

**USTR INITIATES ANNUAL NATIONAL TRADE ESTIMATE REVIEW OF FOREIGN
TRADE BARRIERS ALONG WITH “SECTION 1377” REVIEW OF
COMPLIANCE WITH TELECOM-TRADE COMMITMENTS**

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The Office of the U.S. Trade Representative (“USTR”) has initiated its 2018 National Trade Estimate (“NTE”) review of significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment. As a part of this process, USTR has also initiated its annual review of U.S. trading partners’ compliance with telecommunications-trade commitments. Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, as amended (the “Act”), USTR examines U.S. trading partners’ compliance with commitments undertaken in bilateral and multilateral trade agreements with respect to telecommunications services, equipment, and software. Comments relevant to each of those reviews must be filed with USTR by **October 25, 2017**.

President Trump has made trade enforcement a hallmark of his Administration to date, and is likely to expand his Administration’s enforcement priorities. Therefore, USTR, the Department of Commerce, and other agencies with jurisdiction over the trade agenda may rely on NTE submissions to help dictate the trade enforcement agenda. The NTE review process results in the publication of an annual report outlining significant trade barriers. This report serves to raise awareness of these trade restrictions, as well as serves as the basis for negotiations aimed at reducing or eliminating these barriers.

In order to assist USTR in preparing the NTE, U.S. industry is encouraged to submit information related to one or more of the following categories of foreign trade barriers:

- Import policies;
- Government procurement restrictions;
- Export subsidies;
- Lack of intellectual property protection;
- Services barriers;
- Investment barriers;
- Government-tolerated anticompetitive conduct of state-owned or private firms that restrict the sale or purchase of U.S. goods or services in the foreign country’s markets;
- Trade restrictions affecting electronic commerce, and specifically digital trade;
- Trade restrictions implemented through unwarranted Sanitary and Phytosanitary Measures; and
- Trade restrictions implemented through unwarranted standards, conformity assessment procedures, or technical regulations.

The Section 1377 review serves to pressure U.S. trading partners to comply with existing telecommunications-trade commitments. The review provides a mechanism for USTR to

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identify “priority foreign countries” pursuant to Section 1374 of the Act. For countries so identified, USTR may seek expedited negotiations and, in the event that such negotiations do not succeed, retaliate against the trading partner. Action under Section 1374 is rare, but USTR has successfully acted—or threatened to act—to resolve trade complaints with Korea and Taiwan. Issues highlighted in last year’s report include data localization requirements in Brazil, India, Indonesia, and Russia, continued Chinese restrictions on market entry for foreign telecommunications suppliers, and onerous local testing requirements in India for telecommunications equipment.

In the current Section 1377 review, USTR seeks commenters to identify barriers that may operate as “localization barriers to trade.” The notice describes localization barriers as measures designed to protect, favor, or stimulate domestic industries, services providers, and/or intellectual property at the expense of those from other countries. The telecommunications trade barriers identified in last year’s report included restrictions on cross-border data flows, foreign investment caps, limitations on competition, increased termination rates for international traffic, and restrictions on the supply of satellite services.

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For more information regarding the 2018 NTE report and Section 1377 review, assistance in filing comments in that review, or Harris, Wiltshire & Grannis LLP’s international trade and investment practice, please contact **Kent Bressie** at +1 202 730 1337 or kbressie@hwglaw.com; **Tricia Paoletta** at +1 202 730 1314 or tpaoletta@hwglaw.com; or **William Leahy** at +1 202 730 1358 or wleahy@hwglaw.com.

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