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MEMORANDUM March 3, 2023

To: House Energy and Commerce Committee
Attention: Evan M. Viau, Professional Staff Member
Johanna R. Thomas, Counsel

From: Brandon J. Murrill, Legislative Attorney, bmurrill@crs.loc.gov, 7-8440

Subject: **Consistency of H.R. 1338, the Satellite and Telecommunications Streamlining Act, With U.S. Obligations in the World Trade Organization's General Agreement on Trade in Services**

This memorandum responds to your request for an analysis of the consistency of H.R. 1338, the Satellite and Telecommunications Streamlining Act (SAT Streamlining Act), with U.S. international obligations under the World Trade Organization (WTO)'s General Agreement on Trade in Services (GATS).[1] The SAT Streamlining Act would impose statutory deadlines on the Federal Communications Commission (FCC)'s consideration of applications for satellite system licenses.[2] The Act would not impose such deadlines on the agency's consideration of foreign-licensed satellite operators' applications for U.S. market access.[3] This has prompted questions about whether the Act would violate the GATS by discriminating against foreign suppliers[4] of satellite services[5] that are seeking to serve the U.S. market by operating a non-U.S. licensed space station.[6]

A WTO panel would likely determine that the SAT Streamlining Act's statutory deadlines for license applications do not discriminate against foreign suppliers of satellite services in violation of U.S. GATS

[1] *General Agreement on Trade in Services*, WORLD TRADE ORG., https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm. For a link to all of the WTO agreements discussed in this memorandum, see *Legal Texts: The WTO Agreements*, WORLD TRADE ORG., https://www.wto.org/english/docs_e/legal_e/final_e.htm. CRS is available to follow up with you, in person or virtually, at your convenience.

[2] *See* "Summary of H.R. 1338, the SAT Streamlining Act."

[3] *See id.*

[4] For purposes of this memorandum, CRS uses the terms "foreign supplier" or "foreign service supplier" to refer to a satellite operator that is: (1) organized under the laws of a WTO member other than the United States; or (2) majority-owned or controlled by an entity described in (1). *See* GATS art. XXVIII(b), (d) (f)–(g), (j), (l)–(n).

[5] For purposes of this memorandum, CRS uses the term "satellite services" to refer to those services covered by the United States' commitments under its GATS Schedules. The FCC has stated that "as part of its commitments under the GATS, the United States made market access commitments for all satellite services," except for Direct to Home (DTH) services, Direct Broadcast Services (DBS), and Satellite Digital Audio Radio Services (SDARS). 22 F.C.C.R. 5282, 5988–89 (2007) [hereinafter FIRST SATELLITE COMPETITION REPORT].

[6] *See generally* 47 C.F.R. § 25.137.

national-treatment obligations.[7] A satellite operator can choose to apply for a license in any country. The Act's deadlines appear to distinguish between satellite operators on the basis of where they choose to become licensed and not on the basis of foreign origin.[8] In addition, although most U.S. market access applicants are foreign satellite operators, the Act would not necessarily require a longer time frame for review of market access applications than for original license applications.[9] Thus, a WTO panel would probably determine that the Act does not provide less favorable treatment to foreign market access applicants.[10]

The Act would also appear not to violate U.S. GATS obligations related to market access because it does not impose numerical quotas or other limitations specifically enumerated in the agreement on foreign suppliers of satellite services.[11]

The Federal Communications Commission's Role in Licensing Commercial Satellite Systems

The FCC is the agency responsible for licensing commercial communications "transmitted via satellite to, from and within the United States."[12] Generally, communications satellites capture signals from one point on the earth's surface and use radio waves to transmit these signals to a different earth location.[13] Satellites orbit "far above the Earth."[14] Their "footprint, or service area, covers nearly every part of the United States, providing instant, ubiquitous and reliable coverage."[15] Organizations use satellites to provide data, voice, and video services.[16] Complete satellite transmission links involve both space stations and earth stations.[17]

[7] *See* "Nondiscrimination Obligations and National Treatment."

