a common agreement known as a Letter of Intent (LOI) with manufacturers detailing the preliminary terms and conditions for public reimbursement. Following the LOI, manufacturers must then negotiate with each individual jurisdiction to finalize PLAs to ultimately list a drug on a public formulary. These processes have become increasingly time-consuming and complex in nature, and on average they take 25 months to complete, which is double the amount of time it takes in most other OECD countries. During that time period, patients are unable to access these medicines and patentees are unable to fully benefit from market exclusivity and the rights and benefits associated with their patents are eroded as a result.

Eighty-five percent of new medicines launched globally since 2012 have launched and are publicly reimbursed in the United States compared to just 21 percent available on Canadian public drug plans, with Canadian public plan patients waiting an average of 52 months from global first launch to reimbursement for the new medicines that do become available.

Overall, these barriers significantly delay the benefits of new medicines and vaccines for Canadian citizens and erode the already limited time for innovative companies to commercialize their significant investments in R&D, clinical trials and regulatory approval processes. Fewer clinical trials also result in less access for patients to potentially innovative treatments. NFTC urges the U.S. Government to engage with the Canadian Government on these growing delays that are hindering patient access to new medicines.

Regulatory Burden

Health Canada is making a change to how it receives key information from drug submission sponsors. The Department intends to make the Structured Product Label (SPL) standard mandatory for new drug submissions in early 2025. This change by Health Canada will result in an unnecessary regulatory burden by departing from the global shift to the superior Fast Healthcare Interoperability Resources (FHIR) standard. The USA's 21st Century Cures Act introduced legal requirements for health information interoperability and prohibits information blocking. Canada should support FHIR adoption and operate in line with US and global FHIR standards to achieve cross-border healthcare interoperability. A much older standard, the SPL will shortly no longer be supported at other major global

regulatory bodies, including the U.S. Food and Drug Administration (FDA). An international coalition, including the European Medicines Agency (EMA), is developing a global standard for electronic Medicinal Product Information (ePI) using FHIR. Adopting mandatory SPL leaves Canada offside and an outlier as the global regulatory community increasingly moves to FHIR. FHIR is far superior to SPL, offering better support, lower costs, and stronger implementation capabilities. This benefits both regulators and manufacturers. A separate and outdated standard will impose additional delays and costs – financial and human – on manufacturers already working to resource and support the global FHIR standard. This negatively impacts Canada's competitiveness and is also contradictory of horizontal, whole-of-government efforts to streamline and modernize regulations.

Regulatory Approvals

Unlike the United States and Europe, Canada has no established definition, dedicated regulatory pathway or specific IP incentives for drugs for rare diseases. Without a dedicated rare disease regulatory pathway, delays in access are common for patients living with rare disease, with disparities in access between provinces and territories. Existing clinical trial and HTA processes are ill-equipped to assess value and manage uncertainty at the time of rare disease product launch. Current HTA processes significantly undervalue these medicines, often calling for unrealistic price reductions in excess of 90 percent. In March 2023, the federal government announced a total investment of up to $1.5 billion over three years in support of the first-ever National Strategy for Drugs for Rare Diseases to help increase access to, and affordability of, promising and effective drugs for rare diseases. Of this funding, $1.4 billion will be available to provinces and territories to cover a small set of new and emerging drugs that will be covered in a consistent way across the provinces and territories.

To date, only one agreement has been reached with the government of British Columbia (BC) in July 2024. While the signing of the first bilateral is a positive step, there is still work remaining to reduce disparities in access to medications across the provinces and territories. Further, the bilateral agreements provide no assistance in elevating regulatory standards and incentives to ensure that Canada becomes more consistent with international best practices.

Colombia

Regulatory Approvals

In recent years, the pharmaceutical industry has experienced worsening delays in regulatory approval times resulting in a significant market access barrier. Colombia's Instituto Nacional de Vigilancia de Medicamentos y Alimentos (INVIMA) takes up to 35 months to complete the evaluation and approval process, while other agencies are conducting this process in less than 12 months. This delay means that the pharmaceutical industry is unable to get new products approved even though the same products have been approved by other high standard agencies around the world. In fact, many countries are

reducing approval times while the timelines in Colombia continue to increase. This has a direct impact on access to medicines and vaccines for patients in Colombia while also contributing to an unpredictable business environment, which could ultimately impact investment from the pharmaceutical sector.

INVIMA needs a clear legal framework aligned with international standards and the adoption of FDA and EMA good practices. Public policies function as scaffolding for the construction of a predictable, efficient, transparent, and sustainable environment.

