ITI Promoting Innovation Worldwide

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# 2021 Policy Agenda for the Americas

The Information Technology Industry Council (ITI) is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries.

The technological innovations of ITI's members, and the digitalization of the economy more broadly, bring innumerable benefits to industry and society across the globe. The tech sector empowers companies of all sizes and across industries – from agriculture to education, financial services to manufacturing, healthcare to energy and transportation – to leverage frontier innovations towards competition and success in the global marketplace. Whether it is sensors that detect health and safety hazards for workers in real time, or artificial intelligence that allows doctors to analyze complex medical data faster than ever, technology allows us to address some of the most challenging issues of our time and improve the quality of everyday life across the Americas. The tech sector is also already taking significant steps to help prepare the workforce of the future for the shifting skills and competencies that are required in the 21st century.

Before the pandemic, Latin America lagged behind other parts of the world with respect to investment in technology, connectivity, and digital trade. According to the World Bank, regional connectivity was below 50%, a glaring figure that hindered market competitiveness and stifled innovation. During the pandemic, Latin America's technology gaps proved costly, both to human life and to the economy. Many of the region's nations suffered some of the highest proportionate COVID deaths and infection rates, while economically, it is estimated that the region's GDP shrank by more than 7% and nearly 30 million people lost their jobs. As states attempted to control the spread of COVID through business closures and lockdown measures, tens of millions across the region were pushed into poverty. As noted in a separate World Bank Report, the tremendous gains made at poverty reduction in Latin America over the last two decades were erased by the pandemic. In confronting this startling reality, ITI believes governments across the Americas must be prepared to act boldly and enact an agenda that promotes digital technology at all levels, from investment, to infrastructure, to education and training.

ITI's 2021 Policy Agenda for the Americas responds to the challenges faced by countries in the Americas, including Latin America and Canada, by detailing a set of policy principles and recommendations designed to accelerate the digital transformation currently underway and ensure that its benefits are shared by all members of society. ITI and its members are excited by the opportunities that exist for governments and citizens to take full advantage of the benefits of digital technology. To realize those benefits, however, ITI believes governments must be ready to craft and enact the right kinds of policies that will allow technology investment, incorporation, and adoption to flourish.

ITI has developed recommendations outlining concrete steps that policymakers can take in Latin America and Canada, in partnership with industry, academia, civil society, and other stakeholders. Our recommendations address the economic and social implications of technology and the role of our industry, in a manner that supports innovation, while recognizing the range of public interests at stake. These recommendations focus on the following areas:

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- **Artificial Intelligence:** Harnessing the benefits of AI while managing potential challenges in an array of fields to bring innumerable opportunities to economies and societies.
- **Cybersecurity:** Leveraging risk-based, proportionate frameworks that bring expertise from all stakeholders responsible for protecting networks, users, and society.
- **Data Protection:** Protecting data in responsible and effective ways, while ensuring that data flows are not restricted.
- **Digital Services:** Maintaining a safe online environment and ensuring a functioning online market by enacting regulations based on objective criteria, justified obligations and appropriate due process guarantees and stakeholder consultation.
- **Digital Trade:** Reducing barriers to trade for technology goods and digital services, including restrictions to cross-border data flows and data localization requirements, in order for more citizens, businesses, and communities to realize the benefits of a global, digitally-charged economy.
- **Digital Transformation:** Implementing policies that expand and invite innovation for developing new technologies that will shape the global economy and enhance economic development.
- **Environmental Policy:** Achieving sustainability goals by developing ways to efficiently handle rapidly growing data volumes and catalyse on digital transformation across all industry sectors.
- **Regulatory Policy:** Harmonizing regulatory policies across the region to comply with international standards in order to enhance the ease of doing business in Latin American countries.
- **Tax:** Realizing a free, fair, non-discriminatory, transparent, predictable, and stable trade and investment environment by avoiding unilateral tax measures and reaching consensus through the OECD/G20 Inclusive Framework.

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# Artificial Intelligence (AI)

Technological innovations bring innumerable benefits to economy and society. We are already experiencing the benefits of AI in an array of fields, and we urge governments to continue promoting these advances. Companies of all sizes have developed and are using AI systems to help solve some of society's most pressing problems. Many others are harnessing AI to improve their business, provide better public services and advance ground-breaking research.

The tech industry also shares the goal of responsible AI use and development. For instance, there is a recognition of the need to mitigate bias, inequity, and other potential harms in automated decision-making systems. As technology evolves, we take seriously our responsibility as enablers of a world with AI, including seeking solutions to address potential negative externalities and helping to train the workforce of the future. ITI is concerned that some policymakers in the Americas have considered positions on these initiatives that could stifle important medical and safety advancements and other technological breakthroughs; impose unique standards, onerous certification or localization requirements that isolate individual countries; or adopt heavy-handed regulations, that ultimately leave their citizens behind other global workforces.

ITI encourages governments, communities, and industry to work together to determine how we can deploy these technologies in a responsible way and address the consequences of their adoption. Participating in the development of international, voluntary standards and related multi-stakeholder processes will drive the development of AI technologies while, at the same time, addressing any potential harms in advance, and can help form a bridge between written rules and practical implementations. Multi-stakeholder conversations are occurring around the world about how to best accomplish this goal.

## Recommendations

- **Ensure AI policy is flexible enough to support match the rapid pace of technological development**. The benefits of AI development are enormous, and the technology is constantly evolving. We encourage governments to be mindful of the fast pace of technological advancement and ensure that any approach to AI is flexible enough to account for rapid change. We also encourage both strong public-private collaboration to support responsible development of AI.
- **Focus on capacity building, STEM education, and training.** Advancements in training and education will be necessary to ensure that innovations and innovators can flourish. Governments should prioritize incentives and investments for R&D, as well as robust programs for fostering STEM education and training at all levels of school and across the workforce. Further, to promote innovation, ITI encourages governments to consider how to better facilitate data sharing, advancement of AI R&D, and support for STEM-informed workforce development.
- **Ensure that AI policy is risk-based and considers relevant context.** Our industry is committed to working with governments and other relevant stakeholders to develop a reasonable accountability framework for AI. ITI members recognize their important role in making sure technology is built and applied for the benefit of everyone. We support the ethical and responsible development of AI, but we also believe that governance approaches to AI should be context- and risk-specific and consider that not all applications or use cases require the same level of intervention or oversight. As the number of potential AI application grows, it is important to remember that not all use cases requite the same level of intervention or oversight. There are also important considerations about the appropriate amount of ex-ante, preventive rules and ex-post remedies, and ensuring that the rules of the road are clear.