[8] *See id.*

[9] *See* "De Facto Discrimination Analysis." It is possible that the FCC's implementation of the Act might prompt GATS concerns if the agency's review of foreign service suppliers' market access applications was consistently lengthier than its review of domestic license (or market access) applications for reasons unrelated to legitimate national security concerns. However, time frames for application review would depend upon the FCC's implementation of the Act after its enactment, and are therefore speculative. *See id.*

[10] *See id.* For similar reasons, a WTO panel would probably determine that the SAT Streamlining Act does not discriminate against foreign service suppliers of one WTO member as compared to competing suppliers of another WTO member in violation of U.S. most-favored nation commitments. *See generally* GATS art. II:1.

[11] *See* "Market Access Obligations."

[12] *Satellite*, FED. COMMC'N COMM'N, https://www.fcc.gov/general/satellite. *See also* 47 U.S.C. § 309(a) (stating that the FCC shall determine "whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application").

[13] *How Do Satellites Communicate?*, NAT'L AERO. & SPACE ADMIN., https://www.nasa.gov/directorates/heo/scan/communications/outreach/funfacts/txt_satellite_comm.html.

[14] *Satellite,* FED. COMMC'N COMM'N, *supra* note 12.

[15] *Id.*

[16] *Id.*

[17] *Id.*

Acting pursuant to its authority under the Communications Act of 1934 and other federal laws,[18] the FCC has promulgated regulations that govern the licensing of satellite space and earth stations.[19] The FCC coordinates its authorization process with the International Telecommunication Union (ITU), a United Nations agency that authorizes orbital slots and allocates spectrum for satellites.[20]

A satellite operator may apply for an FCC license regardless of whether it is a U.S.- or foreign-owned company. FCC regulations govern the licensing of satellite common carriers (those that purport to serve the public generally) and non-common carriers (e.g., private carriers).[21] Section 310(b) of the Communications Act "establishes a 25 percent benchmark applicable to foreign investment in, and ownership of, the parent company" of a common carrier satellite licensee.[22] The Communications Act authorizes the FCC to allow higher levels of foreign ownership if the agency concludes that such ownership "would not be inconsistent with the public interest."[23] In considering whether to exercise its discretionary waiver authority and permit a foreign company to acquire an indirect controlling interest in a common carrier licensee, the FCC evaluates license applications for national security, law enforcement, foreign policy, and trade considerations.[24] However, most FCC satellite licenses authorize non-common carrier services and are not subject to foreign ownership restrictions in Section 310(b) of the Communications Act.[25]

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[18] *See* 47 C.F.R. § 25.101(a) (noting that the FCC derives its licensing authority from Section 201(c)(11) of the Communications Satellite Act of 1962, as amended; Section 501(c)(6) of the International Maritime Satellite Telecommunications Act; and Titles I through III of the Communications Act of 1934, as amended).

[19] *See* 47 C.F.R. § 25.102(a) ("No person shall use or operate apparatus for the transmission of energy or communications or signals by space or earth stations except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission."). *See also, e.g.*, *id.* §§ 25.110, 25.114, 25.115, 25.124.

[20] *See id.* § 25.111; *ITU and Space: Ensuring Interference-free Satellite Orbits in LEO and Beyond*, ITU NEWS (Feb. 9, 2022), https://www.itu.int/hub/2022/02/itu-space-interference-free-satellite-orbits-leo/. The United States has agreed to be bound by the ITU's Radio Regulations under a 1992 treaty. *See generally Constitution of the International Telecommunication Union*, ITU, http://www.itu.int/council/pd/constitution.html. The FCC is authorized to implement the treaty and the ITU regulations through rulemaking. 47 U.S.C. § 303(r).

[21] *See* sources cited *supra* note 19. *See also* 47 C.F.R. § 25.135.

[22] 11 F.C.C.R. 3445, 3941–42 (1996).

[23] *Id.* 47 U.S.C. § 310(b); 47 C.F.R. § 25.105. *See also id.* §§ 1.5000–1.5004. In 2013, the FCC streamlined its procedures for reviewing foreign ownership of common carrier services, including satellite common carrier services. 28 F.C.C.R 5007 (2013).

