Comments in Response to Executive Order Regarding Trade Agreements
Violations and Abuses

Introduction

The Information Technology Industry Council (ITI)\(^1\) appreciates the opportunity to submit its comments to the Office of the United States Trade Representative and the Department of Commerce for the Administration's "Report to the President on Trade Agreement Violations and Abuses", as called for in Executive Order 13796 of April 29, 2017 (82 FR 20819).

We support the Administration's efforts to grow the U.S. economy, and we share its goals of opening markets, increasing U.S. manufacturing and services exports, creating jobs and raising wages in the United States, and improving the U.S. climate for investment and innovation. Addressing violations and abuses of U.S. trade agreements will help accomplish these goals. ITI has participated in recent opportunities to share views on trade barriers impacting U.S. technology and technology-enabled companies, including through our most recent National Trade Estimates submission and our submission on trade deficits of significant concern.

Our goals for this submission are to: 1) underscore ITI's support for U.S. trade and investment agreements; 2) describe the barriers to trade and investment that technology and technology-enabled companies experience or may experience around the world; 3) identify existing U.S. trade agreements that may apply to these barriers; and 4) emphasize why new rules and new agreements may be necessary to address many of these barriers.

Why are U.S. trade and investment agreements critical for the U.S. economy and technology companies?

U.S. trade and investment agreements have created significant benefits and opportunities for U.S. technology companies and companies in all sectors using technology, as well as U.S. workers, consumers, and users. The World Trade Organization Agreement and its covered agreements, as well as the fourteen U.S. free trade agreements and forty bilateral investment treaties, have opened up new markets across the world for technology products and services and prevented U.S. trading partners from imposing new tariffs or other discriminatory barriers to trade. They have created new commercial and investment opportunities for U.S. companies, reinforced the rule of law in U.S. trading partners, given U.S. stakeholders new tools to address difficult trade problems, allowed U.S. firms to participate in the development of regulations, and created greater global economic certainty and predictability. The U.S.

\(^1\) ITI is the global voice of the tech sector. We advocate for public policies that advance innovation, open markets, and enable the transformational economic, societal, and commercial opportunities that our companies are creating. Our members represent the entire spectrum of technology: from internet companies, to hardware and networking equipment manufacturers, to software developers. ITI's diverse membership and expert staff provide a broad perspective and intelligent insight in confronting the implications and opportunities of policy activities around the world. Visit [http://www.itic.org/](http://www.itic.org/) to learn more.
technology sector and all U.S. economic sectors have greatly benefited from the international rules-based trading system, which is based to a large extent on U.S. trade policy, ideas, and bedrock principles and commitments. For these reasons, the technology sector is a strong supporter of existing U.S. trade and investment agreements and seeks the negotiation of high standard, high ambition new rules and new agreements.

The WTO Information Technology Agreement is a prime example of an agreement that benefits U.S. technology and technology-enabled companies. This agreement, to which the United States is a founding party, has since its entry into force in 1996 eliminated tariffs on a vast range of technology products, thereby lowering costs for these products at every segment of value chains in countries around the world. It is foundational to the success and innovation capacity of U.S. technology firms and the increasing number of U.S. firms that are technology-enabled. It has also facilitated the widespread adoption of digital technologies in increasing number of markets, particularly in developing countries with growing populations and purchasing power for U.S. goods. The ability of U.S. firms to purchase lower cost technology products, thereby facilitating the generation and movement of valuable data and information, increases their economic competitiveness at home and abroad. This competitiveness serves a platform for U.S. firms to develop and sell new products and services for the 96% of consumers who live outside the United States, businesses and institutions in other markets, and governments seeking to adopt digital technologies to achieve their domestic objectives. In light of the success of this agreement, the technology sector strongly prioritizes maintaining and expanding the product scope of the WTO ITA and the number of countries participating in it, as well as preventing any violations and abuses of this agreement both with respect to tariffs and non-tariff barriers.