European Union

EU Proposed Revisions to the Packaging and Packaging Waste Decree

On February 27, 2023, the EU notified the WTO of proposed revisions to its Packaging and Packaging Waste Decree (G/TBT/N/EU/953). The revision was issued as a "Regulation" and not a "Directive." It is important that the U.S. government continue underscoring that this proposal remain a "Regulation" that reflects consistency across the EU Member States to avoid fragmentation of the EU's internal market. Further, the exemption for distilled spirits from reuse targets and the recognition of U.S. spirits as distinctive products of the U.S. in the EU, similar to products recognized as GIs should continue. And finally, NFTC urges the U.S. government to ensure that the EU retains marketing and consumer acceptance as performance criteria justifying additional packaging weight and volume.

Labeling

In February 2021, the EU published its Beating Cancer Plan, under which the EU will propose a mandatory requirement to include a nutrition declaration and a list of ingredients on labels before the end of 2022 and mandatory health warnings on labels by the end of 2023. In December 2021, the EU launched a public consultation seeking general feedback on, among other things, requiring nutrition information on beverage alcohol products that may either appear 'on label' or 'off label' with a QR code 'on label'. The proposed nutrition declaration and ingredient list regulatory text has not been published. It is unclear when the EU will issue a proposed warning statement regulation.

Ireland – Public Health (Alcohol)(Labeling) Bill

Ireland's Public Health (Alcohol) Bill was signed into law in October 2018, completing a process that began in 2015. In June 2016, the draft bill was notified to the WTO (G/TBT/N/IRL/2), and Ireland notified a revised bill through the EU's TRIS internal review system for comment in January 2018.

In July 2022, Ireland notified the EU through TRIS and FIC of its intent to adopt regulations under the Bill on beverage alcohol labeling. Specifically, the proposal would require information on calories and grams of alcohol per container, a pregnancy pictograph warning, and warning statements. In February 2023, Ireland notified the draft regulation to implement the beverage alcohol labeling requirements of the Bill to the WTO

(G/TBT/N/IRL/4). The draft is the same text notified through the EU's TRIS and FIC systems in June 2022. On May 22, 2023, the proposal was signed into law and will go into effect on May 22, 2026.

There is no EU-wide beverage alcohol warning statement requirement, and beverage alcohol products over 1.2% a.b.v. are exempt from nutrition labeling requirements. The EU published its Beating Cancer Plan in February 2021 and, in December 2021, launched a public consultation seeking general feedback on, among other things, requiring nutrition information on beverage alcohol. However, when the EU will issue a proposed warning statement regulation is unclear.

India

Health Star Ratings

The Food Safety and Standards Authority of India (FSSAI) is in the process of framing rules for front-of pack nutrition labelling (FOPL) of packaged foods. The health star rating (HSR) format ranks a packaged food item based on salt, sugar, and fat content and the rating will be printed on the front of the package to help make it easier for consumers to understand the calorific value of the product. NFTC members report that compliance with this new system is extremely challenging and creates a barrier to U.S. exports to India.

Philippines

Telecommunications Services

Under the amended Public Services Act (PSA) which took effect in April 2022, public services engaged in the provision of telecommunications services are considered critical infrastructure. Foreign nationals may own more than 50 percent of public services engaged in the operation and management of critical infrastructure, subject to reciprocity requirements.

The Philippines allocates and manages spectrum through the Radio Control Law of 1931 (RA 3846 and its amendment, RA 584), Executive Order No. 546 1979, and the Public Telecommunications Policy Act of 1995 (RA 7925). These laws and directives provide the country's legal framework for spectrum enfranchisement, operation, and permitting in line with International Telecommunication Union requirements, and general provisions on the allocation and assignment of radio spectrum. While RA 7925 requires the conduct of open tenders in allocating spectrum, no public bidding has ever been carried out to allocate spectrum (e.g., spectrum auctions). Evaluation of applications typically involves the submission by an applicant of a letter of request to the National Telecommunications Commission for its spectrum needs. This model is inherently non-transparent, constituting an administrative approach by which applicants are chosen based on the government's prioritization of certain criteria (like financial or technical capacity).

Konektadong Pinoy (previously called the Open Access in Data Transmission bill) is a key measure that still awaits Congressional approval. Even though the amendments to

the Public Services Act opened up the telecommunications sector for foreign ownership, new entrants face significant barriers due to the requirement of securing a legislative franchise (the Philippines is the only country that requires a legislative franchise for telecommunications or data transmission entities). The market remains largely a duopoly and is dominated by local telecommunication companies, Globe and PLDT Smart.