[24] 28 F.C.C.R 5741, 5745 (2013). The agency may refer such applications to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Telecom Committee) for further review. Such referrals typically extend the time frame for the FCC's decision on the application. The Telecom Committee is an interagency body that reviews foreign parties' applications for U.S. telecommunications licenses and makes recommendations to the FCC on whether to approve them. Exec. Order No. 13913, *Establishing the Committee for the Assessment of Foreign Participation in the United States*, 85 Fed. Reg. 19643–48 (Apr. 8, 2020). The Attorney General chairs the Telecom Committee, and the Secretaries of Defense and Homeland Security serve as members, along with any other agency heads or assistants to the President that the President may appoint. Several other executive branch officials act as advisors to the Telecom Committee. The Executive Order establishes a time frame of 120 days for initial review and, if necessary, an additional 90 days for a secondary assessment. Applications that involve complicated questions may require additional review time. For more information on the Telecom Committee, see CRS Legal Sidebar LSB10848, *National Security Review Bodies: Legal Context and Comparison*, by Stephen P. Mulligan and Chris D. Linebaugh.

[25] 19 F.C.C.R. 473, 490 (2004) ("Further, the Application before us involves the transfer of control of earth station licenses, space station licenses for provision of [fixed-satellite and direct broadcast] service, and wireless licenses, all of which are held, and are to be transferred, on a non-common carrier basis. Thus, we find that the proposed transaction does not involve a 'broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license,' and the statutory provisions of Section 310(b) of the Act do not apply."). Licensing provisions for non-voice, non-geostationary mobile-satellite services (i.e., services covered by GATS but not Section 310(b)) can be found at 47 C.F.R. § 25.135. As described *supra* note 5, other non-common carrier services, such as direct-to-home video, direct broadcast satellite, and satellite digital audio radio, are excluded from GATS.

FCC regulations also govern the agency's review of U.S. or foreign satellite operators' applications to serve the U.S. market by operating a non-U.S. licensed space station.[26] Such applications are subject to national security review under the FCC's "public interest" standard for granting such authorizations.[27] Federal law does not establish deadlines for FCC action on license or market access applications.[28]

In addition to addressing procedures for obtaining initial licenses and market access grants, FCC rules also address license (and market access authorization) renewal,[29] modification,[30] transfer, and assignment.[31]

Summary of H.R. 1338, the SAT Streamlining Act

H.R. 1338, the SAT Streamlining Act, would amend the Communications Act of 1934 to establish a "streamlined" process for FCC licensing of satellite systems. Generally, the Act would establish deadlines for FCC decisions on (1) earth and space station license applications; (2) license modifications; and (3) renewals of licenses, grants of market access, and certain other authorizations. The Act would authorize the FCC to extend these deadlines for national security reasons or in other extraordinary circumstances.[32] The Act would not establish deadlines for FCC action on applications for U.S. market access or modifications to market access authorizations.

The World Trade Organization and Dispute Settlement

The WTO is the 164-member international organization created to oversee and administer multilateral trade rules, serve as a forum for trade negotiations, and resolve trade disputes.[33] The GATS is the relevant WTO agreement that sets forth rules for practices that affect international trade in services.[34] The WTO's dispute settlement mechanism provides a means for WTO members to resolve their trade disputes and may decide whether a WTO member has complied with its WTO obligations.[35]

If a WTO member considered the SAT Streamlining Act to violate the GATS, it could potentially challenge it in a WTO dispute settlement proceeding under the rules and procedures of the WTO Dispute

[26] 47 C.F.R. § 25.137.

[27] FIRST SATELLITE COMPETITION REPORT, *supra* note 5, at 40 ("In evaluating requests from U.S. earth station operators to access a non-U.S.-licensed space station or in-orbit non-U.S.-licensed satellites to provide space segment capacity service to licensed earth stations in the United States, we apply a public interest framework that considers the effect on competition in the United States, spectrum availability, eligibility and operating requirements, national security, law enforcement, foreign policy and trade concerns.").