What types of barriers to trade and investment do technology companies face?

While the experience of the technology sector with U.S. trade agreements has largely been positive, our companies do face barriers to trade and investment around the world. ITI has elaborated extensively on these barriers in our recent NTE submission and in our trade deficits submission. In annexes to this submission on trade agreements violations and abuses, we outline a number of barriers to trade and investment in U.S. FTA partners and other U.S. trading partners. It is possible that the countries maintaining these barriers may be violating or abusing U.S. trade and investments agreements or acting in a manner that is unfair to U.S. companies and workers. These agreements may be helpful in addressing many of these measures. For each barrier in each market, we have identified possible relevant agreements as well as the type of barrier at issue. These barrier types include:

1. Data localization and restrictions on cross-border data flows
   - China, Colombia, EU, Indonesia, Korea, Russia, Vietnam
2. Cloud computing restrictions
   - China, Korea
3. National treatment violations
   - China, Colombia, India, Indonesia, Korea, Russia, Vietnam
4. Regulation of online service providers
Why should USTR negotiate new rules to address barriers to trade in technology products and services and restrictions on cross-border data flows?

Multiple foreign governments have turned to discriminatory or otherwise harmful policies that unfairly disadvantage American companies and impede the ability of technology products and services to drive growth. Governments around the world are, for example, preventing U.S. tech companies from selling their products and services abroad; requiring the “localization” of data, software, services, and hardware within their borders; forcing technology transfer; and using regulatory and other barriers to put a thumb on the scale in favor of their own firms. These restrictions harm U.S. companies in all sectors, preventing manufacturers, service providers, and small businesses from entering foreign markets and using technology products and services to support U.S. exports and other U.S. businesses.

U.S. trade agreements must both combat foreign trade restrictions that impact the technology sector and other sectors that use technology, and fight for policies that will benefit U.S. exports and other business activities. While we advocate for strong enforcement of the rules in existing U.S. trade and investment agreements, we urge the Administration to craft new rules to achieve the above goals. Our recent submission to USTR and the Department of Commerce on NAFTA modernization contains a wide range of suggestions on negotiating new rules that would go a long way in addressing the barriers that we identify in the following annexes.
Market Annexes
Annex 1: Canada

1. *De Minimis Value:*
   - **Relevant Issues:** customs regulation
   - **Relevant Trade Agreements:** WTO Trade Facilitation Agreement, NAFTA Chapter 5 (customs procedures)

Canada’s *de minimis* threshold remains at CAD $20 (approximately USD $15), the lowest of any industrialized country and among the lowest in the entire world. For comparison, the *de minimis* threshold for items imported into the United States is $800 USD – over 40 times higher than Canada’s. This low threshold, which Canada has not adjusted since the 1980s, unfairly impacts internet-enabled businesses – especially small businesses – in the United States who regularly ship low-value items to Canada.
Annex 2: China

1. Cybersecurity Law:
   - **Relevant Issues**: data localization, restrictions on data flows, source code, technology transfer, national treatment
   - **Relevant trade agreements**: GATS, WTO TBT Agreement
   This measure discriminates against foreign technology and companies through multiple and overlapping security review regimes that potentially require disclosure of source code or other sensitive information, requirements to store personal and important business data within the territory of China, and poorly defined requirements for the Chinese government to designate technology products as “secure & controllable”.

2. Notice on Regulating Business Behaviors in the Cloud Service Market:
   - **Relevant Issues**: data localization, technology transfer, national treatment
   - **Relevant Trade Agreements**: GATS
   This draft regulation when combined with existing Chinese laws would force U.S. Cloud Service Providers (CSP) to transfer valuable U.S. intellectual property, surrender use of their brand names, and hand over operation and control of their business to a Chinese company in order to operate in China.

