



**PREPARED STATEMENT FOR THE RECORD OF  
INTEL CORPORATION**

**For the**

**JOINT ECONOMIC COMMITTEE  
U.S. SENATE AND HOUSE OF REPRESENTATIVES**

**On**

**Manufacturing in the USA: How U.S. Trade Policy Offshores Jobs**

**September 21, 2011**

Intel Corporation respectfully submits this testimony for the record in conjunction with the Committee’s hearing on manufacturing and trade. In particular, our testimony will focus on the importance of increasing market access overseas as a way to create more U.S. jobs and maintain the ones we already have. This objective is time sensitive because we face escalating competition from other governments as they increase the competitiveness of their own industries and strike preferential trade deals with other significant economies.

The main way to increase market access for U.S. companies is to (i) level the playing field by holding WTO members accountable to their existing commitments; and (ii) enter into new agreements that are modernized to prevent emerging non-tariff barriers from hurting U.S. exports of goods and services. We support the general recommendation by a new high-level Independent Task Force report on U.S. Trade and Investment Policy, which calls for the Obama administration and Congress to “adopt a pro-America trade policy that brings to more Americans more of the benefits of global engagement, within the framework of a strengthened, rules-based trading system.”<sup>1</sup> We also support a reasonable and effective Trade Adjustment Assistance program for workers dislocated by open trade that expands and improves skills needed to be competitive in the 21<sup>st</sup> century economy.

## **I. Market Access is Critical for our Industry**

### **a. Intel Depends on Overseas Revenue to Create and Sustain Jobs at Home**

Intel is the leading manufacturer of computer, networking, and communications products. Intel has close to 44,000 employees in the U.S. In 2010, Intel had over \$40 billion in revenue from sales to customers in more than 120 countries.

Intel is a prime example of why the U.S. government should simultaneously pursue the synergistic objectives of (i) creating the best ecosystem possible to encourage domestic manufacturing; and (ii) removing market access barriers overseas. While three quarters of Intel’s manufacturing capacity remains in the U.S., more than three quarters of our revenue is generated overseas. The revenue we generate outside of the U.S. helps create and sustain our high paying jobs at home.

Even during the strained economic climate of the last few years, Intel has continued to invest to stimulate economic and job growth. In February 2009, the company announced a \$7 billion upgrade to its manufacturing facilities in Oregon, Arizona, and New Mexico—projects that are helping to maintain approximately 7,000 high-wage, high-skill U.S. jobs while providing 4,000 contract jobs for technicians and construction workers.

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<sup>1</sup> “U.S. Trade and Investment Policy,” Independent Task Force with Co-Chairs Andrew H. Card and Thomas A. Daschle, sponsored by the Council on Foreign Relations, p. 4 (September 2011) [hereinafter “CFR Task Force”].

In 2010, Intel announced that it will spend an additional \$6 billion to \$8 billion over the next several years to bring next-generation manufacturing technology to several existing factories across the U.S. and to build a new development factory in Oregon. This new investment will support approximately 6,000-8,000 additional U.S. construction jobs during the building phase, and eventually add approximately 800-1,000 Intel high-skilled, high-wage jobs.

And now, in 2011, Intel announced plans to invest more than \$5 billion in a new chip manufacturing facility, called Fab 42, in Chandler, Arizona. The new fab will create thousands of construction and permanent manufacturing jobs at Intel's Arizona site.

We have spent more than \$68 billion on U.S. operations, manufacturing and R&D, from 2002 to 2010. Most of the product manufactured from our significant U.S. investments will be sold to the 95% of worldwide consumers that live outside the U.S. The ability to access markets worldwide is essential to Intel's ability to create and maintain jobs in the U.S. and our continued growth and prosperity.

b. The Semiconductor Industry's Future is Tied to Overseas Sales

Free trade is of particular importance to the growth of the entire semiconductor industry. According to the Semiconductor Industry Association (SIA), the U.S. semiconductor industry employs over 180,000 people in the U.S. and makes almost half of the world's computer chips. This market for chips was worth just under \$300 billion in 2010 and is growing every year. Over 80% of U.S. semiconductors go to customers outside the U.S. market and are sold in nearly every country in the world. According to the International Trade Commission (ITC), semiconductors have been America's largest exporter when data are averaged over the last five years. However, as discussed in Section III, information technology industries are facing an increasing number of market access issues that need to be effectively and promptly addressed to safeguard our ability to compete.