[28] The FCC has sought comment on how the agency might expedite processing times for license applications. *See* Fed. Communications Comm'n, Proposed Rule, *Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation*, 88 Fed. Reg. 2590–95 (Jan. 17, 2023).

[29] 47 C.F.R. § 25.121.

[30] *Id.* §§ 25.117–118, 25.137.

[31] *Id.* §§ 25.119, 25.137.

[32] The Act would also require the FCC to determine "what constitutes reportable foreign ownership" in the context of reviewing license applications or modification requests for national security concerns. It would also require the FCC to promulgate rules establishing "specific, measurable, and technology-neutral performance objectives" for space safety and orbital debris for certain licensees and market access grant recipients.

[33] *See* Agreement Establishing the World Trade Organization, art. II. The WTO encompassed and succeeded the General Agreement on Tariffs and Trade (GATT), which was established in 1947. For more on the WTO, see CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Cathleen D. Cimino-Isaacs and Christopher A. Casey.

[34] *General Agreement on Trade in Services*, WORLD TRADE ORG., https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm.

[35] *Understanding on Rules and Procedures Governing the Settlement of Disputes*, WORLD TRADE ORG., https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf.

Settlement Understanding.[36] If consultations between the complaining member and the United States failed to resolve the dispute, the complaining member could request that a dispute settlement panel be established to hear the dispute.[37] In ordinary circumstances, if an adverse WTO decision were rendered, the United States would be expected to remove the offending measure, generally within a reasonable period of time, or face the possibility of paying compensation to the complaining member or being subject to sanctions.[38] Such sanctions might include the complaining member's suspension of its application of certain trade concessions to the United States.[39]

As of December 11, 2019, however, the WTO's Appellate Body lost its quorum of three members necessary for the Body to decide appeals of WTO dispute settlement panel decisions and issue final reports.[40] Thus, if a WTO member appeals a panel report, the Dispute Settlement Body (DSB) (i.e., the committee composed of all WTO members that oversees the dispute settlement mechanism) can no longer adopt such reports unless the disputing parties agree to consider the report as final.[41] The DSB also cannot oversee the losing member's implementation of a panel ruling or authorize the prevailing member to engage in trade retaliation if the losing member ignores the panel's recommendations. This situation may persist unless WTO members agree to reform the system or to use an alternate dispute settlement mechanism, such as an interim appeals system, as some members have done.[42]

As a result of these developments, even if a U.S. trading partner prevailed in a dispute over the SAT Streamlining Act, there are significant doubts as to whether the ruling would be enforceable under WTO procedures. In addition, even if the WTO's dispute settlement mechanism ruled that the SAT Streamlining Act was inconsistent with the United States' GATS obligations, the FCC could potentially continue to enforce the law, absent any action from Congress repealing it.[43]

U.S. GATS Obligations

When examining whether the SAT Streamlining Act's deadlines for FCC decisions on satellite license applications—but not market access applications—comport with U.S. WTO obligations, a WTO panel would likely consult two sources of GATS obligations.[44] First, the United States has committed to following general GATS national treatment and market access obligations, as implemented in its Schedule of Commitments incorporating the Basic Telecommunications Agreement, which are analyzed below.[45]

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[36] *Id.* art. 3.

[37] *Id.* arts. 4, 6.

[38] *Id.* arts. 19, 22.

[39] *Id.* art. 22.

[40] Alan H. Price, *Real WTO Reform Now Possible With Demise of Appellate Body*, BLOOMBERG LAW (Dec. 20, 2019). For more on this issue, see CRS Legal Sidebar LSB10385, *The WTO's Appellate Body Loses Its Quorum: Is This the Beginning of the End for the "Rules-Based Trading System"?*, by Brandon J. Murrill.

[41] *See* WTO Dispute Settlement Understanding, art. 16.