- **Consider AI policies where there is a gap in existing regulatory landscape.** AI technologies are not necessarily standalone technologies or services, but rather built into many existing technologies and are already in use. Governments should consider where these technologies are already covered by existing privacy, consumer protection, cybersecurity, and other relevant regulations and ensure that any new regulations address the gaps between these existing frameworks.
- **Prioritize an effective and balanced liability regime**. AI presents great opportunities for society in different fields yet raises valid concerns around responsible and safe deployment. The clarification of rules around liability, currently designed for physical products, is an appropriate area of focus. There are also important considerations about finding the appropriate balance of ex-ante preventive rules and ex-post remedies.
- **Ensure the availability of and responsibility for securing personal data**. By leveraging large and diverse datasets and increased computing power and ingenuity, AI developers and other stakeholders innovate across industries to find solutions that will meet the needs of individuals and society in unprecedented ways.

## Country-Specific Issues

Brazil

Several bills were introduced in the Brazilian Congress and in state legislatures aimed at regulating use and deployment of Artificial Intelligence. ITI advocates the adoption of a flexible and diversified regulatory approach that encourages strong public-private collaboration and responsible development of AI. Therefore, ITI is concerned about the accelerated legislative process that may hinder the ability of the relevant Congressional committees to fully explore impacts of policy proposals and result in measures that could inadvertently stifle innovation and the development and use of AI-based technologies and solutions in Brazil.

Chile, Colombia, and Peru

Chile, Colombia, and Peru are currently reviewing and advancing national AI strategies at the federal level. ITI applauds these developments, and urges governments promote the adoption of a flexible and diversified regulatory approach that encourages strong public-private collaboration and responsible development of AI.

# Cybersecurity

Cybersecurity policy must reflect a shared responsibility and the changing nature of cyberspace. Security is a continuous process of risk management, technology development, and process improvement that must evolve with today's highly complex and dynamic environment. Cybersecurity is a shared responsibility – neither governments nor companies can address it alone. A range of policy tools and approaches is available to meet shared security objectives, including risk management, threat information sharing, technological innovation, education, and raising awareness. These tools and approaches must be manageable and interoperable – too many silos can create a risk of overlooking or failing to connect the dots between incidents and events across networks. Static or overly prescriptive rules will not provide a lasting solution to cybersecurity concerns since they quickly become outdated as business models and technology change and cyber adversaries evolve.

## Recommendations

- **Promote international best practices in cybersecurity.** We recommend that as countries in the Americas consider future cybersecurity policies, they align with international industry-backed approaches to risk management, such as the ISO/IEC 27000 family of information security management systems standards. Other tools providing a common language to manage cybersecurity risks (such as the U.S. NIST Cybersecurity Framework) should also be considered.
- **Develop a multi-stakeholder, public-private approach to cybersecurity**. As many countries launch multi-stakeholder initiatives to address cybersecurity risk within different sectors, such as IT, finance and telecoms, we recommend policymakers continue to seek active participation of the private sector, including in the form of consultation or comment. Indeed, cybersecurity is a shared responsibility between public and private sector stakeholders and only with robust dialogue will measures succeed. Such an approach will also help ensure that resources are directed to areas where cyber risk is most imminent and critical while also facilitating a mechanism to deal with the complex nature of global cybersecurity challenges.
- **Address supply chain security collaboratively.** Supply chain security will be critical as countries in the Americas deploy 5G networks. Governments should promote the adoption of baseline security requirements in the supply chain aligned with international best practices, encompassing risks in both product and service-oriented suppliers. A risk-based approach to supply chain security, which extends to network security and therefore 5G security, in which evidence-based risk assessments are conducted throughout the supply chain should be another fundamental premise of any policy. Governments should seek to develop incentives to encourage ICT vendors, including in 5G and consumer and industrial IoT, to adopt supply chain and cyber hygiene, including for example transparency in how organizations manage supply chain risks. Lastly, public-private partnerships can be an efficient way to help companies implement cyber hygiene and mitigate supply chain risks.
- **Support IoT security industry best practices that provide voluntary baseline capability for consumer devices**, while aligning with global norms and global value chains. ITI recommends leveraging ISO/IEC standard 27402 IoT security and privacy, and the NISTIR 8259 series IoT Device Cybersecurity Capability Core Baseline. These documents establish a set of voluntary core capabilities that will help to ensure device security and is an example of a successful multi-stakeholder process in which global consensus helped to drive the outcome.

## Country-Specific Issues

Brazil

In January, Brazil's telecom regulator ANATEL published a number of resolutions related to cybersecurity. Notably, Act 77/2021 sets out criteria for telecom equipment in Brazil. Among other requirements, the Act mandates a cybersecurity declaration during the certification process. There are several challenges in the scope and definitions of the resolution, which ITI hopes Anatel will resolve in order to avoid any potential delays to market or impacts on innovation in Brazil. ITI recommends that any regulatory schemes should be technology neutral and refrain from mandating prescriptive technical features/controls as they can become outdated quickly and be at odds with the basic economics of product and services design and apply at finished product level. ITI also urges Brazil away from any mandatory certification requirement and to rely instead on suppliers' declarations.

# Data Protection

There are expanded efforts to govern data protection across the region. Industry supports the responsible protection of personal information, and we urge governments to think holistically about these important and intersecting topics. Empowering people through a strong, and consistent set of privacy protections should be the priority, no matter where their data is located. For privacy measures to be relevant and effective in today's environment, they must be interoperable, technology-neutral, risk-based, ensure accountable cross-border data flows, and protect consumers while allowing for the benefits of e-commerce. As countries in the region develop their own frameworks for privacy, the implementation of existing and new privacy rules should focus on harmonization with other global frameworks, while being flexible to accommodate the ongoing technology evolution that brings benefits to individuals, businesses, and societies.

Effective privacy and data protection safeguards can help maximize individuals' participation in the economy and harness the full potential of the ecosystem. While there is no single approach to privacy that works for all jurisdictions, stronger and more coherent principles on data protection globally mean people have more control over their personal data, and that businesses can benefit from greater consumer confidence and trust.

As business models and applications change rapidly, it is important to avoid creating artificial boundaries and limitations on the use of data. Businesses rely on their ability to operate globally and transfer data across borders. Global approaches to privacy should encourage the adoption of innovative security and privacy best practices, as fragmented approaches to privacy across the globe create unnecessary costs, and onerous requirements that degrade the user experience, or deter innovation and SMEs' participation in the global economy.