Exporting semiconductors creates real benefits not just for Intel's employees, but also for many other American workers. For example, those overseas sales allow leading-edge U.S. based chip makers to employ highly skilled and talented U.S. workers whose average income is almost \$100,000 per year. Additionally, domestic semiconductor makers invest about \$20 billion a year in research and development in the U.S. and invest over \$13 billion in capital equipment at home, which also spur new products and create new jobs both with our U.S. suppliers and at Intel that are maintained by sales overseas.

**II. Increasing U.S. Exports Through Robust Trade Agreements**

Intel believes that strong exports also are critical to America's overall continued economic growth, and the creation of good jobs in the United States in many other industries besides our own. As the U.S. government works with the private sector to find new ways to increase domestic manufacturing, it also needs to take the initiatives necessary to fulfill the Administration's goal of doubling exports by 2015. With 95% of the world's consumers living

outside of the U.S. and about 80% of global purchasing power outside the U.S., any increase in domestic manufacturing must be accompanied by additional opportunities to sell overseas. Those opportunities are created in large part by free trade agreements (FTAs), bilateral investment treaties (BITs), and other initiatives – that establish the rules to force open other markets and promote and protect U.S. business interests.

There are still many barriers that need to be taken down. For example, last year the World Economic Forum Global Competitiveness Report listed the United States near the bottom or 121st out of 125 economies due to the significant tariffs placed on American goods overseas. Section III below discusses some of the non-tariff barriers U.S. IT industries face.

According to the United Nations Industrial Development Organization’s 2010 International Yearbook of Industrial Statistics, the U.S. continues to lead the world in manufacturing, with 19% of the worldwide value-added manufacturing output. However, the U.S. has dropped from first to third over the last 12 years in terms of the total quantity of goods exported.<sup>2</sup> As the competitiveness of other countries increases and the number of FTAs and BITs not involving the U.S. accelerates,<sup>3</sup> America may drop further in that ranking.

We can further increase our exports, improve our economy and thus create more U.S. jobs by both (i) promptly approving the three pending agreements with Colombia, Korea and Panama; and (ii) entering into additional, robust free FTAs with other key markets. FTAs are essential to level the playing field so U.S. companies can effectively compete with increasingly competitive foreign companies.

a. The Three Pending FTAs Will Provide Significant Benefit to the U.S. Economy

Once approved, the three pending agreements will level the playing field for American businesses that export to those markets, thus creating real business opportunities for U.S. business and their employees. For example, South Korea currently collects \$4 in tariffs on U.S. exports for every \$1 the United States collects in tariffs on South Korean exports. U.S. businesses confront similar or higher trade barriers in Colombia and Panama.<sup>4</sup> And, all three agreements have a number of critical provisions that address non-tariff barriers. For sake of brevity, this subsection focuses only on the most significant of the three pending agreements -- the U.S./Korea (KORUS) FTA.

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<sup>2</sup> Compare <http://umsl.edu/services/govdocs/wofact2000/fields/exports.html> with <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US,CN>, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US>, and <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=US,DE>.

While the WTO uses “merchandise” rather than “export” as a benchmark, the various ranking systems show the U.S. to have dropped at least three, if not four, places in terms of total goods exported since the late 90s.

<sup>3</sup> See *infra* page 7 and footnote 17.

<sup>4</sup> Letter by 34 Trade Associations to Chairmen and Ranking Members of the Senate Finance Committee and House Ways and Means Committee (July 6, 2011).

Currently, the U.S./Singapore FTA is the only U.S. bilateral agreement in force in all of Asia, the region with the highest economic growth where many of U.S. industries' greatest competitors are located.<sup>5</sup> The pending KORUS FTA is critical to Intel and the U.S. economy for many reasons, including the strong precedent it sets for the rest of Asia.

First, given the rapid growth of its information economy, South Korea has become a very important market to U.S. technology industries. In fact, it is the 6<sup>th</sup> largest market for U.S. IT goods. High quality trade agreements like the KORUS FTA allow Intel and other companies in the semiconductor industry to maintain and even grow our manufacturing base in the U.S. by increasing exports around the world.