[42] The European Union and several other countries (but not the United States) have agreed on an interim appeals mechanism until WTO members agree to reform the Appellate Body. *See* Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes: Addendum, WTO DOC. JOB/DSB/1/Add.12 (Apr. 30, 2020); *The WTO Multi-Party Interim Appeal Arrangement Gets Operational*, EUR. COMM'N, (Aug. 3, 2020), https://policy.trade.ec.europa.eu/news/wto-multi-party-interim-appeal-arrangement-gets-operational-2020-08-03_en.

[43] 19 U.S.C. § 3512(a).

[44] The GATS Telecom Annex contains obligations with respect to WTO members' laws and policies that govern a user's "access to and use of public telecommunications transport networks and services." *Annex on Telecommunications,* WORLD TRADE ORG., https://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm. However, the Annex obligations do not appear to be relevant to this analysis because they do not address authorization of satellite operators that are seeking to provide satellite services. *See id.*

[45] *See* "Nondiscrimination Obligations: National Treatment," "Nondiscrimination Obligations: Most-Favored Nation Treatment,"

Second, the United States has committed to obligations in the GATS Telecom Reference Paper that address transparency of (1) licensing criteria, and (2) agency decisions on license applications.[46] The United States' compliance with the Reference Paper's transparency obligations would depend on how the FCC implements the SAT Act (i.e., whether the agency provides sufficient transparency). However, the Act itself would not appear to violate the Reference Paper's transparency commitments.

Nondiscrimination Obligations and National Treatment

"National treatment" under the GATS generally refers to a requirement that the United States treat services and service suppliers of other WTO members no less favorably than competing domestic services and suppliers.[47] The United States' GATS Schedule of Commitments defines the scope of its national treatment obligations in the Telecommunications Services sector.[48] The United States has committed in its GATS Schedule to accord the full extent of national treatment to service suppliers of other WTO members that are seeking to provide satellite services.[49]

When evaluating whether the SAT Streamlining Act is consistent with U.S. national treatment obligations, a WTO panel would likely examine whether the Act's imposition of deadlines on the FCC's consideration of license applications—but not market access applications—discriminates against foreign suppliers of satellite services by potentially delaying their entry into the U.S. market.[50] This would likely require a panel to consider: (1) whether the Act discriminates against competing foreign service suppliers based on their foreign origin; and (2) whether the Act, even if origin-neutral, effectively reduces competitive opportunities for such service suppliers in its design, structure, and operation, which is known as "de facto discrimination."[51]

Origin-Based Discrimination Analysis

A WTO panel would likely first examine whether the SAT Streamlining Act's deadlines for consideration of licensing applications (but not market access applications) discriminate against foreign service suppliers that are seeking to access the U.S. market through operation of a non-U.S. licensed space station

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and "Market Access Obligations."

[46] *Negotiating Group on Basic Telecommunications*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm.

[47] GATS, art. XVII ("In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers."). The Appellate Body has determined that foreign services and service suppliers are "like" domestic services and services suppliers if they compete with them. Appellate Body Report, *Argentina – Financial Services*, ¶¶ 6.25-6.26, WT/DS453/AB/R (Apr. 14, 2016). This analysis assumes that the foreign suppliers of satellite services are in a competitive relationship with U.S. service suppliers of such services.

[48] United States of America, Schedule of Specific Commitments Supplement 2, GATS/SC/90/Suppl.2 (Apr. 11, 1997).

[49] *See id.* The FCC has stated that "as part of its commitments under the GATS, the United States made market access commitments for all satellite services," except for Direct to Home (DTH) services, Direct Broadcast Services (DBS), and Satellite Digital Audio Radio Services (SDARS). 22 F.C.C.R. 5282, 5988–89 (2007). *See also* WTO Panel Report, *EC—Bananas III*, ¶ 7.293, WT/DS27/R/ECU (May 22, 1997).

[50] Before examining the consistency of a WTO member's measure with the GATS, the Appellate Body has indicated that it will first determine whether the measure is covered by the GATS as one "affecting trade in services." GATS, art. I:1 ("This Agreement applies to measures by Members affecting trade in services."); Appellate Body Report, *Canada—Autos*, ¶¶ 151–67, WT/DS139/AB/R (May 31, 2000). A WTO panel has held that a measure "affects" trade in services when it influences the conditions of competition among service suppliers. WTO Panel Report, *EC—Bananas III*, ¶ 7.280–.285, WT/DS27/R/ECU (May 22, 1997). Licensing procedures affect trade in services because they determine which suppliers may enter the market.