Government Procurement Issues

India

R&D Local Content Requirements

India imposes rules that prohibit or create incentives against U.S. suppliers in procurement and research. For example, local content requirements for software and cloud services create market entry barriers for multinational companies that have global R&D centers; wholly-owned subsidiaries of foreign firms would be blocked by recent guidance from completing already approved contracts to discharge certain offset obligations; and geospatial guidelines prevent foreign companies from partnering with Indian companies to develop innovative technologies using higher resolution geospatial data.

Pharmaceutical Local Content Requirements

Aligned with the Government of India's continued stress on self-reliance, the Public Procurement (Preference to Make in India), Order 2017 and subsequent revisions mandate that only Class-I suppliers (local content equal or more than 80%) and Class-II suppliers (local content more than 50% but less than 80%) are eligible to bid for Government procurement. except where a global tender enquiry is issued (for an amount more than USD 2 billion.) Such a global tender enquiry is unlikely in the pharmaceutical sector as the value of the tender released by the procuring entities is invariably less than USD 2 billion. Hence the current framework creates challenges for global pharmaceutical companies to continue supplying even patented medicines (for which there are no local generics) that are manufactured outside India to Govt procurers.

In addition to being a major concern for the multinational pharmaceutical industry which has been importing lifesaving patented drugs for cancer and other critical ailments, this order poses a significant compliance challenge in particular to foreign software and cloud service providers (CSPs) to demonstrate local value add. This model does not consider the investments and other contributions made by foreign CSPs that enable the Indian Tech ecosystem and their global competitiveness, such as skilling initiatives, cloud innovation centers, quantum computing lab etc. Even if CSPs don't directly bid for government contracts, partners need to certify their percentage of local content, for which they rely on their vendors' local value addition as well. For example, where cloud services are a substantial cost element in a public procurement bid, percentage of local value added from a CSP becomes important. Moreover, the Indian government is considering revisions to the order and increasing the minimum local content requirement for Class-I suppliers to 60% and Class-II suppliers to 30%.

As a solution, while the Government of India has in April this year created a list of GTE (Global Tender Enquiry) exceptions (exemption from localization) that included 70 patented drugs at that time, this list has not been refreshed and no additional drugs have been added. As such, for these medicines that are not yet included, access to Govt procurers remains challenging. Industry is seeking the inclusion of additional patented therapies and an automated process of biannual review and refresh of GTE exemption list.

Indonesia

Local Content Requirements

Local content requirements (LCR) are a growing concern for many industries, including the pharmaceutical industry. The newly issued Omnibus Health Law (Law No. 17/2023) prioritizes the use of pharmaceutical products and medical devices produced locally. Articles 327 and 328 of the Law explicitly dictate that the government and healthcare facilities – both public and private – must prioritize the procurement and utilization of domestically produced and sourced pharmaceuticals and medical devices, imported products will only be used if there are availability or supply issues. This further escalates the aggressive import substitution policy pursued in recent years, which has centered around the imposition of local content requirements as well as the "freezing" of imported products from the public procurement catalog should local alternatives be available.

Separately, Presidential Instruction No. 6/2016 mandates local content requirement calculation to be used as a criterion for government procurement of biopharmaceutical and medical device products. Finally, this trend was further bolstered by Presidential Decree 2/2022, which prioritizes government procurement of products with domestically produced raw materials, specifically those with a local content threshold of at least 25 percent. It is critical that these requirements are not applied in a manner that restricts patient access to innovative medicines in Indonesia and that greater recognition is given to biopharmaceutical innovators for their contribution in bringing innovative therapies to Indonesia.

Korea

Cloud Services Procurement Requirements

Despite its ICT leadership status globally, Korea maintains a hallmark discriminatory policy in the cloud computing service industry to block U.S. cloud service providers (CSPs) from participating in government procurement. The Cloud Security Assurance Program (CSAP) is administered by the Korea Internet & Security Agency under the supervision of the Ministry of Science and ICT (MSIT). CSAP has been in place since 2016, acting as a pre-condition to participate in all cloud-related public procurement bids.

CSAP imposes a set of highly restrictive, brick-and-mortar operational requirements that no U.S. CSPs can meet. CSAP is built upon the data localization principle in its design,

by requiring CSPs to physically separate the server, network, security equipment, operational personnel, access control, etc. from general cloud systems and to place their computing facilities within the national borders. As a result, U.S. CSPs are unable to access the public procurement market despite being certified to the highest security and privacy standards globally and equipped with state-of-art technical capacity.