Second, the KORUS FTA and the other two pending FTAs are all very robust and have met the Administration's high standard for open and fair market access. The benefits of KORUS reach far beyond our industry. With U.S. exports totaling about \$38 billion in 2010, South Korea is our 7<sup>th</sup> largest market. The United States Trade Representative (USTR) estimates that the agreement will create tens of thousands of well-paying jobs in the U.S. and increase the U.S. GDP by \$10 billion per year through increased exports made possible by greater market access. According to the U.S. International Trade Commission, the KORUS FTA will create 280,000 jobs and lower tariffs for 95% of industrial and consumer goods.<sup>6</sup> In addition, the agreement will provide U.S. services firms with levels of market access, national treatment, and regulatory transparency that generally exceed those currently afforded by South Korea's commitments.

Third, the KORUS FTA is an agreement that would provide not only significant tariff cuts for many U.S. companies, but also crucial substantive protections for U.S. goods and services -- many of which exceed WTO requirements or fill in sorely needed gaps. For instance, of relevance to IT industries, KORUS includes:

- Strong provisions on intellectual property (IP) enforcement that include (i) criminalization of end-user piracy and counterfeiting; and (ii) except in exceptional circumstances, guarantees of authority to seize and destroy not only counterfeit goods but also the materials and equipment used to produce them.<sup>7</sup> These provisions will provide a strong deterrent to IP infringement, a significant concern U.S. companies face overseas.
- State-of-the-art public participation rights in rulemaking, standard setting activities, and conformity assessments,<sup>8</sup> which exceed WTO requirements and are critical to help prevent the development of technical regulations and standards that discriminate against foreign companies and are common in Asia.

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<sup>5</sup> Nearly 87 percent of world economic growth over the next five years is expected to take place outside the United States, with most of it in Asia.

<sup>6</sup> The ITC report was prepared by the Commission's economic staff at the request of the Senate Committee on Finance Subcommittee on Trade.

<sup>7</sup> Free Trade Agreement Between The United States of America and the Republic of Korea , Articles 18.10.26 & 27.

<sup>8</sup> *Id.*, Articles 9.2.1, 9.6.1, 9.6.3

- Due process protections applicable to competition cases and settlement authority for the Korean Fair Trade Commission.<sup>9</sup> These are important provisions that help ensure claims of anti-competitive conduct by budding domestic companies against multi-national companies are fairly administered. WTO does not cover competition policy, an emerging area of concern as more than 130 antitrust agencies now exist.
- A provision that enables e-commerce by ensuring technology choice while recognizing legitimate exceptions such as law enforcement activity and harm to the network.<sup>10</sup> This provision builds on FTAs over the last five years that have contained the fundamentals needed for e-commerce to flourish, including non-discriminatory treatment of foreign digital goods and tariff/duty protection for digital products imported or exported by electronic transmission or fixed on a medium.<sup>11</sup>

Fourth, in addition to Korea being a key market for U.S. exports, as alluded to earlier KORUS provides a great template for furthering trade liberalization initiatives in Asia. The precedent it sets for other FTAs in the rest of that dynamic region cannot be underestimated. Indeed, the Trans-Pacific Partnership (TPP) Agreement under negotiation, which involves various Asian countries, is building on a number of the provisions in KORUS.

For example, we understand from Inside U.S. Trade and other public sources that USTR has tabled text in the TPP negotiations which supports a provision expressly allowing the free transfer of data across borders in conjunction with relevant service commitments made by each Party (e.g., computer services), assuming appropriate privacy protections are included. This provision will become increasingly important as countries begin to allow foreign direct investment related to digital services, but at the same time they may decide to interfere with associated data flows. We understand that the e-commerce provisions being negotiated may also expressly prohibit any requirements to locate IT infrastructure (e.g., servers) within a country as a condition of providing digital services. Efforts to sever treatment of the data from service commitments or to require in-country infrastructure often have protectionist purposes even when security or privacy concerns are raised. A recent survey from General Electric found thirty five localization measures proposed or enacted across the world within the past two years, most of which were enacted in developing economies.<sup>12</sup>

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<sup>9</sup> *Id.*, Articles 16.1.3, 4 & 5.

<sup>10</sup> For example, the KORUS FTA requires each Party to recognize the right of consumers to “run applications and services of their choice, subject to the needs of law enforcement” (Art. 16.7(b)); “connect their choice of devices to the Internet, provided that such devices do not harm the network and are not prohibited by the Party’s law” (Art. 15.7(c)); and “have the benefit of competition among network providers, application and service providers, and content providers” (Art. 15.7(d)).