## Recommendations

- **Participate in ongoing dialogue in official forums on international transfer mechanisms,** while providing robust and future-proof mechanisms for data transfers. We stand ready to support greater interoperability in privacy rules and data flows globally.
- **Harmonize privacy protection principles and regulations within the region.** It is important to ensure individuals have control over their personal information while facilitating innovation and competitiveness.

## Country-Specific Issues

Brazil

In 2018, Brazil adopted a General Personal Data Protection Law (LGPD), applicable both to the private and public sectors, that ITI believes strikes an appropriate balance between protecting the data subject's rights and enabling innovation and access to information. ITI supports a privacy framework that gives individuals controls over their personal data while providing globally harmonized definitions of data controllers and processors, multiple legal bases for data processing and transferring across Brazilian borders. We further encourage adoption of non-discriminatory and interoperable approach aligned with principles and guidelines of relevant international bodies and best practices.

As Brazil's ANPD works to create regulations to implement the LGPD, ITI encourages Brazil to leverage global best practices in promoting clarity and predictability for companies and ensuring that business operations are disrupted, especially where they rely on data processing. More generally, ITI underlines that the ANPD should prioritize clarifying definitions and scope, ensuring mechanisms for transferring data outside of Brazil, providing guidance on the legal bases for processing and clear criteria for the use of legitimate interest, and identifying data subjects' rights clearly. Implementation of the LGPD has also raised numerous concerns, notably around ensuring uninterrupted cross border data flow of personal data. ITI encourages these clarifications, as well as potential legislative changes to support a centralized regulatory approach by an independent federal data protection authority.

Canada

In November 2020, Canada introduced Bill C-11, the Digital Charter Implementation Act (DCIA), to reform PIPEDA, its federal privacy law. DCIA would bring Canada's federal privacy laws closer to the European Union on issues related to consent, algorithmic transparency, and data portability. We expect the bill to be re-introduced in the next parliament, and potentially pass in late 2022. ITI has advanced our support for a balanced and principles-based approach to a privacy law modernization as long as it remains transparent, technology neutral, and business sector agnostic. In 2022, Ontario and B.C. may also introduce privacy bills, in addition to provincial legislation in Quebec. ITI will continue to monitor and engage on this important set of issues and encourage a framework that remains interoperable with other global privacy rules and accounts for the global nature of data flows and companies in all sectors.

Chile and Argentina

Chile and Argentina have both been considering new or updated data protection frameworks. ITI encourages privacy regulations that allow consumers and companies to benefit from the use of data in a secure and privacy-friendly way. For privacy laws to be relevant and effective in today's environment, ITI advocates for the interoperability of privacy regimes and frameworks that are technology neutral and that ensure accountable cross-border data flows while protecting consumers and allowing for the benefits of e-commerce. ITI encourages Chile, a key APEC member, to consider the CBPR model as a best practice.

# Digital Services

The internet has greatly incentivized the development of a wide variety of innovative content, applications, and services. Network providers and digital intermediary services play a foundational role in driving innovation and growth in the economy. The tech industry also recognizes the shared responsibility of companies and governments to maintain a safe online environment, and it is paramount that all relevant players work together to ensure a functioning online market.

Similarly, the emergence of online services provided over traditional telecommunications networks – often referred to as “over the top” or “OTT” services – is driving growth, creating jobs, and advancing innovation in the global economy. These services are an increasingly important element of the broadband value chain and are diverse and fast evolving, providing solutions that were previously unavailable or unaffordable to many people and businesses. OTT services provide users, developers, and SMEs around the world with access to jobs, education, news, trading platforms, productivity tools, enterprise services, app stores, and entertainment choices that were unheard of just a decade ago.

OTT services have an interdependent relationship with traditional telecommunications network operators and service providers. Although network operators have built and must operate the networks that supply last-mile access to OTT users, online application and content providers also invest significantly in internet infrastructure, for instance data centers, submarine cables, and long-haul terrestrial networks. Local network operators benefit, as they are able to offer a more valuable product to their Internet access customers, including selling high speed services and data plans to customers who want to reach broadband content provided by OTT providers and their partners. Local network operators also earn significant revenue from leasing network facilities and providing other network services directly to OTTs.

In the case of these online services and platforms, it is important to carefully consider public policy objectives and meaningful differences in services when considering new regulations or the application of existing regulation to new services. Many legacy telecommunications regulations are ill-fitting for OTT services, which have different technical characteristics as other services. Relatedly, as we support the concept of ensuring transparency and competition among online platforms, grasping differences in business models and user interaction is key to properly addressing any challenges. It is essential that regulations be based on objective criteria, with proportionate, well-justified obligations accompanied by appropriate due process guarantees and stakeholder consultation.

## Recommendations

- **Consider Proportionality, Context, and Risk in Developing Any New Measures for Content Moderation.** We recommend that any measures targeting the transparency and processes for content moderation be proportionate to the nature of the service, consider the context and risk profiles of services, provide for fair and non-discriminatory application, and continue to support freedom of expression, rights of third parties, and a healthy online ecosystem. Any frameworks for oversight of content moderation should be built around best practices for ensuring transparent, fair, and effective processes for overall content moderation systems that do not discourage good faith, proactive moderation efforts. Such frameworks should preserve a meaningful liability regime by ensuring that companies that take good-faith efforts to restrict access to or availability of harmful content will not be held liable for that content. These protections are absolutely critical for effective content moderation systems that protect children, makes the internet safer for users, prevents the sale of counterfeit products, and enables creative spaces for users to develop and share content. Similarly, companies must not be compelled by governments to provide general monitoring of content or activities of private users or engage in government-mandated censorship.

- **Avoid local content requirements for streaming services**. Requirements for OTT streaming services to host or feature specific percentages of locally-produced content create significant technical and economic challenges. These requirements would limit free expression and consumer choice, distort a growing audiovisual market, and stifle investment and competitiveness, often without having the desired economic effects of stimulating domestic production. These requirements often limit or prevent services from being offered, at the detriment of consumers.

## Country-Specific Issues

Argentina

The Argentine government is making it increasingly expensive for consumers to access cross-border digital services. In August of 2020, Argentina's Tax Authority (AFIP) issued a revised opinion that a non-resident provider can be deemed of Argentine source even if they are not performed in Argentina. This new opinion is in contract to a previous ruling by AFIP in December of 2017 and goes in contrast with Article 5 of the Income Tax Law (ITL) and Article 9 of its Regulations. Based on this new opinion, services rendered by non-resident entities now fall within the scope of Article 14 of the ITL and therefore that an effective withholding rate of 17.5% shall apply on the payments made by local customers. This withholding tax is in addition to a minimum of 64% in other taxes that the government requires local payment processors apply on top of the price for cross-border digital services.