While Korea took a positive step in January 2023 to revamp the CSAP into three tiers -- High, Moderate and Low, the reform was limited in effect. Even though the physical separation rule for the cloud information network was lifted for the Low-tier segment, U.S. CSPs are not able to qualify for Low-tier certification status, let alone in the Moderate and High tiers. A set of local technical standards-based requirements remain unchanged throughout the three tiers, specifically concerning the Korea-developed version of the Common Criterial (CC) certification and Korea's standalone encryption module known as the Korea Cryptographic Module Validation Program (K-CMVP). Furthermore, the physical separation rule is still required for the Moderate and High tiers.

CSAP also does not comply with Korea's international trade commitments including the WTO Government Procurement Agreement (GPA), the government procurement chapter of the U.S.-Korea Free Trade Agreement and the WTO's Technical Barrier Treaty Agreement (TBT). Given Korea's participation in IPEF, it is also noteworthy that CSAP is also in conflict with other widely-accepted digital trade rules that is expected to be discussed under IPEF, including on ensuring seamless cross-border data flows, prohibitions of data localization, safeguards against the forced use of local encryption modules and prohibitions on the forced disclosure of source codes.

Mexico

Healthcare procurement

Mexico's healthcare procurement system is undergoing significant reform (resulting in shifting and competing authorities for conducting procurement), and the lack of industry consultation and transparency has created not only significant trade barriers for U.S. companies but also drug lag (delay in approval of innovative products) as well as drug shortages in Mexico. Publication of procurement information is inadequate, and notices of intended procurement are not released with enough lead time for U.S. companies to participate competitively. Furthermore, the tendering process includes onerous requirements that constitute TBT, e.g., requiring letters or documents that are difficult to obtain from other institutions. The lack of transparency and not adhering to administrative protocols tends to favor local companies or companies that are favored by the NHC. Mexico's Comission Federal d'Electricidad (CFE), the government agency responsible for building and operating many of Mexico's government-owned communications networks, is a covered entity under Mexico's Government Procurement Chapter obligations. However, CFE is abrogating its USMCA commitments by not giving adequate notice of public tenders, not providing enough time for suppliers to respond, and not using technology-neutral specifications. We urge USTR to re-engage Mexico on its government procurement practices so that U.S. exporters of secure Internet technologies can compete on a level playing field in the Mexican government procurement market.

Intellectual Property Protection

Canada

Non-Compliant Patent Term Adjustment (PTA) System

Under USMCA, Canada is required to implement a patent term adjustment (PTA) system to compensate patentees for "unreasonable" delays in the patent examination process by January 1, 2025. On June 22, 2023, the Canadian government passed a budget bill which included amendments to the Patent Act to implement a PTA system. The legislation will come into force at a later date and related regulations are currently being developed. The Canadian Intellectual Property Office has subsequently launched consultations on amendments to the Patent Rules to seek preliminary feedback on the regulatory components of Canada's PTA system., As passed, Canada's PTA system will not comply with its international commitments, since it imposes significant and inequitable barriers that will prevent innovators from receiving the intended meaningful remedy for patent office delays.

Under Canada's system, PTA terms will run concurrently with Certificate of Supplementary Protection (CSP) terms, which is a separate and distinct benefit provided to pharmaceutical patentees due to the lengthy development and regulatory approval process. In practice, running PTA and CSP terms concurrently will result in the term of one vitiating the other term, and patentees will not receive the full benefit to which they are entitled. If Canada proceeds with this approach, it will fail to fulfill two independent trade obligations, which each serve important purposes and compensate for distinct delays.

The process of obtaining PTA is also rife with barriers that would render PTA unattainable for most patents and prevent patentees from receiving the intended meaningful remedy. The Canadian government will not commit to deadlines for critical milestones, but suggests that it may take years for the government to consider whether any PTA is owed and make a final determination. This projected timeframe is inconsistent with comparable service standards, such as for the CSP system. The Canadian government has also imposed significant PTA fees, both to apply for PTA consideration, and by way of maintenance fees. Such fees are inconsistent with comparable patent office fees and are contrary to the remedial nature of the PTA system.

The Canadian government has also proposed a number of "example" actions and periods of time that may lead to days being subtracted in the determination of additional term, including delays which are not attributable to, and in many circumstances cannot be avoided by the innovator applicant. For example, the system will not provide a reasonable period of time for an applicant to respond to communications and requisitions from the patent office. This means that days will be deducted during a period when even a diligent applicant could not respond. Deducting such time period will particularly prejudice larger

or American companies, who must relay notices through multiple parties, global head offices, and external counsel.