3. Restrictions of Electronic Payments Services (EPS):
   - **Relevant Issues**: market access, national treatment, source code surrender, technology transfer
   - **Relevant Trade Agreements**: China’s WTO Accession Protocol, GATS
   Despite commitments made when joining the WTO, China has created several barriers to market entry for companies for EPS providers. Primarily, the People’s Bank of China (PBOC) has limited foreign companies to only processing transactions made in foreign currency, closing off large sections of the domestic economy. The United States won a WTO case against China in 2012. After the WTO ruling, in 2015 the PBOC issued preliminary guidelines for licensing what it calls domestic “bank-card clearing institutions” (“BCCI”) that will be authorized to handle transactions in renminbi. In 2017, as part of the U.S.-China 100-Day Action Plan, China agreed to promptly “issue any further necessary guidelines and allow wholly U.S.-owned suppliers of electronic payment services to begin the licensing process before July 16, 2017, [which]...should lead to full and prompt market access.” However, any BCCI application may be subject to a National Security Review (NSR), during which time an application will not be considered or reviewed by the PBOC. The content, duration, and relevant entities involved in the NSR process remain unclear. In addition, PBOC has created increasingly onerous technical regulations for licensing of foreign EPS providers that include potential disclosure of source code, intellectual property, and encryption keys.
4. A Broad Effort to Localize Data and Restrict Data Flows:

- **Relevant Issues**: data localization, restrictions on data flows
- **Relevant Trade Agreements**: GATS

A high priority of the technology industry – and other industries that depend on ICT platforms for global operations – are requirements to store, process, or manage data locally within China and restrictions on flows of data in and out of China. In particular, there are a raft of laws and regulations that restrict the flow of data relating to the medical ([Population and Healthcare Information Management Measures](#)), financial ([Notice to Urge Banking Financial Institutions to Protect Personal Information](#)), credit ([Administrative Regulation on the Credit Information Industry and Credit Reference Agencies](#)), and online publishing ([Online Publishing Service Management Rules](#)) sectors. In addition to these, there are broader restrictions requiring explicit permission to transfer data overseas ([Guidelines for Personal Information Protection within Public and Commercial Information Systems](#)). On April 11, 2017, China issued the [Draft Security Assessment Measures for Cross-Border Transfer of Personal Information and Important Data](#), which requires that companies undergo a security assessment to transfer data that meets certain thresholds. Following significant international concern, China revised the regulation to enable greater data flows. However, on July 11, China issued draft [Critical Information Infrastructure Protection (CIIP) Measures](#), which is broad in scope and requires that CII network owner and operators’ data be localized in China; China has yet to identify CII network owners and operators.

5. Blocking of U.S. Digital Services:

- **Relevant Issues**: investment, restrictions on data flows
- **Relevant trade agreements**: GATS

The government of China either blocks or severely restricts many U.S. services provided over the internet. Barriers to digital trade in China continue to present significant challenges to U.S. exporters. This blocking has cost U.S. services billions of dollars as they are pushed out of the market, with a vast majority of U.S. companies describing Chinese Internet restrictions as either “somewhat negatively” or “negatively” impacting their capacity to do business there.
Annex 3: Colombia

1. Draft Circular on International Transfers of Personal Data and Decree 1377 of 2013

- **Relevant Issues**: Data flows, national treatment
- **Relevant Trade Agreements**: GATS, US – Colombia Trade Promotion Agreement – Chapters 11 (cross-border trade in services) and 15 (e-commerce)

Colombia’s draft circular on international transfers of personal data combined with Decree 1377 of 2013, which requires entities that perform certain types of international data transfer to enter into “international transfer agreements” (ITA’s), may constitute a breach of the national treatment principle in the U.S. – Colombia Trade Promotion Agreement. These ITAs impose burdensome compliance requirements on foreign based cloud service providers which would not apply to domestic providers.