<sup>11</sup> See, e.g., United States – Bahrain Free Trade Agreement, Chapter 13 (2006); Australia-United States Free Trade Agreement, Chapter 16 (2005).

<sup>12</sup> “Forced Localization of Global Companies Business Activities,” Handout given at The 2011 Global Services Summit: Engaging the Dynamic Asian Economies, Washington, DC (July 20, 2011)

b. Congress Should Promptly Approve the Pending FTAs

Congressional approval of the pending FTAs should occur as soon as possible so that the U.S. economy can reap their benefits and momentum can be created for a more robust trade policy. The strategic importance of promptly implementing these agreements cannot be overstated.

Although South Korea is the United States' seventh-largest trading partner, the U.S. share of the Korean market has declined over the last several years. China, Japan and now Europe all enjoy greater market shares. The U.S. share will continue to decline until KORUS is implemented as other key governments negotiate with Korea to open up their respective markets for their companies and workers on a preferential basis, putting American companies and workers at a severe competitive disadvantage.

Korea now has FTAs with the EU and India, Chile, Singapore, the European Free Trade Association, and the Association of Southeast Asian Nations. Korea currently is negotiating with Japan, Canada, Mexico, Australia, New Zealand and Peru, and preparatory discussions are underway with China, Malaysia, Turkey, Russia, Colombia, MERCOSUR and Israel. As long as the KORUS FTA remains unapproved, U.S. exports of goods and services to Korea will face discrimination and higher tariffs than the competing products of countries subject to these other trade agreements that Korea is or has negotiated.

As a result of the European/Korea FTA coming into force on July 1, 2011, EU exports to South Korea already have increased 44.9 percent between July 1 and July 20, 2011 from the same period in 2010. Meanwhile, U.S. exports during this same period were up by only 8.5 percent. The biggest gainers among EU exports were passenger cars at 204.6 percent and civilian aircraft and parts at 2,359 percent. The U.S. and European auto and aircraft industries compete for sales in South Korea and elsewhere.<sup>13</sup>

The United States has long been the largest exporter into Colombia's over \$32 billion market (accounting for nearly 30 percent of that market in 2009).<sup>14</sup> The market share of U.S. exports to Colombia is expected to drop considerably now that the Canada/Colombia FTA is in effect. For example, under the Canada-Colombia FTA, Canadian wheat and wheat flour exports now enter Colombia duty-free, while U.S. farmers must pay a thirteen percent tariff. The wheat growers association (U.S. Wheat Associates) estimates that the United States could lose over \$70 million in wheat sales each year as a result of our tariff disadvantage, which we could

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<sup>13</sup> Korea-US FTA coalition letter, citing Korean Ministry of Knowledge Economy (August 1, 2011). The rapid jump in EU exports followed the July 1, 2011 implementation of the Korea-EU Free Trade Agreement, which eliminated 90.7 percent of South Korea's tariffs on EU imports and will do away with 98.7 percent of such tariffs within five years.

<sup>14</sup> World Trade Organization, Trade Profiles 2010, accessed at [http://www.wto.org/english/res\\_e/publications\\_e/trade\\_profiles10\\_e.htm](http://www.wto.org/english/res_e/publications_e/trade_profiles10_e.htm).

reverse if the U.S.-Colombia agreement, with its tariff elimination for our wheat exports, entered into force quickly.<sup>15</sup> The disadvantages U.S. manufacturers and producers face now in Colombia compared to our Canadian competitors is found in every major sector. The impact is exacerbating the loss of market share that the U.S. already has started experiencing as a result of the preferential arrangements that Colombia has with the MERCOSUR countries (including Argentina and Brazil). For example, the U.S. share of Colombia's total imports of wheat, corn, and soybeans fell from 71 percent in 2008 to 27 percent in 2010 following implementation of Colombia's trade agreement with MERCOSUR.

In brief, we need more consumer spending overseas on U.S. goods and services, as this is the engine of our economy that accounts for about 70% of our total GDP growth. The quicker the pending FTAs are approved and implemented, the faster the U.S. economy will benefit. Further delays in approving those FTAs will only result in more harm to the U.S. economy.