In addition to the proposed deductions, the Commissioner of Patents (the Commissioner) would also have residual discretion to further subtract unspecified days from the PTA calculation. Enabling the Commissioner to consider ambiguous and unknown factors would make it extremely challenging for patentees to determine whether it is feasible to obtain additional term, and therefore assess whether it is worth undertaking the administrative burden to apply and pay the prescribed fee. This discretion undermines the obligation to compensate for unreasonable delays.

To further complicate the application process, the Canadian government also proposes to permit third party observations at the initial PTA determination stage, which would transform what should be a remedial administrative application into an adversarial process. Allowing third party observations would increase the time, cost and uncertainty in the process, and is unnecessary since third parties have other avenues to challenge any PTA term.

If PTA is granted, Canada has implemented a redetermination process that is wholly inequitable. Concerningly, there is no opportunity for patentees to seek redetermination if they believe additional PTA is owed, unless they initiate costly judicial review litigation. Calculation issues may occur, particularly in light of the proposed periods of time that may be deducted from any additional term, as noted above. As currently legislated, the Commissioner can only shorten the duration of the PTA provided or dismiss the application for redetermination. The Commissioner may reconsider the PTA term at any time, and third parties may challenge the PTA term through the Commissioner or Federal Court.

For the reasons set out above, Canada's framework would not provide a meaningful remedy to patentees who are impacted by unreasonable patent office delays. We urge the U.S. government to work with the Canadian Government to align its approach with that of the U.S. in order to ensure that Canada complies with its trade treaty obligations.

Colombia

IP Threats

The threat of unmitigated compulsory licensing in Colombia is a continued risk for the innovative biopharmaceutical industry. In April 2024, the Colombian government issued a compulsory license (CL) on an antiretroviral medicine on vague and ambiguous grounds. Since that action, the MoH has publicly signaled its desire to use the threat of CLs as a price "negotiation" tool despite other and more effective options that would not compromise incentives for innovation.

Mexico

Patent Enforcement

As part of its USMCA commitments, Mexico enacted the Federal Law for Protection of Industrial Property, which entered into force on November 5, 2020, but implementing regulations have not been issued and U.S. companies are unable to assess whether the new law will address some deficiencies in Mexico's patent enforcement system.

Mexico has taken some positive steps to improve patent enforcement, including adopting the Linkage Decree of 2003, although the decree has not been implemented in a comprehensive and consistent manner. The publication in the Gazette of Patents Protecting Medicines (Gazette) is a positive step toward the goal of eliminating unnecessary, costly and time-consuming court actions to obtain appropriate legal protection for biopharmaceutical patents. However, many times formulation and use patents still require lengthy and costly litigation to achieve protection or even inclusion in the Gazette. COFEPRIS appears to apply linkage inconsistently and possibly in a discriminatory manner. In several cases, marketing authorizations have been issued to generics despite valid patents being listed in the Gazette. The lack of implementing regulations for the Federal Law for Protection of Industrial Property has left companies without key details regarding the scope of the patent enforcement regime, including which patents would be subject to the system. This undermines company confidence in the IP system in Mexico and impedes companies' ability to do business in Mexico.

The Philippines

Procurement Practices

The government procurement system in the Philippines generally favors Philippine nationals or Filipino controlled enterprises for procurement contracts. Republic Act No. 9184 or the Government Procurement Reform Act, specifies a minimum Filipino ownership requirement of at least 60 percent in the procurement of goods, consulting services, and infrastructure projects. Domestic goods are also given preferential treatment over imported products in the bid evaluation process. Additionally, Executive Order No. 120, issued in 1993 directs government departments and agencies, including government-owned and controlled corporations, to exert best efforts to negotiate countertrade equivalent to at least 50 percent of the value of contracts on foreign capital equipment, machinery, products, goods, and services worth at least $1 million. Government Procurement Policy Board Resolution 14-2005 states that a government agency must comply with the provisions of RA9184 if it decides to adopt countertrade as an internal procurement policy. The New Government Procurement Act (NGPA), which was signed into law on July 20, 2024, looks to enhance the existing procurement systems implemented by the 21-year-old Republic Act (RA) No. 9184. The new law states that preference and priority are given to Philippine products. As per Section 79, "The procuring Entity shall award the domestic bidder if the bid is not more than twenty-five (25%) in excess of the lowest foreign bid. The margin of preference provided herein shall be subject to a periodic review and adjustment by the GPPB, as may be necessary." However, the domestic preference can be waived if

specific conditions are met, such as if the priority and preference will result in inconsistencies with obligations under international agreements. While U.S. cloud service providers are active in the Philippine market, they continue to face constraints that limit their participation, particularly in competing for government projects. The Philippines requires government agencies to procure cloud computing services from the Government Cloud (also known as GovCloud), a cloud infrastructure set up by the Department of Information and Communications Technology. The Philippines is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