The primary issue is Colombia’s classification of data exchanges between data controllers in Colombia and foreign cloud service providers as international “transmissions” of data, which incur different legal obligations than those imposed on international data transfers. Recently, after significant pushback from the U.S. government and global industry, the Colombian government has granted the U.S. an adequacy determination that eases restrictions on some data transfers, but excludes data transmissions to foreign cloud providers. This discrimination against American cloud service providers is both unnecessary and harmful to U.S. industry.
Annex 4: European Union

1. **Restrictions on Data Flows:**
   - **Relevant Issues:** data localization, restrictions on data flows
   - **Relevant Trade Agreements:** GATS
   
   While the U.S.-EU Privacy Shield arrangement, which took effect on August 1, 2016, represents a strong commitment by both the U.S. and EU to enable transfers of data across the Atlantic and safeguard consumer privacy, threats to transatlantic data flows remain. These threats are due to: 1) the judicial review in Ireland – and perhaps later in 2017 at the European Court of Justice – of standard contractual clauses, which give U.S. companies an alternative option to ensure that they can transfer data from the EU to the U.S., and; 2) increasing preference for data localization policies in EU member states, including in France and Germany. Other emerging concerns include the implementation of the ePrivacy directive as well as provisions in the Audiovisual Media Services directive that could impose burdensome requirements on online platforms.

2. **EU Copyright Reform:**
   - **Relevant Issues:** burdensome regulation, discriminatory fees, unbalanced copyright frameworks
   - **Relevant Trade Agreements:** WTO TRIPS Agreement

   The current reform of the EU copyright rules is proving increasingly problematic for U.S. technology companies seeking to do business in Europe. First, the European Commission is considering significantly changing existing principles of “intermediary liability” by requiring online services to create content filtering technology. Second, the European Commission has also proposed the creation of a new “neighboring right”, which would give publishers the right to charge online services a fee when they show even a small amount of news content, such as headlines or images, on their platforms. Both measures would raise considerable market access barriers for major technology companies, startups, and other entrepreneurs and deviate fundamentally from U.S. principles underlying a free and open internet. In addition, there have been numerous problematic rulings on intermediary liability issues in EU member states, raising new burdens on internet services that host third-party content and potentially excluding some U.S. services from the scope of intermediary liability protections.

   - **Relevant Issues:** product regulation
   - **Relevant Trade Agreements:** WTO TBT Agreement

   With a June 2017 deadline rapidly approaching, the EU has not yet figured out how it will implement its transition to a new set of telecom and other technical requirements that will impact a wide range of technology products. Harmonized EU standards for the Radio Equipment Directive will not be published before the transition date. As a result, U.S. companies have been left scrambling to figure how to demonstrate compliance with requirements that are not yet available. The Commission has refused to extend the transition deadline, forcing companies to pursue an alternative approval process for their products that relies upon third parties and will create delays and additional costs in getting products to
market. The alternative process also leaves much uncertainty about how this issue will be resolved in the longer term.
Annex 5: India

1. **Compulsory Registration Order for ICT products:**
   - **Relevant Issues:** Conformity assessment
   - **Relevant Trade Agreements:** WTO TBT Agreement
   
   Ostensibly a product safety regulation, the Compulsory Registration Order (CRO), requires manufacturers to undertake redundant testing and certification in India as a condition of market entry. This system ignores an existing international mutual recognition agreement of which India is a member. If adhered to, this agreement would eliminate the need for these unnecessary in-country requirements. Instead, American companies face an unpredictable and ever-changing list of requirements that make India’s product safety requirements by far the costliest in the world, especially for companies seeking to sell highly specialized products (e.g., industrial and commercial goods) in the Indian market. Despite repeated engagement by the U.S. Government and ITI members, the Government of India has expanded the product scope of the CRO and has refused to make fundamental changes that would provide significant regulatory relief for ITI member companies. There is growing industry concern that the CRO model of product registration will become the norm for other areas of regulation.