Brazil

Brazil has contemplated measures like content quotas to apply ill-fitting or cumbersome regulations to value added services, such as video on demand streaming or other OTTs. Recent consultations by both ANATEL and ANCINE question how to regulate these services under existing frameworks, without due consideration of specific market and service characteristics or the technical feasibility of the requirements on these services. ITI 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. ITI also encourages the prohibition of permanent customs duties for digital products and electronic transmissions to ensure that added cost does not impede the flow of music, video, software, games, or information.

ITI is also concerned about proposed measures that would severely impact the ability of internet and other tech companies to do business in Brazil. For example, the fake news bill, PL 2630, would put into place a set of requirements that are nearly untenable for internet companies, such as intermediary liability and a local presence requirement. This measure would require companies to verify all accounts with a local phone number or passport, retain, trace, and monitor messages and content for three months, grant remote access to Brazilian law enforcement to any data stored outside Brazil, prevent certain messages from being shared by a given number of users, and it would also establish high sanctions. ITI urges thoughtful consideration of this or any other potential measures in this space in order to ensure that regulations are technically feasible and find the right balance of equities in ensuring a safe, open, innovative internet economy.

Mexico

ITI has been tracking a number of legislative proposals in Mexico targeting OTT services. The Mexican Senate is considering a measure that would introduce local content quotas for music or video streaming services of 15%. This type of quota raises compliance questions under Mexico's trade commitments, in particular under the

USMCA. As a result of this registration, OTT services would be regulated under the Federal Telecommunications and Broadcasting Law and likely forced to comply with its mandates for restricted audio/video services. Additionally, a bill creating new requirements for “relevant social network providers” has recently been introduced in the Mexican Senate, and proposed requirements include securing pre-approval by the Mexican government of terms of services and limitations on providers’ ability to terminate user accounts, among other requirements. These requirements would create a significant barrier to ITI members in Mexico and raise questions under Mexico’s trade obligations, especially under the U.S.-Mexico-Canada Agreement (USMCA).

# Digital Trade

The last decade has seen a fundamental shift in the way global trade is conducted, and today technology products and services drive growth and job creation in virtually every sector of the economy Globally competitive companies across all sectors rely on a vast array of data-driven digital technologies to produce, export, market, and sell goods and services. Global cross-border data flows grew by 45 times from 2005 to 2015[1], and 75 percent of the value created by cross-border data flows accrues to traditional industries. For example, manufacturers depend on real-time access to global data as a means of conducting their day-to-day operations, driving innovation in the implementation of new technology, and improving product performance and safety.

Small businesses of all types leverage technology platforms to reach new customers in foreign markets – an impossible feat only a decade ago. Indeed, one survey found that throughout the pandemic, digitalization and automation accelerated across 85 percent of companies, while one in three U.S. SMEs reported that their businesses would not have survived the pandemic without digital tools[2]. However, commitments in trade agreements have not kept up with the rapid pace of change in global trade. Companies are increasingly subject to conflicting and restrictive national policies governing digital services and emerging technology, driving the need for strong trade policy tools. Updated digital trade rules at the WTO, in future free trade agreements (FTAs), and/or in specific digital economy agreements are necessary to ensure that companies can continue to grow, innovate and create jobs.

In an effort to spur domestic production of information and communications technology (ICT) goods and services, countries have frequently enacted measures requiring global companies to manufacture and develop technology products locally, to store data locally, to transfer data and technologies to local competitors, to comply with burdensome and at times discriminatory regulatory and tax requirements, or to source products from local suppliers. These types of trade barriers are increasing at a rapid rate. A recent study found that the number of data localization measures around the world more than doubled over the past four years.[3]Unfortunately, these measures will have a significant, negative impact on economic growth and development, including by hindering investment and growth. Such consequences are likely to be particularly acute for MSMEs, as data-restrictive policies affect access to a range of cost-efficient digital technologies, including cloud and over-the-top (OTT) communication services that small businesses rely on to reach new markets. A recent World Bank World Development Report estimated that by removing restrictive data policies, the productivity of domestic companies that have incorporated digital technologies would improve on average by about 4.5 percent, and the productivity of domestic companies engaged in trade in services by about five percent.

These discriminatory policies, which can appear in regulations focused on cybersecurity, data protection, competition, platform regulation, taxation, procurement, online content and services, testing and conformity assessment, or standards and regulatory policies, undermine the ability of companies to innovate, grow, and operate their global supply chains effectively. ITI supports the growth of domestic ICT industries through the implementation of policies that stimulate innovation, open markets, reduces tariffs, and spur job growth in the sector.

USMCA includes some of the most forward-thinking and comprehensive digital trade, trade facilitation, and other commitments of a modern trade agreement. We continue to work with U.S. and Mexican officials to ensure that Mexico's customs rules, telecom requirements, equivalency agreements, and other implementing measures align

[1] https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2016/march/fact-sheet-key-barriers-digital-trade
[2] https://digitallyempowered.connectedcouncil.org/pdf/3C-DigitallyEmpowered-52720v2.pdf
[3] [1] https://itif.org/publications/2021/07/19/how-barriers-cross-border-data-flows-are-spreading-globally-what-they-cost

with the commitments taken in the agreement negotiations. Chile has also been a leader in the region through the recently completed Digital Economy Partnership Agreement (DEPA), a comprehensive digital agreement between Chile, New Zealand, and Singapore that recognizes the importance of strong digital trade commitments to the development and competitiveness of modern economies.[4]