Other Barriers

Australia

Country-by-Country Reporting

Starting in 2022, the Government issued an array of regulatory proposals and as result of these efforts introduced a series of draft legislation that displays a worrying lack of consistency with international norms and a massive compliance burden for MNEs. Despite a revision attempt in February 2024 based on stakeholder and business community feedback, the existing draft legislation (*Treasury Laws Amendment Bill 2024)*, which passed the House of Representatives and is pending in the Senate, maintains a much more exhaustive approach to CbC reporting than that of the OECD and the EU. The Australian reporting proposal reaches further than either the OECD reporting or EU Directive, requiring information exceeding what is needed to determine tax compliance in the country.

This lack of congruence with international norms creates a variety of challenges for MNEs by muddying definitions of revenue within the CbC reporting realm, neglecting differentiated treatment of U.S. S corporations, concealing criteria for determining "blacklisted" noncompliant jurisdictions, and requiring the publication of detailed sensitive information by multinationals outlining their revenue, tax paid, list of tangible assets, among other details, with limited protections for information relevant to national security.[11]

These regulations, taken together, amount to an extremely burdensome policy with enormous compliance costs. The Australian government has not incorporated many recommendations of the business community, but rather has continued with unprincipled rulings, proposals, and retroactive legislation. These initiatives will increase costs for U.S. MNEs operating in Australia and should be addressed.

Colombia

Significant Economic Presence Taxation

[11] Parliament Australia, "Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill, Sec. 3DA" (introduced June 5, 2024).

In August 2022, the Colombian government introduced a significant economic presence (SEP) proposal, a new tax on gross income derived by overseas providers of goods and digital services into Colombia. In November 2022, the Colombian government approved the SEP rule (Law 2277/22, Article 57) which distinguishes between goods and digital services. For goods and services, a person is in scope if it has a deliberate and systematic interaction with the Colombian market (maintaining a marketing interaction with 300,000 or more users or customers located in Colombia) and if it obtains gross income of approximately USD 300,000 or more from users in Colombia. The tax applies to both the sale of tangible goods, but also to an enumerated list of digital services, including cloud services. As such, the SEP provisions apply to more than companies operating in the digital services sector. The rule imposes a 10% withholding tax on a non-resident with a deemed SEP in Colombia. The tax is imposed at the source, on the total payment made to the non-resident for the sale of goods and/or provision of services. Using other enacted DSTs and other relevant similar measures as a benchmark, the 10% proposed rate for withholding is unusually high. There is an elective, alternative regime, whereby the non-resident can elect to pay a 3% tax on the gross income derived from the sale of goods and/or the provision of digital services from abroad, sold, or provided to users in Colombia when registered. The SEP entered into force on January 1, 2024.

The Colombia law represents a significant departure from international tax norms, which allocate taxing jurisdiction on the basis of nexus (i.e., the concept of permanent establishment, physical operations, workforce, etc.) or source (the location of income-generating activity), rather than destination-based criteria. The law does not align with the current ongoing negotiations at the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework and violates the spirit of both the 2021 DST standstill agreement, and the conditional, one-year extension reached in July 2023, which Colombia agreed to. The new gross-basis tax imposed on non-residents of Colombia on income derived from sales to the Colombian market creates barriers to trade to U.S. companies engaging with the Colombian market and may constitute a violation of the United States-Colombia Trade Promotion Agreement (USCTPA).

Vehicle Safety Standards

In fall 2024, the Colombian government introduced draft Resolution 20223040044585 issued by the Ministry of Transportation, which pertains to braking standards for vehicles. Colombia has long-accepted U.S. Federal Motor Vehicle Safety Standards (FMVSS) for safety, as is the case in many markets globally. While the policy is focused on braking standards, there is a risk that this could be extended to other policy categories and sets a negative precedent which will harm U.S. trade to Colombia and Colombian access to U.S. vehicles, as well as other markets that certify to FMVSS standards. Furthermore, both the consultation period and the implementation window for the standards was insufficient for industry to be able to meet. NFTC would like to see Colombia pause implementation of the standard in order to continue consultations with an aim towards continuing to recognize FMVSS as an automotive safety standard for the market.