2. **Tariffs on technology products inconsistent with India’s WTO commitments:**
   - **Relevant Issues:** Tariffs above bound rates
   - **Relevant Trade Agreements:** GATT
   
   India continues to raise tariffs on an increasingly wide range of technology products, including products where is bound under WTO rules to apply zero tariffs, such as mobile phones, base stations, routers, and ink cartridges. Our view is that India is blatantly acting in a manner that is inconsistent with its WTO commitments. We encourage USTR to consider enforcement actions, such as revoking India’s GSP benefits or initiating WTO dispute settlement proceedings, to address India’s behavior as soon as possible, as we anticipate that India will continue to raise tariffs on additional technology products.

3. **Restrictions on Foreign Direct Investment:**
   - **Relevant Issues:** Investment restrictions
   - **Relevant Trade Agreements:** WTO TRIMS Agreement
   
   India restricts foreign ownership on business to consumer retail, making it difficult for U.S. companies to offer these services in India.

4. ** Preferential Market Access for Government Procurement (PMA-G):**
   - **Relevant Issues:** Government procurement, local content requirements
   - **Relevant Trade Agreements:** WTO TRIMS Agreements
   
   The PMA-G is a program that defines certain performance requirements – such as local content requirements – required goods to qualify for government procurement. The program currently applies
to a wide array of technology products, and is expanding to include higher margin, highly complex products, such as servers.

5. **Preference for Make in India Order**
   - **Relevant Issues**: government procurement, local content requirements
   - **Relevant Trade Agreements**: WTO GPA, WTO TRIMS Agreement

A new order released by the Department of Industrial Policy and Promotion (DIPP) in the summer of 2017 obliges government agencies to provide procurement preferences to locally produced products for all public procurement, varying by cost thresholds. In order to qualify for a local product, it must have 50% local content, calculated by the product's bill of materials.

6. **Security Testing Requirements**:
   - **Relevant Issues**: conformity assessment
   - **Relevant Trade Agreements**: TBT Agreement

The Indian Government is set to implement new and potentially problematic security testing requirements for technology products in 2018. Despite repeated requests by ITI and our member companies, the government has yet to provide any detail about the scope or coverage of these requirements. However, there are indications that the government could require technology companies to hand over source code, intellectual property, and other sensitive design elements.
Annex 6: Indonesia

1. Kominfo/MICT Regulation No. 82/2012 on Data Localization:
   - **Relevant Issues:** Data localization, source code surrender
   - **Relevant Trade Agreements:** GATS, WTO TRIPS Agreement
   This law contains data center and disaster recovery center localization requirements and source code surrender for software developers, along with other onerous requirements that would impose large costs on all U.S. industry sectors that wish to do business in Indonesia. Though it appears that an amendment to this law is being considered, there are no details forthcoming on the nature and extent of the amendment. We expect Indonesia to enforce GR 82 in October 2017, but understand that it will soon conduct an inter-ministerial review of this measure.

2. Data Localization of Financial Services:
   - **Relevant Issues:** Data localization, data flows
   - **Relevant Trade Agreements:** GATS
   The Bank of Indonesia has released Circular 17/52 and Regulation 18/40 which mandate local processing of ATM, debit card and credit card transactions and impose a foreign equity cap of 20% on EPS providers. This is in addition to the Financial Services Authority (OJK) Regulation on Information Technology Risk Management which requires foreign banks and payments networks to locate data centers and process payments in country.

3. Local Content Requirement for 4G LTE Mobile Phones and Modems:
   - **Relevant Issues:** Local content requirements, national treatment
   - **Relevant Trade Agreements:** WTO TRIMS Agreement
   Regulation 27/2015, *Technical Requirements of Equipment and Telecommunication Devices Standards-based of Long Term Evolution (LTE) Technology* — in addition to a more recent regulation, Regulation 65/2016 — impose strict local content rules on 4G LTE smartphones, laptops, tablet computers, and all related equipment. The Government of Indonesia is phasing in these requirements over several years, progressively raising costs and pushing out U.S. industry.