[51] *See, e.g.*, WTO Panel Report, *EU – Energy Package*, ¶¶ 7.482, 7.486, 7.744, WT/DS476/R (Aug. 10, 2018).

based on the supplier's foreign origin. This would occur if the deadline provisions modify the conditions of competition in the U.S. market to the detriment of foreign suppliers of satellite services as compared to competing domestic service suppliers.[52]

A WTO panel would likely conclude that the SAT Streamlining Act does not negatively impact foreign suppliers' ability to compete with domestic service suppliers. A satellite operator can choose to apply for a license in any country. Both foreign and domestic service suppliers that are seeking U.S. market access through operation of a non-U.S. licensed space station would potentially be affected by the Act's lack of statutory deadlines. For example, if a domestic service supplier becomes licensed in a foreign jurisdiction to operate a space station, then it would be required to seek an FCC grant of market access—without the potential benefit of statutory deadlines—to serve the U.S. market.[53] Conversely, a foreign service supplier might benefit from the expedited timelines in the SAT Streamlining Act when seeking an FCC license to operate a space station, subject to any additional time required for national security review.[54] Thus, the SAT Streamlining Act's statutory deadlines do not appear to discriminate against foreign service suppliers on the basis of their foreign origin in violation of U.S. GATS national-treatment obligations. Rather, the Act appears to distinguish between satellite service suppliers on the basis of where they choose to become licensed to operate the space station that they would use to serve U.S. customers.

De Facto Discrimination Analysis

Although the SAT Streamlining Act would not appear to discriminate against foreign service suppliers based on their origin, WTO panels have ruled that a WTO member's origin-neutral laws or policies may discriminate *de facto* against foreign service suppliers when their "design, structure, and expected operation" would modify the conditions of competition to the detriment of those suppliers.[55] Generally, a U.S. satellite operator will choose to apply to the FCC, and a foreign operator will choose to apply to the equivalent agency in their home country and seek U.S. market access. This raises the question of whether the Act's lack of deadlines for FCC action on market access applications would effectively discriminate against foreign suppliers of satellite services.

The SAT Streamlining Act would not appear to result in *de facto* discrimination. Although the SAT Streamlining Act does not specify a deadline for FCC review of market access applications, the Act would not necessarily require a longer time frame for such review than for review of original license applications. In practice, the FCC might spend an equal (or less) amount of time reviewing some market access applications than it spends reviewing some original license applications.[56] A WTO panel could thus find that the Act does not discriminate *de facto* against foreign service suppliers.

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[52] Appellate Body Report, *Argentina – Financial Services*, ¶¶ 6.103–6.104, WT/DS453/AB/R (Apr. 14, 2016). *See also* WTO Panel Report, *EU – Energy Package*, ¶ 7.744, WT/DS476/R (Aug. 10, 2018).

[53] *See generally* 47 C.F.R. § 25.137.

[54] Differential treatment of foreign service suppliers with respect to national security reviews would likely be justified under the GATS national security exception. GATS, art. XIV *bis*. *See also The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector—Frequently Asked Questions*, U.S. DEP'T OF JUST., https://www.justice.gov/nsd/committee-assessment-foreign-participation-united-states-telecommunications-services-sector#3 ("Our telecommunications networks are increasingly attractive targets for espionage, sabotage, and other forms of malign foreign activity. These activities could threaten the ability of our networks to provide crucial support to critical infrastructure and emergency services and to securely store and communicate vast amounts of sensitive information."). In addition, because the United States has exempted the Communication Act's restrictions on foreign ownership of common carrier licensees from its GATS market access obligations, a WTO panel might find that the United States retains implicit authorization to subject discretionary waivers of these restrictions to national security review. *See* United States of America, Schedule of Specific Commitments Supplement 2, GATS/SC/90/Suppl.2 (Apr. 11, 1997).

