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U.S. Trade Representative Releases Section 1377 Annual Review of Telecommunications Trade Agreements – New Report Identifies Eight Types of Trade Restrictions Imposed by China, India and Other Countries

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The U.S. Trade Representative (USTR) recently released its annual report on the operation and effectiveness of U.S. telecommunications trade agreements. Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, codified at 19 U.S.C. § 3106, requires the USTR to complete an annual review of the telecommunications trade industry and report by March 31.

The purpose of the review is to determine whether any act, policy or practice of a foreign country is not in compliance with an applicable telecommunications-related agreement with the United States, or whether a country otherwise denies to U.S. companies “mutually advantageous market opportunities.” The annual report incorporates public comments and information from industry, private sector and U.S. embassy and foreign government representatives. It complements the USTR’s annual National Trade Estimate, which separately examines barriers in all international trade sectors.

The annual telecommunications trade report addresses several key issues of concern:

- Certain countries restrict Internet-enabled trade in services by limiting cross-border data flows and Voice over Internet Protocol (VoIP) services, undermining both supply of and access to Internet-based services.

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- Independent and effective regulators, particularly in China, inhibit implementation of trade commitments.
- Anti-competitive practices also limit U.S. trade in telecommunications, especially in Colombia's mobile carrier industry.
- Several countries' international termination rates and universal service surcharges discriminate against calls of international origin, in violation of U.S. Free Trade Agreements and the General Agreement on Trade in Services (GATS) Telecommunications Services Reference Paper.
- U.S. telecommunications companies further face trade barriers to offering satellite services in China and India due to a lack of transparency in government regulations and a requirement to sell capacity only through government-owned satellite operators.
- With respect to telecommunications equipment trade with China and India, equipment certification and testing requirements could threaten companies' intellectual property and result in forced technology transfer.
- Finally, the USTR also noted widespread limits on foreign investment and local content requirements as key issues of concern for international telecommunications trade.

The Section 1377 review also provides a mechanism for the USTR to identify "priority foreign countries" under Section 1374 of the Omnibus Trade and Competitiveness Act. The USTR may seek expedited negotiations with an identified priority country and, if those negotiations are unsuccessful, impose sanctions. See 19 U.S.C. § 3104, 3105. USTR has successfully acted or threatened to act to resolve trade complaints with Korea and Taiwan pursuant to Section 1374, but such action is rare. The 2013 report does not indicate any USTR intent to identify a priority foreign country.

Wiley Rein is one of the leading firms in the practice of international trade law and it has the largest communications law practice in the country. *Chambers USA* recognized the firm in 2012 and 2011 for its impressive depth of expertise in trade remedies and policy matters, and *The New York Times* has described it as the "brand name" of communications law. Our clients include established companies and new entrants providing telecommunications, Internet, media and satellite and earth station services throughout the world as well as major trade associations, equipment manufacturers and governments. With extensive experience in both senior government policy-making and private practice, our team of attorneys and engineers is exceptionally prepared to provide guidance on international telecommunications law and policy and stands ready to work with companies to comply with applicable law and to help remove trade barriers and restrictions abroad.