4. Draft Regulation on Over-the-Top (OTT) Services:
   - **Relevant Issues:** Data localization
   - **Relevant Trade Agreements:** GATS
   The *Draft Regulation Regarding the Provision of Application and/or Content Services Through the Internet*, first opened for comments in May of 2016, places vague requirements on providers of OTT services. The most onerous requirement is that an OTT service provider must “place a part of its servers at data centers within the territory of the Republic of Indonesia.” It is not clear what “part of its servers” means precisely, nor is it clear why this requirement is in the draft regulation — there seems to be a line of rationality drawn between this draft regulation needing to mirror Regulation 82/2012.
Annex 7: The Republic of Korea

1. **Data Protection Standards for Cloud Computing Services:**
   - **Relevant Issues:** Data localization, restrictions on data flows, cloud computing restrictions
   - **Relevant Trade Agreements:** GATS, KORUS Chapters 12 (cross-border trade in services) and 15 (e-commerce)

   These cloud computing standards require cloud service providers serving public institutions to locate all cloud systems and data in-country.

2. **Act on the Establishment and Management of Spatial Information:**
   - **Relevant Issues:** restrictions on data flows
   - **Relevant Trade Agreements:** GATS, KORUS Chapters 12 (cross-border trade in services) and 15 (e-commerce)

   Korea has strict rules governing the exportation of mapping data. Though this restriction was originally from the Korean War era, it has been updated to include the exportation of digital maps. The original measure which imposed this restriction was called the Measurement Act but was replaced by the current law in 2014 in which Article 16 prohibits taking any maps or "fundamental surveys" without permission from the authorities.

3. **Software Industry Promotion Act (SIPA):**
   - **Relevant Issues:** government procurement, national treatment
   - **Relevant Trade Agreements:** WTO GPA, KORUS Chapter 17 (government procurement)

   Korea's SIPA is designed to promote government procurement from domestic SMEs by barring large corporations from bidding on contracts for software. Whereas this in itself is concerning for many ITI members, the definition of "software business" has been extended to include data analytics, information, and insights; effectively barring large companies from bidding on a wide range of government contracts beyond what was originally considered to be covered by the law.

4. **Discriminatory Regulation of Electronic Payments Services (EPS):**
   - **Relevant Issues:** National treatment
   - **Relevant Trade Agreements:** KORUS FTA

   Korean financial authorities have been exerting pressure on financial institutions to steer customers toward domestic brand credit cards rather than international credit card brands. This pressure, combined with preferential pricing for local payment brand on government mandated annual fees, has significantly eroded market share for international payments networks operating in Korea.
Annex 8: Mexico

1. **Energy Efficiency Standards:**
   - **Relevant Issues:** market-specific standards, conformity assessment
   - **Relevant Trade Agreements:** WTO TBT Agreement, NAFTA Chapter 9 (standards-related measures)

Mexico is regulating product energy efficiency via an Energy Transition Law, an associated regulation, *Reglamento Ley Transicion Energetica* and official standards for specific products (e.g. NOM-032 for printers and NOM-029 for external power supplies), some of which require annual conformity testing and include unique country specific testing and labeling requirements. Additionally, Mexico’s Metrology Law, *LEY FEDERAL SOBRE METROLOGÍA Y NORMALIZACIÓN; DOF 30-04-2009* requires testing by third-party accredited laboratories. This has led in practice to a de facto in-country testing requirement. Globally, manufacturers test products once, only re-testing when a product is modified. Diverging specifications and the resulting fragmentation of requirements unnecessarily increases costs and burdens for the ICT sector. This should be addressed at the federal level via adoption of regionally aligned requirements.

2. **Customs Rules for Express Carriers:**
   - **Relevant Issues:** customs regulations
   - **Relevant Trade Agreements:** WTO Trade Facilitation Agreement, NAFTA Chapter 5 (customs procedures)

Mexico is considering a change to its customs procedures (specifically rule 3.7.3) for express shipments. Currently, Mexico provides simplified and consolidated import procedures for express shipments, which will be eliminated under the rule change, adding to the time, cost, and complexity U.S. companies will face in sending express shipments into Mexico.