European Union

CBAM, Russia Sanctions, and Other Measures

In implementing various laudable policies and priorities, the European Union/its member states impose requirements on importers to collect extensive information from other parties with limited or late guidance and with varying enforcement strategies across the European Union. For example, the CBAM requires an effort to collect extensive data from upstream suppliers regarding inputs and raw materials in the imported product and marrying it to import data in a very short timeframe. Another example is the European Union's sanctions against Russia, which include a prohibition on imports of iron and steel of Russian origin effective September 30, 2023. The guidance on particular matters was not released until October 2, and companies were surprised to learn from customs brokers that each implicated import declaration required a certification. To verify the content or production date of the concerned iron or steel takes time, and the late guidance release will likely create risk of production delays. Although these measures pursue legitimate policy objectives, without co-creation of the "how" with importers, the implementation of these measures at the border creates a trade barrier.

Sustainability Standards

Under the Corporate Sustainability Due Diligence Directive (CS3D), which the EU adopted in June 2024 and entered into force in July, EU Member States must enact national laws to comply with broad environmental and sustainability standards. Member States have until July 2026 to bring laws into force with implementation set for the largest companies in July 2027. If companies want to start bringing their operations into compliance in anticipation of the July 2027 deadline (recognizing the extensive lead time that is required), they will likely need to do so largely absent official guidance as the Commission has set January 2027 as the deadline to publish official implementation guidelines, which may include due diligence best practices, responsibility prioritization, sector-specific guidance, etc. With guidelines potentially coming as late as this deadline, companies could be left with a 6-month implementation window.

Not only does CS3D impose heavy, costly and in some cases unfeasible burdens on companies (in many cases it simply transfers public commitments made in state-to-state treaties onto the private sector), it does so with extraterritorial effect, impacting even companies that have no nexus to the EU, and opens the door to the constant threat of meritless, excessive, and expensive litigation by virtually anyone in the EU.

CS3D is a direct contradiction to the efforts to strengthen the EU's competitiveness and risks further weakening business confidence and economic growth in Europe. Furthermore, its extra-territorial application of international agreements that countries may or may not be a party to which themselves lack specificity will be both onerous and raise significant questions of its compliance with EU trade obligations.

Discriminatory Taxation

The EU's excise tax rules and minimum rates for distilled spirits are set forth in two EU Directives: 92/83 and 92/84. EU legislation only sets harmonized minimum rates, meaning that EU Member States may apply excise tax rates above these rates. Under the Directives, some member states can provide preferential tax benefits to certain spirits producers under "derogations" from general excise tax rates. In May 2018, the European Commission published a revised legislative proposal, which retains the derogations for certain spirits producers. Such measures put U.S.-origin spirits at a considerable disadvantage in these markets while affording protection to certain domestically produced products in contravention of the EU's WTO national treatment obligations. EU Member States that provide preferential excise tax rates for certain domestically produced products include Austria, Croatia, Czechia, France, Greece, Portugal, Romania, Spain, and Slovakia.

Medical Device Payback

In certain countries including France and Italy there are efforts to advance medical device clawbacks.

In Italy, the government reintroduced a payback system that has been upheld in the courts. This requires suppliers to cover any costs that exceeded the budget allocated for medical devices in those years. The unpredictability and retroactive nature of this system have raised concerns, especially as companies are expected to repay millions within a short timeframe.

Similarly, in France, although the structure of the payback is less severe, companies face growing pressures related to cost containment measures, where reimbursement decisions can retroactively impact revenues.

These clawback mechanisms have caused uncertainty, especially for smaller companies, as they face unexpected financial liabilities. The industry has pushed for reforms, such as increasing healthcare spending caps and revising the payback system to alleviate financial stress on SMEs.

Limited Eligibility of the European Defence Industry Programme (EDIP)

In March 2024, the EU released the European Defence Industrial Strategy (EDIS) to guide EU policy on defense industry matters for the next decade.[12] Through EDIS, the EU plans to strengthen its defense industry through "increased, more collaborative and European investment" from EU Member States, maintain "a defence readiness culture," and improve the EU defense industry's responsiveness to meet defense needs, among other objectives.[13] To begin implementing EDIS, the European Commission proposed a regulation to establish the EDIP.[14] Among other things, the European Commission

[12] https://defence-industry-space.ec.europa.eu/eu-defence-industry/edis-our-common-defence-industrial-strategy_en

[13]https://defence-industry-space.ec.europa.eu/eu-defence-industry/edis-our-common-defence-industrial-strategy_en

[14]https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf

proposes spending EUR 1.5 billion on EU defense during 2025 to 2027 through the new EDIP.[15] Possible funding measures include "grants, prizes, procurement, and financial instruments" governed by a separate EU regulation.[16]

The European Commission's current proposed eligibility criteria for participating in EDIP limits U.S. exports of goods and services and diminishes U.S. foreign direct investment. As currently proposed, eligible legal entities must be established in the EU or in an "associated country" (i.e., members of the European Free Trade Association that are members of the Agreement on the European Economic Area – Iceland, Liechtenstein, and Norway).[17] In other words, although entities established in some non-EU countries may participate in EDIP, entities established in other countries – including like-minded allies and members of the North Atlantic Treaty Organization such as the United States – are not eligible. These eligibility limitations create a significant barrier to U.S. exports of defense goods and services to the EU that could otherwise support the EU's policy goals of EDIS and EDIP.