## Recommendations

- **Advance participation in regional and bilateral trade agreements as well as digital economy agreements.** In E-Commerce and digital trade chapters of preferential trade agreements as well as in bespoke digital trade agreements (e.g., the Digital Economy Partnership Agreement (DEPA), to which Chile is a partner), governments should seek to expand the acceptance of strong digital trade provisions. Such agreements serve as a valuable means to 1) eliminate and prevent barriers to trade, including through strong commitments that enable the flow of data and prohibit data localization, and otherwise facilitate digital trade; 2) internationalize strong rules to counter digital protectionism; and 3) build momentum and consensus for strong outcomes in international forums, including WTO E-Commerce negotiations and regional venues.
- **Pursue strong outcomes in the WTO E-Commerce Initiative.** Governments should seek to secure the strongest possible commitments for eliminating or reducing barriers to trade and facilitating the development of strong, interoperable regulatory frameworks in areas like privacy and cybersecurity. These include commitments to facilitate the flow of data across borders; prohibit data localization requirements and forced disclosure of source code, algorithms, and encryption keys; expand market access commitments in services sectors key to digital trade and simplify and expedite customs clearance procedures. Additionally, countries across the Americas should prohibit tariffs and customs formalities on electronic transmissions by seeking a permanent moratorium on customs duties on electronic transmissions.
- **Strengthen and expand good regulatory practices for digital trade.** Strengthen and expand good regulatory practices for digital trade, in accordance with the Organization for Economic Co-operation and Development's (OECD) principles, to promote new technologies like Artificial Intelligence (AI), machine learning, and additive manufacturing. Enshrine non-discriminatory treatment of digital goods and services and stop trading partners from pursuing discriminatory approaches to digital regulation. Seek to expand the application of TBT-style commitments to digital services, including commitments ensuring reliance on global, industry-driven, voluntary consensus standards. Address potential market access barriers related to platform governance while enabling effective content moderation practices. To further facilitate digital trade, countries should enshrine acceptance of electronic contracts, signatures, and authentication.
- **Increase *de* minimis thresholds and extend their application to both business-to-business transactions, and business-to-consumer transactions, and express delivery shipments**. Limiting *de minimis* thresholds to consumer-to-consumer transaction and postal shipments, and not applying the threshold to express deliveries, creates unnecessary barriers to trade. This differentiated treatment of the threshold by transaction type and shipment modality, in addition to low *de minimis* thresholds, increases transactional costs for businesses and restricts consumer choice and competition in the market.
- **Promote ITA accession for Argentina, Mexico, Brazil, and Chile.** Under the WTO Information Technology Agreement (ITA), 82 signatory countries have agreed to fully eliminate tariffs on hundreds of ICT products. By reducing their costs, the ITA leads to increased use of ICT goods, which spurs productivity and economic growth in signatory nations. ITI encourages countries to join the ITA and its expansion, enabling them to tap into global ICT supply chains. According to a study by the Information Technology and Innovation

[4] https://www.subrei.gob.cl/landings/depa

Foundation (ITIF), joining the ITA would bolster Argentina's economic growth by an estimated 1.52 percent over ten years or $12.72bn.

## Country-Specific Issues

Argentina

The Government of Argentina has taken several actions to make importation of ICT goods more difficult. For example, Resolution 1/2020 requires a non-automatic import license for many products, including some ICT goods, and there have been recent removals of tariff increases on ICT products that make them more expensive to bring into the country. ITI member companies have already begun experiencing delays in import license approvals and flow of goods at the border. As companies saw in past years in Argentina, these delays at the border result in significant costs and lack of choice, resulting in damage to local industry, local consumers, and Argentina's competitiveness. ITI appreciates the severe economic situation in Argentina and hopes to be a partner to the Government of Argentina in its effort to stem capital flight and dissolve macroeconomic pressures, while also ensuring that trade in goods and services continues to flourish.

Brazil

The recent modernization of tariff rates in Brazil, specifically the reduction in the rates of the Import Tax on capital goods (BK) and information technology and telecommunications (ICT), demonstrates an important realization by the Brazilian government that society advances with greater access to technology. For this reason, we want to reinforce the importance of continuous dialogue and cooperation with the private sector in order to build a broad strategy for greater Brazilian international insertion, including the modernization of tariff rates and structural reforms that make Brazilian companies more competitive. Similarly, we encourage the modernization of Brazil's de minimis regulation, which does not fully consider the dynamic nature of the Brazilian economy and the role that e-commerce plays in support Brazil's small businesses and creators.

Chile

Despite Chile's historic record of business-friendly policies, recently we are observing more unique rules that impose, for example, local testing requirements and mandate specific and unique telecom labels and safety markings. ITI understands Chile also is planning additional labels in other segments, such as environment and/or consumer labels. While presented as minor changes to ideally address social needs and provide information, the cumulative impact of addition labels starts to build a complex business environment that ultimately creates barriers and leads to additional costs to the Chilean market. ITI suggests an open and transparent dialogue with the private sector and associations to build alternative paths to address the objectives of policies today pursued only with additional label requirements.

Mexico

On January 1, 2021, Mexico's 2021 Budget Law went into force and included a 'kill-switch' provision that established an unprecedented enforcement mechanism by empowering Mexico's tax authority, in collaboration with its telecom regulator, to demand that local Internet Service Providers (ISPs) block websites and/or digital services providers that are non-compliant with Mexico's VAT rules. Notably, the provision stipulates that action can only be taken against non- resident firms that fail to navigate the complexities of the Mexican tax legislation, in potential conflict with the national treatment and access to internet provisions of the USMCA. Given the nature of the measure, its potential for expansive detrimental impact on digital services suppliers, and its potential contravention of USMCA commitments in Articles 15.3 and 19.4 (National Treatment for Services, Service Providers and Digital Products), 15.6 (Local Presence), 18.3 (Access to and Use of Public Telecommunications Networks or Services), and 19.10(a) (Principles on Access to and Use of the Internet for Digital Trade), we urge the

Mexican government to amend this provision in a way that achieves its tax policy objectives and conforms with Mexico's international trade obligations.

Additionally, many electronic payments services firms face significant barriers to entry in Mexico. The current regulatory framework in Mexico requires new suppliers to be certified by domestic incumbent suppliers—often their direct competitors—in order to be able to operate in the market, effectively giving the local incumbents a veto over whether, and which, foreign companies can enter the market. The Mexican regime also requires that services suppliers process all domestic transactions under a single set of technical standards and rules. The ability of an electronic payments services supplier to apply its own standards and rules is critical for that supplier to differentiate its business offerings, bring new innovations to the Mexican market, and enhance the consumer experience. We encourage Mexico to provide a fair, transparent, and level playing field market structure so as to allow full competition among suppliers' service offerings.

Mexico´s financial sector regulators also issued new regulations that apply to e-payments institutions. The regulations include an article that requires such institutions using cloud computing services to ensure that data resides with multiple companies and in multiple locations. This requirement to localize data restricts market access of many foreign financial services providers and could negatively affect the adoption of cloud computing in the country.

Lastly, USMCA's Customs and Trade Facilitation Chapter includes commitments that will help speed border clearance and simplify customs processes for shipment, including commitments by Mexico to implement de minimis and informal clearance thresholds prior to entry into force of the agreement. On June 30, 2020, Mexico amended its General Rules on Foreign Trade (Reglas Generales de Comercio Exterior para 2020) in order to comply the agreement. However, rather than implementing the new commitments, Mexico's amendments raised import duty on all low-value express shipments and did not implement the US$2,500 informal clearance threshold. In addition, Mexico has failed to implement the customs broker reforms that "establish qualifications, licensing, or registration" and "ensure that the requirements are transparent, based on objective criteria related to providing customs broker services, promote integrity and professionalism among customs brokers, and are administered uniformly in its territory". On May 27, 2021, Mexico published further revisions to the General Foreign Trade Rules that raised the informal clearance threshold to $2,500 for shipments valued over $117. We encourage the Secretary of Economy to harmonize its own regulations to allow for this change to be fully implemented.