3. **Product Safety:**
   - **Relevant Issues:** product regulation, conformity assessment
   - **Relevant Trade Agreements:** WTO TBT Agreement, Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment

Mexico has made some recent efforts to streamline its product testing and certification requirements. ITI hopes that it will make further progress toward fully implementing its mutual recognition agreement for telecom approvals with the U.S. At the same time, there is industry concern with Mexico’s proposal to revise its product safety regulations for ICT equipment. Currently, there is an agreement in place by which Mexico agrees to accept products tested in the U.S. to meet a North American safety standard. The latest draft of these safety regulations (NOM019) does not provide reference this agreement. US manufacturers would like to ensure that they do not have to retest and recertify their products to meet a unique set of product safety requirements in Mexico.
Annex 9: Russia

1. **Federal Law 242-FZ:**
   - **Relevant Issues:** Data localization, national treatment
   - **Relevant Trade Agreements:** GATS

   This law affects the normal business operations of all industries in Russia by imposing inefficient operational rules, particularly the requirement in Article 18 to store personal data concerning Russian citizens in data centers located in Russia. It appears that Roskomnadzor, the federal regulator responsible for implementing this law, has accepted mirroring of data—keeping copies of data within Russia rather than the more extensive requirements of processing it in-country—to be compliant with the law. However, the vague language in the law could allow for blocking cross-border data flows in the future, lending to an uncertain business environment in Russia. Furthermore, even mirroring of data can be very costly to businesses, particularly Small and Medium Size Enterprises (SME), increasing barriers to entry for the Russian market. In addition, the federal media regulator has been empowered to block local access to the websites of non-compliant companies. Given the law’s expansive scope, foreign companies without a legal presence in Russia, which might pay only a cursory attention to the Russian market, can be labelled data protection violators and blocked.

2. **The “Yarovaya Amendments,” 374-FZ and 375-FZ:**
   - **Relevant Issues:** Data localization, encryption key surrender
   - **Relevant Trade Agreements:** GATS

   These amendments require “organizers of information distribution on the internet” to store the content of communications that they enable within Russia for 6 months. In addition, telecommunications companies have to store metadata of all communications within Russia for three years, whereas “organizers,” referring to internet providers, must store metadata for one year. If any of this data in encrypted, then companies must also provide encryption keys to the implementing agency, the Federal Security Service (FSB). These requirements will be incredibly costly for American companies operating in Russia and expose them to serious security risks.

3. **Federal Law 149-FZ “On Information, Information Technologies and the Protection of Information”:**
   - **Relevant Issues:** Data localization
   - **Relevant Trade Agreements:** GATS

   Article 10.1 "The Duties of an Organizer of Dissemination of Information on the Internet," requires "organizers of the distribution of information on the internet" to retain all metadata within Russia for six months and provide access to that data to security agencies. This applies to an incredibly wide range of companies that facilitate the receiving, transmitting, delivery, and or processing of electronic messages—including any email and internet based messaging services. Second, Article 10.2, the "Blogger’s Law," requires bloggers with more than 3,000 daily users to register with Roskomnadzor and places restrictions on what they can and cannot post to their website. This law not only has significant
free speech and human right implications, but it also creates costly barriers for U.S. companies who wish to do business in Russia.

4. The Kremlin’s 16-point Plan:

- **Relevant Issues**: Import substitution, national treatment, encryption
- **Relevant Trade Agreements**: GATT, GATS

In January 2016, the Kremlin issued a 16-point plan for improving the competitiveness and security of the Russian ICT sector through import-substitution, increased surveillance capabilities, and increased education on issues related to cyber. The plan is focused on import substitution and has generally been talked about in the context of “internet sovereignty.” Two new executive decrees associated with this plan call for ministries to create plans that: prioritize Russian-produced software and equipment for government purchases, create additional obligations for how the personal information of Russian citizens is processed, regulate the encryption of data, reorganize federal cyber-threat monitoring, and establish a Center of Import Substitution for Information and Communication Technologies.
Annex 10: Thailand