### **III. The Need to Increase the Number of U.S. FTAs and Modernize Them**

As noted by ECAT, trade flow data show how important FTAs are to the U.S. economy. Trade with the 17 countries with which the U.S. had an FTA in effect by the end of 2010 accounted for approximately \$1.1 trillion, or nearly 34 percent, of total U.S. trade and 41 percent of U.S. exports that year, while these countries represent only 7 percent of the world economy. U.S. exports to every single FTA partner country since have increased dramatically after those agreements were implemented. ECAT expects a similar economic boost for American enterprises and workers after the Colombia, Korea and Panama agreements become effective.<sup>16</sup>

Today, however, "the United States lacks an ambitious trade policy and has not kept pace with other countries in opening new markets abroad, especially in the fast-growing economies of Asia and Latin America that are now major engines of global growth."<sup>17</sup> According to WTO data, about 380 regional trade agreements (RTAs) have been negotiated worldwide and, of those, 202 RTAs have entered into force. The United States is party to only twelve such agreements with a total of 17 countries. In contrast, the European Union has 28 RTAs in force with 29 countries, and is in negotiations with India, Canada and Ukraine. China has ten RTAs in force with 20 countries, and another five in negotiation; India has 13 RTAs in force with a total of 25 countries and another three in negotiation. Similarly, when it comes to bilateral investment treaties, the U.S. lags behind in a world with nearly 3,000 BITs. In particular, the 40 U.S. BITs in force are far less than half of Germany's 138 BITs and considerably less than China's 70 BITs or even Korea's 57 BITs.

We must not only increase the pace of negotiation, but also ensure that the agreements being negotiated effectively address all forms of tariffs and emerging non-tariff barriers.<sup>18</sup> The

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<sup>15</sup> Canada-Colombia FTA Puts Critical U.S. Wheat Market at Risk (July 6, 2011), accessed at <http://www.uswheat.org/newsEvents/newsRelease/doc/A1BF68C6305418B285257758005ADF67?OpenDocument>

<sup>16</sup> ECAT Letters to Senators Max Baucus and Orrin Hatch (June 30, 2011).

<sup>17</sup> CFR Task Force, *supra* note 1, p. 3.

United States Trade Representative (USTR) has improved FTAs over time. Of relevance to Intel, FTAs enable trade in both the equipment and devices that make up the IT infrastructure, and the digital goods and services that infrastructure enables. Moreover, the latest model language for free trade agreements (FTA) contains various provisions requiring the Parties to cooperate on an ongoing basis, for example, to ensure regulatory alignment with international technology standards and prevent deceptive practices in e-commerce to enhance consumer welfare.<sup>19</sup> Such cooperation mechanisms are important to expand an FTA's capability to resolve new trade issues as they arise.

As Intel testified in a hearing last year on International Trade in the Digital Economy, however, there are a number of emerging trade barriers to IT goods and services that need to be addressed. For example, much progress still needs to be made in liberalizing digital services and the interests of many governments in addressing privacy and security concerns related to digital goods need to be properly channeled to ensure that trade is not unnecessarily restricted.<sup>20</sup> We are confident that similar gaps exist in other dynamic industries.

Basically, there are a number of ways that existing FTA language and trade rules can be further updated to better protect U.S. business interests – especially the rules in current WTO agreements that predate development of the digital economy. We address just two examples.

a. Ensuring Better Protection of Intellectual Property

On a broader level, a number of U.S. companies are seriously concerned about the lack of robust IP laws and enforcement mechanisms in many countries. Our competitive advantage in so many industries – whether pharmaceuticals, aeronautics, semiconductors, digital services, or otherwise – is based on intellectual property developed through significant R&D investments in the U.S. Yet there are increasing challenges overseas in protecting intellectual property from misappropriation and disclosure as a condition of market access. The latter challenges may arise in relation to qualifying for government procurement preferences, accessing the telecom market, or complying with conformity assessments involving environmental criteria.<sup>21</sup> All signatories to U.S. FTAs should be required to have robust systems in place to protect IP disclosed to them and bear the burden of justifying the disclosure by private parties to government of any sensitive information so that it is minimized.

Moreover, in the name of the “public interest,” some countries are calling for compulsory licensing of environmental technologies (most of which are owned by U.S. companies) to enable broader and/or cheaper access to those critical technology solutions

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<sup>18</sup> See [http://www.wto.org/english/tratop\\_e/region\\_e/rta\\_participation\\_map\\_e.htm](http://www.wto.org/english/tratop_e/region_e/rta_participation_map_e.htm); <http://icsid.worldbank.org/ICSID/FrontServlet#>.