# Digital Transformation

Global companies are preparing for and developing new technologies, such as quantum computing and 5G, that will reshape the global economy and enhance job creation, economic development, and global integration. Yet deploying these innovative technologies successfully, securely, and at scale requires free movement of data and international cooperation. As such, countries throughout the Americas should seek to implement policies that expand and invite innovation in these fields, rather than risk stifling or restricting it. ITI encourages governments to ensure flexible, dynamic regulatory environments that adapt to quickly evolving technologies, and they should avoid creating unique standards or certifications that would stymie full participation in the deployment of innovative technologies across the global economy. As the needs for and uses of data increase via these connected systems, including smart cities, ensuring that cross-border flows of data are not restricted is critical for success. Because all data-centric technology relies on connectivity, ITI supports expanded broadband access throughout the hemisphere as an integral part of national development strategies.

Wi-Fi, in particular, is an essential technology for digital transformation, playing a vital part in citizens' lives at home, at work, and at leisure. Wi-Fi supports communications, web browsing, e-commerce, access to news and entertainment, and plays an important role in hospitals, industrial facilities, transportation hubs and citizen services. We encourage telecom regulators throughout the region to harmonize their approaches in allocating the 6GHz band for Wi-Fi and other unlicensed uses, which will produce significant economic benefits and spur greater technological innovation.

ITI members seek to work with governments and agencies in transforming citizen services using cloud-based solutions. Digital transformation can best be done when there is fair and open competition between numerous cloud providers that all seek to compete on quality, cost, and innovation in a transparent manner.

## Recommendations

- **Make public data more accessible.** Facilitating a robust data sharing environment will be critical for the Americas in the coming years. Governments should both refrain from and affirmatively discourage restrictions on the cross-border flow of data (allowing only for narrowly tailored exceptions) and forced localization of computing facilities. Countries across the Americas should also continue to facilitate the removal of other barriers to widespread open data use. These barriers include lack of awareness, lack of knowledge, and poor data quality.
- **Harmonize spectrum allocations internationally across bands to ensure sufficient economic value from WiFi and mobile technologies.** ITI supports providing additional spectrum for 5G mobile services and, especially in the 6 GHz band, for unlicensed use by Wi-Fi as an effective way to mitigate the risks associated with spectrum crunch, meet demand, and multiply the economic value of wireless. Brazil, Mexico, Argentina, and Colombia are all considering the 6 GHz band for unlicensed use by WiFi, and we encourage them to continue these processes.
- **Offer web-based services to citizens and secure open competition.** To achieve the best innovative services being offered at the best price to citizens, governments should prioritize a flexible, competitive cloud-first policy for government services.

# Country-Specific Issues

Brazil

Brazil recently passed three major laws affecting the public procurement environment and government's digital services. Law 14,133/2021, the new federal procurement law, seeks to regulate the bidding and contractual environment for the public administration. Law 14.129/2021, the Digital Government law, adopts open data and interoperability as its principles, requiring the adoption of open format and machine-readable databases. It also introduces the possibility of the creation of government innovation laboratories, open to broad participation and collaboration, for the development and experimentation of innovative concepts, tools and methods for public management. Law 182/2021 adopted a new Startup Framework which intends to foster economic growth of startups, promote the adoption of technology and innovation, and reduce regulatory barriers. The law has one chapter dedicated to the participation of startups in projects with the public administration, creating a special modality for their participation and recognizing the role of "GovTechs" for governments digital transformation. ITI encourages further developments in this space to consider the pace of technological change and ensure flexibility in regulations that can adapt to this changing environment and ensure that the public sector digital transformation brings more efficient, transparent, and productive governance.

# Environmental Policy

While tech is a fundamental enabler for achieving society's sustainability goals, our industry also has an important direct role to play in the green transition, and many companies are already taking action and committing to ambitious goals related to their respective activities. The technology industry is for example developing ways to efficiently handle rapidly growing data volumes from data storage to data flows to data analytics. Further, the transition to 5G will catalyze energy efficient solutions across all industry sectors, thereby reducing carbon emissions.

## Recommendations

- **Circular Economy**. ITI hopes to enable and accelerate the transition to a circular economy through industry participation and transparency. The circular economy for electronics would encourage recycling, reuse, repair, and eco-design. ITI encourages the development of e-waste frameworks that align industry principles, enables design flexibility, and considers shared responsibilities as opposed to aggressive targets on producers.
- **E-waste**. ITI encourages the alignment of transboundary movement of waste and EPR with the Basel Technical Guidelines, especially on the waste versus non waste definitions. E-waste and packaging developments should also encourage design flexibility and avoid ecolabels to minimize product impacts. ITI supports industry participation and transparency through public consultation and open feedback.
- **Align Environmental Packaging Policies**. ITI advocates for alignment of environmental packaging and waste regulations amongst countries in Latin America. Regulatory discussions and standards should line up with existing internationally recognized requirements. Regulatory framework and requirement proposals should leverage internationally recognized standards, rather than challenge or oppose. The ICT industry supports efforts to minimize environmental impacts of packaging across the product life cycle.

## Country-Specific Issues

<u>Chile</u>

As Chile develops its Circular Economy Roadmap 2020-2040, Regulatory discussions should align with existing internationally recognized requirements and standards as disparate global requirements are burdensome for companies, demand resources, create complex processes to manage specific requirements, and do not necessarily, or effectively, result in positive environmental outcomes. ITI promotes the participation of the private sector in the development of regulations for continuous co-creation with the user, allowing the incorporation of knowledge and initiatives that are acquired only by understanding the operation of the company. For this, we believe it is important to incorporate the respective industry from the beginning for the definition of requirements, deadlines, and implementation mechanisms.

The Consumer's Rights Projects outlines requirements for including durability information on products. The obligation for manufacturers and retailers to inform consumers (through a label or other means) about the product lifespan could create unfair competition due to differing stakeholder definitions of this concept and the lack of a reliable and verifiable tool to assess the whole diversity of EEE in such an equitable and standardized manner. It would be recommended to harmonize a product lifespan definition through a standardized and agreed methodology that would allow the consumer to effectively compare similar EEE.