1. Proposed OTT regulations for online video services:

- **Relevant Issues**: Restrictions on data flows, localization requirements, burdensome requirements of online services
- **Relevant Trade Agreements**: GATS

Proposed regulations would require online video services to register as broadcasters with the National Broadcasting and Telecommunications Commission (NBTC), even though online video services differ fundamentally from broadcasting services. For example, online video services do not use finite public spectrum and do not otherwise ‘push’ content into homes. These regulations would impose criminal penalties on business that continue to advertise on platforms that failed to register with the NBTC.
2. **Law on Network Information Security:**

   - **Relevant Issues:** Source code surrender, technology transfer, encryption key surrender
   - **Relevant Trade Agreements:** WTO TRIPS Agreement

   Vietnam’s Law on Network Information Security (LONIS) contains multiple troubling provision in regards to commercial cyber security products. In general, the language in the law is vague, but it could be interpreted to require source code disclosure of encryption software, encryption key surrender, and the surrender of proprietary trade secrets or cyber security products. In addition, the broad requirement to cooperate with the government and obtain licenses in order to sell products within Vietnam could be implemented in a discriminatory manner. The first implementing regulation, “The Decree Guiding Law on Cyber Security” contains broad licensing and certification requirements in addition to strict local presence requirements for providing cyber security services.

3. **State Bank of Vietnam (SBV) Circular 19/2016/TT-NHNN:**

   - **Relevant Issues:** National treatment
   - **Relevant Trade Agreements:** GATS

   This circular requires the construction of a “national payments gateway” in a way that would dramatically disrupt and inhibit the ability of U.S. EPS suppliers to continue exporting to Vietnam. Circular 19, set to take effect in January 2018, would require U.S. electronic payment service suppliers to route all domestic and overseas payment transactions through the National Payments Corporation of Vietnam (NAPAS) – a commercial entity that SBV helped create and in which SBV is the majority shareholder. NAPAS is a direct competitor to U.S. EPS providers.

4. **Draft Decree on Information Technology Services:**

   - **Relevant Issues:** data localization
   - **Relevant Trade Agreements:** GATS

   This measure, which we understand may be implemented soon without public input, would require every U.S. digital service or website to locate at least one server within Vietnam.

5. **Draft Cybersecurity Law:**

   - **Relevant Issues:** data localization, local presence, licensing, product regulation, conformity assessment,
   - **Relevant Trade Agreements:** GATS, WTO TBT Agreement

   The law tasks Vietnam’s Ministry of Public Security with a range of responsibilities, including maintenance of cyber infrastructure, development of national standards on cybersecurity, issuance of business licenses, and response to network incidents/cyber-attacks. Among its wide-ranging provisions, the Law: (1) requires that foreign enterprises providing “telecommunication and/or internet services” to
obtain business licenses, establish representative offices, and locate all servers "in which Vietnamese users data are administered" within Vietnam's borders; (2) establishes a business licensing regime for entities offering “cybersecurity assurance services”; (3) obliges telecommunications and internet service providers to deny service to any user failing to provide “authentic personal information”; and, (4) sets a broad definition of cybersecurity, including not only national security issues but also public order and social interest, allowing for the suspension or withdrawal of the operating license for any website hosting content “contrary to the morality or the fine customs and practices.”

6. **Draft Regulation on OTT Services:**

- **Relevant Issues:** data localization, restrictions on data flows, local presence, unreasonable burdens on online services
- **Relevant Trade Agreements:** GATS

This draft measure includes additional data localization requirements as well as restrictions on cross-border data flows, which would prevent U.S. companies (including OTT service providers) from providing or supplying Internet services in Vietnam unless they enter into a commercial agreement with local telecommunications companies. Vietnam has also introduced problematic rules on intermediary liability, including an excessively short three-hour window for compliance with content takedown requests in the Decree on the use of Internet Services and Online Information.