In addition, as the regulation is currently proposed, participants in EDIP cannot be subject to the control of an entity located outside the EU or an "associated country."[18] For example, an entity established in an EU Member State but controlled by a U.S. company is not eligible for participation in EDIP. Individual EU Member States would be able to issue derogations to allow such entities to participate in EDIP,[19] but the current proposal gives EU Member States significant leeway to create and implement their own criteria for such derogations, which could lead to discrimination and protectionism. This proposal harms existing U.S. foreign direct investment in the defense industry, reduces future opportunities of U.S.-owned subsidiaries based in the EU, and ignores the contribution of EU-based entities that support EU defense with numerous employees and extensive EU supply chains.

EDIP's eligibility criteria also raise concerns about compliance with WTO agreement provisions regarding subsidies, non-discrimination, national treatment, and trade-related investment measures.

Mexico

Constitutional reforms on independent regulatory bodies

On August 26, 2024, the Constitutional Commission of the Mexican Chamber of Deputies approved a proposal to amend the constitution and eliminate the autonomy of antitrust regulators–the Federal Economic Competition Commission (COFECE) and the

[15] https://defence-industry-space.ec.europa.eu/eu-defence-industry/edip-future-defence_en

[16] https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf at Article 8.2.

[17] https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf at Article 10.2 and Article 9.

[18] https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf at Article 10.4-5.

[19] https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf at Article 10.5.

Federal Telecommunications Institute (IFT)—as well as other independent regulatory bodies. The draft resolution still needs to be approved by Congress, signed by the President, and approved by the majority of State Legislatures. If enacted, COFECE's functions would be transferred to the Secretariat of Economy, and the IFT's functions to the Secretariat of Infrastructure, Communications, and Transport. Given the ruling party's supermajority in both legislative chambers and local legislative bodies, and the express support of the reform from President-elect Claudia Sheinbaum, approval of the proposal appears likely. However, the process will take time. The bill's debate and potential approval could take place shortly after the swearing in of the new Congress on 09/01 or in October after President-elect Sheinbaum takes office, but the timeline remains tentative and could shift to 2025 as the Congress is reviewing 19 other proposed constitutional reforms. Key points of the reform include:

- Centralization of Authority: The President would gain direct power over preventing, investigating, and punishing monopolies, anti-competitive practices, and market inefficiencies.
- Loss of Watchdog Independence: COFECE and IFT would effectively be dissolved, with their current functions centralized under executive branch control.
- Merging of Investigative and Adjudicatory Powers: The separation between the investigative and decision-making bodies would be eliminated, allowing the same entity that conducts investigations to also render final judgments.
- Judicial Oversight: Decisions by the new antitrust authority could still be challenged through constitutional appeals and reviewed by specialized judges.

The Philippines

Reconfirmation of Tax Treaty Benefits

The U.S. and the Philippines executed an Income Tax Convention in 1976. Under this treaty, "taxation of business profits derived by a resident of the other country is governed by the standard treaty concept that tax liability will arise only to the extent that the profits are attributable to a "permanent establishment" in the taxing country." To access benefits under the tax treaty, the Philippines Bureau of Internal Revenue (BIR) requires that income payors file a request for confirmation (RFC) with the BIR. The BIR has issued guidelines to administer such annual pre-approval which comes with onerous documentation requirements which undermines the benefit of the existing tax treaty. The BIR also indicates possible penalties and criminal liabilities for non-compliance. There is significant ambiguity on how long BIR will take to review the RFC and there is no guarantee of a positive outcome. Such requests have to be made by each and every income payor (customers) of U.S. non-resident service providers selling to the Philippines.

CONCLUSION

NFTC believes that these recommendations will contribute to the preparation of the 2025 NTE and USTR's 2025 trade agenda. Defending U.S. business interests abroad from discriminatory and disadvantageous policies is critical to American competitiveness. We

look forward to continuing to work with you on the important work of enforcing U.S trade agreements and improving access for U.S. goods and services in foreign markets. Thank you for the opportunity to present our comments. If you have any questions regarding our comments, please contact Tiffany Smith, Vice President of Global Trade Policy, at tsmith@nftc.org or Brad Wood, Senior Director for Trade and Innovation, at bwood@nftc.org.

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