[55] WTO Panel Report, *EU-Energy Package*, ¶¶ 7.482, 7.486, WT/DS476/R/ (Aug. 10, 2018).

[56] When a foreign operator seeks a license or market access authorization, the operator's application might require additional

It is possible that the FCC's implementation of the Act might prompt GATS concerns if the agency's review of foreign satellite operators' market access applications was consistently lengthier than its review of domestic license (or market access) applications for reasons unrelated to legitimate national security concerns.[57] However, because Congress has not enacted the Act, it is difficult to speculate as to how the agency might implement it. The SAT Streamlining Act itself would not appear to violate U.S. national treatment obligations by discriminating against foreign suppliers of satellite services in its design, structure, or expected operation.[58]

Market Access Obligations

GATS Article XVI obligates the United States to grant foreign suppliers of satellite services access to the U.S. market in accordance with the terms, limitations, and conditions in its Schedules of Commitments.[59] The exceptions in the U.S. Schedule allow the United States to restrict foreign ownership in a U.S. common carrier licensee to implement Section 310 of the Communications Act of 1934.[60] However, as noted, most satellite licenses are non-common carrier licenses.[61] The exception in the U.S. Schedule does not appear to apply to non-common carrier licensees, and thus the United States would be obligated to accord the full extent of market access provided for in the GATS to these licensees.[62]

Nonetheless, the GATS market access obligations would not appear to be relevant to the SAT Streamlining Act's deadlines for FCC action on licenses but not market access applications. WTO tribunals have ruled that the list of prohibited barriers to market access in the agreements is "exhaustive."[63] The prohibited market access barriers are limitations on: (1) "the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;" (2) the "total value of service transactions or assets"; (3) "the total number of service operations or on the total quantity of service output"; (4) "the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ"; or (5) "the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment."[64] They also include

national security review. However, the GATS allows for such additional review. *See* sources cited *supra* note 54.

[57] *See* Appellate Body Report, *European Communities–Regime for the Importation, Sale and Distribution of Bananas*, ¶¶ 243–44, WT/DS27/AB/R (Sept. 9, 1997).

GATS Article VI(3) provides that when "authorization is required for the supply of a service on which a specific commitment has been made, the [WTO member's relevant government agency] shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application." However, the Article does not define "reasonable period of time," and it does not appear that any WTO panel has considered the issue.

[58] For similar reasons, the SAT Streamlining Act would not appear to discriminate against foreign service suppliers seeking modifications to their market access authorizations at the FCC. The Act's deadlines for modifications do not appear to discriminate on the basis of origin but instead draw a distinction based on where the satellite operator is licensed. In addition, the Act does not require the FCC to process market access grant modifications according to a longer time frame.

[59] GATS, art. XVI(1).

[60] *See* United States of America, Schedule of Specific Commitments Supplement 2, GATS/SC/90/Suppl.2 (Apr. 11, 1997). As noted, under domestic law, the FCC may waive such restrictions and permit indirect foreign ownership of a licensee on a case-by-case basis after a national security review. *See* "The Federal Communications Commission's Role in Licensing Commercial Satellite Systems."

[61] *See supra* note 25 and accompanying text.

[62] *See* United States of America, Schedule of Specific Commitments Supplement 2, GATS/SC/90/Suppl.2 (Apr. 11, 1997).

[63] *E.g.*, WTO Panel Report, *China – Publications and Audiovisual Products*, ¶ 7.1353, WT/DS363/R (Aug. 12, 2009).

[64] GATS, art. XVI(2).

"measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service."[65]

Because the SAT Streamlining Act's deadlines for FCC action on licenses would, at most, potentially result in some delay of FCC action on market access applications, the Act would not appear to impose any of the listed barriers on foreign service suppliers seeking access to the U.S. market through operation of a non-U.S. licensed space station. Consequently, the Act would not appear to violate U.S. GATS obligations related to market access.

[65] *Id.*