Mexico

As Mexico continues to develop guidance on repair/refurbishment and the recycling of electronics, we encourage the Government to align with international guidelines such as the Basel Convention. Differing global requirements are burdensome and only impede industry's ability to comply.  ITI encourages policies to focus on goals rather than on methods which allows for industry flexibility on implementation without hindering innovation. Additionally, the Mexican Senate is considering a Circular Economy bill. ITI encourages the Senate to follow best international practices and harmonize the proposed bill with current local environmental laws.

# Regulatory Policy

A single conformity assessment, also known as One Standard-One Test, Supplier's Declaration (1-1SDoC) is the way for ICT companies to deliver safe and legal products to market. We have seen some country regulations that diverge from this approach, where countries are rejecting test reports based on internationally accepted standards from accredited labs or asking for testing to be done in-country. In those instances, product safety testing generally must be performed at in-country labs, unless the government acknowledges that necessary in-country capability does not exist. Industry finds in-country testing problematic, both logistically and from a cost perspective. If testing has already been completed at a laboratory accredited to internationally accepted standards, the requirement to undertake similar testing at an additional in-country (local) lab duplicates the testing itself and increases the number of samples required and testing costs, all the while delaying the placement of products into markets.

There has been a growing trend in several Latin American countries of increasing the number of labels required on products or packaging. A typical product intended for the global market could now have up to 20 or more marks and labeling requirements, which poses numerous product design and supply chain issues. ITI endorses the incorporation of, or reference to, international standard IEC 22603-1, which is currently in the final stages of development.

Participation in the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement necessitates good regulatory practice, including timely notifications of regulations to the TBT Inquiry Point. ITI has seen improvements regarding these notifications and stakeholder consultation and involvement, particularly in Brazil and Mexico. ITI appreciates these improvements, and we encourage all countries in Latin America to participate fully in the TBT notification process. Agencies are also encouraged to consider the regulatory impact imposed by requirements and whether the benefits are commensurate with the impacts. ITI encourages governments to consider the impacts of regulations in comparison to the benefits provided and to provide an explanation of these benefits in any proposed regulation. Following these good regulatory practices, along with other recommendations below, can significantly enhance ease of doing business in Latin American countries, as detailed in ITI's series of reports on ease of doing business.

## Recommendations

- **Implement Mutual Recognition Agreement (MRAs).** An MRA with the United States allows for recognition of testing done in the U.S., easing the time and cost of exporting to the country market. By allowing international mutual recognition agreements, countries in the region can avoid having multiple, duplicative testing requirements that delay products to market and increase costs for local consumers. One example MRA of the International Laboratory Accreditation Cooperation (ILAC), which can facilitate acceptance of test results from participating labs in signatory countries. We encourage regulatory agencies concerned with testing and certification to utilize this MRA to consistently accept international test reports.
- **Align with international standards**. For product safety testing and certification, we strongly encourage countries to adopt IEC 62368-1:2018 (3rd Edition), with appropriate transition times, as recommend in our position paper. To address onerous labelling requirements, ▯ adoption of or incorporation by reference of the e-label standard ISO/IEC 22603-1).
- **Allow modular approval in telecommunications equipment regulations**. ITI has seen a recent inclination for telecom regulators in the region to move away from allowance of modular approvals. We strongly

advocate for a three-tiered approach to ensure products are in compliance with regulations while maintaining accountability to the manufacturers of both the radio module and the host product.

## Country-Specific Issues

Argentina

Argentina's June 2021 proposed codifications to the Certification System (Res 169/18 and updates) have raised significant concerns for the ICT industry. ITI believes that these changes will create significant problems for global ICT companies wishing to do business and make investments in Argentina. The requirements are more burdensome than necessary to achieve their regulatory objectives, creating unintentional technical barriers to trade (TBT), impacting the knowledge economy, and running counter to Argentina's obligations under the WTO TBT Agreement. Accordingly, we have urged the Ministry of Product to pause moving forward with implementation of the changes to allow time for a thorough regulatory impact assessment, including dialogue with global industry stakeholders.

Brazil

INMETRO is a signatory to the Mutual Recognition Arrangement (MRA) of the International Laboratory Accreditation Cooperation (ILAC), which can facilitate acceptance of test results from participating labs in signatory countries. We encourage INMETRO to utilize this MRA to consistently accept international test reports. In 2020 through early 2021, Brazil notified several operational procedures that Anatel would use to implement the requirements of Resolution No. 715 on homologation. Brazil has responded to several set of ITI comments on these measures, but many still have open questions. ITI urges Brazil to fully participate in the stakeholder consultations by holding stakeholder meetings or responding individually to comments.

The latest of these consultations, Public Consultation No 18 Operational Procedure for
Product Homologation for Telecommunications presented what seems to be a troubling expansion of scope of Anatel's authority. The procedure deems a very wide swath of electronic products, including "industrial, scientific or medical equipment (ISM)" to be in scope. The operational procedure is unclear on the technical requirements for safety and EMC conformity assessment. We strongly urge Brazil to clarify Anatel's scope of authority and clearly outline technical requirements in this and future procedures.

Mexico

The Mexican telecom regulator (IFT) has issued a series of new guidelines and requirements, including those related to homologation, specific absorption rate (SAR) testing, and conformity assessment. ITI appreciates IFT's recent stakeholder consultation (including WTO TBT notification) of modifications to the conformity assessment process that became effective in February 2021. ITI encourages these new guidelines to avoid requirements for local testing or certification, to align with global standards and methods, and to avoid obligations to share test reports with the regulator that may jeopardize confidential business information. Unfortunately, while the SAR testing requirement took effect February 2021, only one lab currently is equipped to perform this testing which is already creating significant bottlenecks for testing products already in the market, not to mention new products that will be introduced in the coming months and years. ITI strongly recommends acceptance of provisional certificates and/or international test reports until Mexico's lab infrastructure is established enough to manage the testing workload in reasonable timeframes. ITI recommends that when new procedures/regulation involving Customs systems are implemented, the system's operation should be tested beforehand to avoid disruptions to international trade.

# Tax

The digitalization of the global economy has sparked discussions about whether the longstanding norms that underpin the international tax system should be updated to better reflect today's economy. Through negotiations in the OECD/G20 Inclusive Framework, nearly 140 governments are working to address these questions. Collectively known as the Unified Approach, Pillar One addresses the coordination and reallocation of taxing rights to market jurisdictions for certain companies and Pillar Two acts as a global minimum tax for certain companies. Because these rules affect how *all* governments tax companies operating across borders and jurisdictions, only a coordinated, consensus-based international approach can ensure the consistency necessary for companies, regardless of sector, to continue to predictably do business in the global economy.