<sup>19</sup> See, e.g., KORUS Articles 9.4.1 & 15.5.2, 3.

<sup>20</sup> See generally Prepared Statement of Intel Corporation, “International Trade in the Digital Economy,” Subcommittee on International Trade, Customs, and Global Competitiveness, U.S. Senate (November 18, 2010).

<sup>21</sup> For example, the Government of India has recently promulgated various policies in the telecom and government procurement sectors that condition market access on IP disclosures. For specific information on those recent initiatives, in India, contact the U.S. India Business Council.

developed to address climate change and energy issues.<sup>22</sup> This trend may migrate over to other technologies given their importance in building a digital economy. Future FTAs need to reinforce and build on the significant procedural and substantive protections found in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and not expand compulsory licensing that undermines the incentives to invest and innovate such important technologies.<sup>23</sup>

We also recommend that future FTAs make clear that signatory governments generally should not be involved in dictating or directing the development of IP rights policies in conjunction with standard setting activities. Standards are supposed to be voluntary, but some governments have tried to limit the royalty payments dictated by market forces for IP related to those standards.<sup>24</sup>

#### b. Restricting Counterproductive Domestic Market Preferences

At least three dozen countries have implemented national innovation strategies to increase their competitiveness and generate more economic growth.<sup>25</sup> The nature of those strategies differs widely among governments, however, and the difference between innovation and industrial policy is often murky at best.<sup>26</sup> U.S. companies increasingly face a host of domestic market preference measures intended to spur local R&D and manufacturing that are exempt from WTO requirements, do not always comply with the same, or fall within the cracks.

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<sup>22</sup> For instance, in 2007 the European Parliament called for a study on opening and amending TRIPS to provide compulsory licenses to IPR for “environmentally necessary” technology. European Parliament resolution of 20 November 2007 on trade and climate change (2007/2003(INI)); available: <http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0576&language=EN>. In 2008, the Indian Environment Minister Shri Raja wanted a climate change agreement “‘paralleling’ what he call[ed] ‘the successful agreement on compulsory licensing of pharmaceuticals’, which has undermined supply, quality and trade.” Tim Wilson, Op-Ed, “Attacking Patents Is A Way To Halt Progress On Climate Accord” (*The China Post*, 8/29/08). Shyam Saran, India’s special envoy on climate change noted that India wants climate change technologies to be treated as public and common goods and dealt with in the same manner as HIV drugs. “Treat Climate Change Tech As Public,” *The Times Of India* (7/27/08). And the UN Assistant Secretary General for Economic Development, Jomo Kwame Sundaram, has noted: “Reform to the current IPRs regime will need to be addressed to make possible the extensive use of technological solutions to address climate change.” Jomo Kwame Sundaram, “The Climate Change Challenge,” *UN Chronicle*; available: [www.un.org](http://www.un.org) (1/26/08).

<sup>23</sup> Consistent with TRIPS, the KORUS FTA acknowledges that “[e]ach Party may provide *limited* exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.” (Art. 18.8.3; emphasis added) That agreement, however, does not define in any way the type narrow exceptions that are permissible under TRIPS Article 31, which is problematic given recent requests by some countries for broader IP flexibilities and patent exemptions than TRIPS would appear to allow.

<sup>24</sup> In the 2004 U.S./China Joint Commission on Commerce and Trade (JCCT), China agreed to remove PRC regulators from negotiations over royalty payments with IPR holders in standard setting activities. However, the JCCT commitment is non-binding and needs to be included in binding FTAs.

<sup>25</sup> Stephen Ezell, “America and the World We’re Number 40,” *Democracy: A Journal of Ideas*, Issue # 14, Fall 2009, <http://www.democracyjournal.org/article.php?ID=6703>.

<sup>26</sup> See generally “The Good, The Bad and The Ugly (and The Self-Destructive) of Innovation Policy: A Policymakers Guide to Creating Effective Innovation Policy,” The Information Technology and Innovation Foundation (October 2010).

One of the main methods some governments use to promote indigenous innovations is by restricting participation in government procurement activities to domestic companies and products made locally. None of the BRIC countries are signatories to the WTO Agreement on Government Procurement Agreement (GPA), and thus the GPA's prohibition on discriminating against foreign product in government procurement does not apply in these major markets.

Under applicable law, Brazil's government purchases domestically produced goods and services, even when these cost up to 25% more than the cheapest imported products and services, if they are developed by Brazilian companies that either (i) manufacture the goods at issue in Brazil or provide the services locally; or (ii) invest in R&D and the development of technology in the country. Implementing regulations, which require an increasing amount of local content each year to qualify for the preferences, are focused on defense, healthcare and ICT.<sup>27</sup>

In China, goods must have at least 50% local content to qualify under the Government Procurement Law, but foreign invested enterprises that can meet that threshold continue to face barriers to participating in procurement activities. Until earlier this year, products also had to be certified as "indigenous innovation" by having their core IP owned by a China-based company.<sup>28</sup> That latter requirement was deleted after pressure from several governments.

India, for its part, recently recommended that government procurement preferences be given to all domestically produced electronic products and products made with Indian IP.<sup>29</sup> Moreover, India has attempted to extend domestic government procurement preferences in the telecom sector to cover private licensees, even though that would violate the national treatment clause of the General Agreement on Tariffs and Trade. In fact, the Telecom Regulatory Authority of India (TRAI) has proposed a number of other incentives for Indian companies that manufacture with Indian materials or incorporate Indian IP, regardless of whether the products are sold to the government.<sup>30</sup> These incentives include tax breaks and R&D grants that potentially violate the WTO Agreement on Subsidies and Countervailing Measures, which prohibits conditioning incentives on the use of local content.

Russia has a narrower public procurement preference program than the other BRIC countries. In 2010, the Ministry of Industry and Trade prepared a draft decree that will enable domestic manufacturers to receive preferences in state procurements tenders of telecommunication equipment for LTE networks where not less than 50% of the stock of the

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<sup>27</sup> Government Purchase Law (No. 8.666, promulgated in 1993).

<sup>28</sup> For a summary of the procurement laws and regulations in China, see PRC Government Procurement Policy, The U.S.-China Business Council (July 2009); available: [https://www.uschina.org/public/documents/2009/07/government\\_procurement.pdf](https://www.uschina.org/public/documents/2009/07/government_procurement.pdf).

<sup>29</sup> Progress Report on the 100-Days Plan of Action of Ministry of Communications & Information Technology Announced on January 01 This Year (April 11, 2011), DoT Action Point 8(c) and DIT Action Point 8(c). Similar procurement preferences may soon be available in other industry sectors per the Prime Minister's mandate to increase domestic R&D and manufacturing at large.

<sup>30</sup> See generally *Recommendations on Telecom Equipment Manufacturing Policy*, Telecom Regulatory Authority of India (12<sup>th</sup> April, 2011) [hereinafter "TRAI Recommendations"]. The TRAI Recommendations were submitted by to the Ministry of Communications and Information Technology for its consideration.

company belongs to the Russian state or its citizens, and the entire product cycle (e.g., R&D, manufacturing and assembly) of components (e.g., printed circuit boards) needed for the telecom equipment that the domestic company engages occurs in Russia. In addition, the qualifying manufacturer must own the rights to software used in the equipment and the required local content level for components in the telecom equipment rises each year.<sup>31</sup>

Modern FTAs must address the increasing use of domestic market preferences, whether in the government procurement space or otherwise, to be effective in opening up foreign markets. For many U.S. companies, current WTO requirements are not sufficient to provide the significant market access they need for their goods and services so they can grow significantly their U.S. operations and employment base at home.

#### **IV. Conclusion**

As Congress continues to explore ways to increase the competitiveness of U.S. industries, Intel recommends that it also work in parallel with the Administration to open up the biggest and fastest-growing emerging markets using a set of modern rules that take into account emerging non-tariff barriers. This recommended trade agenda is ambitious, but necessary to ensure America is in a position to effectively compete on a level playing field.

Intel is encouraged by recent action to move forward with both the three pending free trade agreements and Trade Adjustment Assistance (TAA). It is time to pass TAA and provide displaced U.S. workers the support they need while opening new markets. Our hope is that these near term actions will pave the way for a more ambitious trade agenda, including implementation of a robust TPP agreement next year.

We appreciate the opportunity to provide testimony on these important issues.

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<sup>31</sup> Draft "Order on approval of the parameter values, methods of the parameter value determination and the order of assignment of the status of the *Russian domestic telecommunications equipment* to telecommunications equipment manufactured within the territory of the Russian Federation," Ministry of Industry and Trade of the Russian Federation (July, 26<sup>th</sup>, 2010).