These are exceptionally challenging times globally for individuals, governments, and businesses. We appreciate that the current priority of governments around the world must be to mount the strongest possible economic and public health response to the outbreak of COVID-19. At a time when governments and firms alike have been operating under immense economic strain and uncertainty, we encourage leaders to commit to realizing a free, fair, non-discriminatory, transparent, predictable, and stable trade and investment environment, and to keep global markets open. This is especially important as governments seek additional revenue sources to account for spending in response to the pandemic.

Despite significant developments at the OECD/G20 Inclusive Framework, the proliferation of unilateral tax measures, including digital services taxes (DSTs) continues. The introduction of unilateral tax measures not only risks further complicating ongoing multilateral negotiations, but also escalates commercial and diplomatic tensions and augments the possibility of a trade policy response. The term "digital services tax" was first applied to targeted, unilateral tax measures that share characteristics such as a tax on gross revenues instead of net profits; multiple thresholds that target globally successful companies; and a narrow scope for which digital activities are covered that largely excludes domestic competitors from liability. Following the first DST proposal released in 2018, some governments have adopted or proposed unilateral tax measures that go far beyond the initial scopes to capture all transactions involving non-resident companies for which one or more aspect of the transaction takes place online. Specific to the Americas, Canada has proposed a DST to take effect on January 1, 2022, and there are several similar bills that have been introduced in the National Congress of Brazil.

Because a DST applies to a company's gross revenues without taking into account the costs of operating the business (i.e., payroll, research and development, intermediary inputs, etc.), the effective impact of a single-digit DST can vary widely based on a company's profitability. This is especially impactful for small businesses, start-ups, low-margin companies, and companies that are not profitable. Further, DST payments are generally not creditable against other taxes paid, which means a DST both operates similar to a tariff on exports entering that market and opens the opportunity for double or multiple taxation on one transaction. These impacts are exacerbated as more jurisdictions adopt divergent and overlapping measures that require the development of new, jurisdiction-specific compliance systems, which can increase the costs of participating in a market and underscores the impetus for a multilateral, consensus-based solution.

Instead of advancing unilateral measures that contravene international tax and trade norms and further complicate multilateral negotiations, ITI encourages governments to devote their efforts and resources to reaching consensus through the OECD/G20 Inclusive Framework.

## Recommendations

- **Work towards finalizing a global solution through the OECD/G20 Inclusive Framework.** We encourage countries across the region to continue working through the OECD/G20 Inclusive Framework to realize reforms to the international tax system. Any reforms should be comprehensive and based on taxing income, avoid double taxation, and include appropriate dispute prevention and resolution mechanisms that will provide certainty.
- **Curb a fragmented policy approach.** A further patchwork of inconsistent policies should be avoided, given the negative impacts on economic growth and innovation. If countries implement significantly divergent approaches, companies will face the possibility of similar but incompatible policies across multiple jurisdictions, which is likely to impose multiple layers of taxation on the same income without effective avenues for relief and discourage innovation, investment, and IT-related job creation in the Americas.
- **Commit to a non-discriminatory, predictable, and stable investment environment.** Any significant changes to tax laws should adhere to clear and consistently applied tax policy principles and should be designed to be sustainable and prospective. In particular, ITI has long agreed with the OECD that it is both unrealistic and poor policy to try to ring-fence the digital economy – a position that the OECD and the OECD/G20 Inclusive Framework have expressed as a key underpinning of their work to address the tax challenges presented by the digitalization of the economy.

## Country-Specific Issues

Brazil

As Brazil contemplates broader tax reform, the government should take care to do so in a way that reflects the digitalization of the broader economy, embraces longstanding international tax principles, and encourages continued investments in innovation, thus improving the business environment in the country. Certain measures proposed thus far attempt to ring-fence the digital economy, which does not reflect the digitalization of the entire economy. For example, some proposals would apply a gross revenue tax on certain digital services for companies that exceed a global revenue threshold (Bill 2358/2020, Bill 218/2020, and Bill 241/2020), while other proposals would establish a unique, higher Cofins rate for digital companies and advertisers (Bill 131/2020) or a gross revenue tax on the availability, dissemination, or supply of any content over the internet (Bill 640/2021). The details vary but each of these approaches present similar challenges in their contravention of international tax and trade norms. ITI also notes that at least three amendments presented as part of broader tax reform efforts (PEC 45/2019 and PEC 110/2019) underway at the Joint Special Committee in Congress may exacerbate concerns related to a Brazilian DST.

Canada

Previewed in late 2020 and tabled in April 2021, Canada's Budget 2021 includes a DST that would be effective as of January 1, 2022. The DST would be a three percent tax on marketplaces, social media, online advertising, and the sale of user data, with applicability determined by a global revenue threshold of EUR 750M and an in-scope revenue threshold of CAD 20M in any calendar year. The tax would only apply to revenue above the in-market threshold. ITI submitted a response to a consultation led by the Department of Finance Canada that urged Canada to withdraw its proposal for a DST and devote its efforts to realizing a multilateral, consensus-based solution through the OECD/G20 Inclusive Framework.

In addition to significant policy concerns associated with DSTs, the introduction of a unilateral measure sends a signal that Canada is not serious about its commitment to the multilateral project, particularly the objective of withdrawing unilateral tax measures that. destabilize the international tax and trade system. Even an interim measure will make future implementation more difficult and encourage the further proliferation of unilateral measures. It would also increase the compliance costs of doing business in Canada, especially considering that taxpayers and tax administrations alike are preparing for the implementation of what are expected to be significant changes to the global tax system. Finally, targeting companies that are predominantly headquartered in one of Canada's most important trading partners with a tax measure that is inconsistent with prevailing international tax and trade principles and national treatment commitments contravenes both the letter and the spirit of USMCA.

Panamá

We understand the National Assembly of Panamá has been considering legislation to establish a special tax regime that includes income tax and Valued Added Tax (VAT) provisions for non-resident companies offering digital services. Ley 229 was approved by the Economic Committee in July 2021 without a public discussion along with relevant parties through a Technical Roundtable, which increases concerns about transparency and opportunities for stakeholder engagement. Such engagement would help to ensure any resulting tax reforms are non-discriminatory and administrable, and support effectively and equitably achieving the government's objectives. ITI strongly encourages the Republic of Panamá to continue its engagement with the OECD/G20 Inclusive Framework and to refrain from the introduction of any unilateral tax measures that would undercut those negotiations or contravene longstanding international tax and trade norms.