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October 04, 2010

Via Electronic Mail to www.regulations.gov

Ms. Gloria Blue

Executive Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20036

RE: USTR's 2011 National Trade Estimate on Foreign Trade Barriers report. Countries/regions covered in this submission include the Brazil, China, the European Union, and India.

Dear Ms. Blue:

In response to the Federal Register notice issued on August 6, 2010, the Telecommunications Industry Association (TIA) and its member companies would like to thank you for the opportunity to comment on the 2011 National Trade Estimate (NTE) on Foreign Trade Barriers report. TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshows, business opportunities, market intelligence and world-wide environmental regulatory analysis. TIA continues to facilitate the convergence of new communications networks while working for a competitive and innovative market environment. Obstacles still remain for U.S. exports of goods and services around the world, and we would like to highlight the following trade barriers faced by TIA members:

Brazil

WTO Information Technology Agreement
TIA strongly encourages Brazil to join the WTO's Information Technology Agreement (ITA). This agreement removes tariffs on a broad range of ITA-covered products, including telecommunications equipment, which reduces costs and stimulates demand. The ITA would lower the costs of telecommunications equipment to Brazilian enterprise purchasers and the end consumer, thus freeing up resources to increase connectivity and enable the Brazilian economy to more quickly realize the economic and social benefits of expanded use of ICT in Brazil. This is especially important as Brazil seeks to establish its National Broadband Plan and look for ways to promote the expansion of broadband connectivity throughout the country.

Complexity of Tax System
The inherent complexities of the Brazilian tax system pose numerous challenges to foreign companies that seek to increase their business with Brazil. The current taxation system discourages investment and development of the ICT industry through its complexity and by imposing one of the world's highest tax rates on telecommunications services. Special attention should be given to tax disputes among the various states (including unconstitutional

discriminatory taxes imposed by state governments), the transfer pricing guidelines, the multiple cascading taxes, the constant changes in the interpretation of tax laws and many other tax-related difficulties. As a concrete example of these difficulties, TIA notes the series of restrictions imposed on the export and re-importation of imported equipment that is being sent abroad for repair. The requirements are so laborious and complex that they create significant challenges for companies' ability to provide quality services to customers in Brazil due to significant delays in the export and re-importation process. Brazil should address the problems created by the tax system in order to help achieve the goals of its forthcoming National Broadband Plan.

Promotion of Domestic Technology

There is a growing trend in Brazil to promote domestic manufacturing at the expense of foreign goods. One example, the newly revitalized Telebras, which is a state owned company created to offer backbone/backhauling services for the National Broadband Plan, recently issued a Public Consultation explicitly stating that it may disqualify "foreign companies who do not function in the Country," from supplying dense wavelength division multiplexing (DWDM) equipment. TIA believes that operators, not governments, are best positioned to decide which technologies most suit the needs of their customers and that Brazilian consumers and businesses should benefit from competition and have access to world-class technologies, irrespective of where they are produced.

People's Republic of China

U.S. exporters and investors still see China as a key destination. While U.S. exports of information and communications technologies to China are increasing, TIA remains concerned about lack of progress in several key areas.

Voice over Internet Protocol (VoIP): TIA believes technology neutrality is important for promoting competition and ensuring that consumers are empowered to choose technologies that best suit their needs. China's policies restrict the use of VoIP to closed user groups that do not allow for origination or termination of IP phone calls on the Public Switched Telephone Network (PSTN). TIA encourages China to allow all VoIP providers to offer services that connect to the PSTN on an unlicensed basis, and eliminate joint venture requirements that apply to non-Chinese companies who wish to offer VoIP services in China.

Imports and Import Discrimination

China continues to struggle with economic inefficiencies, exacerbated by preferences for domestic industries and pricing procurement practices that discriminate against imports. Specifically, it appears that in some telecom procurements, companies are ignoring published criteria for bid evaluation, resulting in the selection of "national" champions, which are state-invested enterprises. As a result of these practices, foreign companies are at a disadvantage when bidding against Chinese suppliers.

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TIA is pleased that China has taken steps to join the WTO Government Procurement Agreement (GPA). The GPA principles of openness, transparency and non-discrimination will benefit China and the United States, as suppliers of goods and services in both countries seek business opportunities in each others' markets. TIA urges China to work with USTR to make certain that its July 2010 offer on government procurement is in accordance with its domestic procurement law and ensures that its accession package is in agreement with international norms as negotiations progress.

European Union

WTO Information Technology Agreement

TIA and its members welcome the WTO dispute resolution panel's July 2010 ruling that upheld the U.S. claim that the European Union's (EU) imposition of duties on a variety of products is a violation of its tariff commitments and that the products should remain free from tariffs, as they are covered by the Information Technology Agreement (ITA). This ruling responds to USTR's May 28, 2008, formal complaint against the EU in the WTO over its imposition of up to a 14 percent tariff on three ITA covered products – set-top boxes, flat computer screen monitors, and multi-function printers.

India

Despite the global economic slowdown, India continues to be one of the world's fastest growing ICT markets. Between August 2006 and July 2010, India's total wireline and wireless telephone subscribers increased from approximately 164 million to over 688 million, representing almost 320% growth in four years. In March 2010, India reached a new high, adding over 20 million new mobile phone subscribers in that month alone. While India has undertaken a number of policy initiatives to open the market, areas of concern remain.

Internet Protocol (IP) –Enabled Services

Although the Telecommunications Regulatory Authority of India (TRAI) has recommended (August 2008) to the Department of Telecommunications (DoT) to allow VoIP to connect to the PSTN, the current policy only allows VoIP to be used in closed user groups (CUGs), or just among sites. For example, if a company has two offices, they are allowed to link using an IP trunk and VoIP, but not out to the PSTN. This causes companies to maintain separate systems for internal and external communications, increasing establishment costs. If India permits VoIP to connect to the PSTN, the requirement of users to have a dual-investment in infrastructure would be eliminated. Additionally, enterprise users would realize enormous savings in the cost of moving telephones or adding telephones, and company investment in Internet communications would realize a higher return because more applications could be managed on a single infrastructure. TIA recommends that the Indian government follow TRAI's recommendations on Internet telephony and establish a time-frame for addressing this issue.

Licensing and Regulatory Efficiency

Capitalization and Licensing Fees: TIA urges India to reevaluate the basis for license application fees, capitalization requirements, and bank guarantees. As a general matter, application fees should reflect the cost of processing an application. While bank guarantees are appropriate in limited cases, such requirements should reflect the scope of business intended to be offered, and should be a temporary, not permanent requirement. India should seek to reduce high licensing fees and capitalization requirements as they reduce the amount of resources available to service providers to invest in building out their networks and connecting India's vast population.

Conclusion

TIA wishes to express its appreciation to USTR for its efforts on behalf of the U.S. ICT industry. It is important that the United States continue its efforts, both bilaterally and multilaterally, to bring about a fully competitive world market for ICT equipment. In addition to addressing the issues cited above, this can be accomplished through the enforcement and expansion of existing trade agreements, as well as the negotiation of new trade agreements.

If you have any questions about this document or if TIA can assist you in other ways, please do not hesitate to contact Nick Fetchko at (202) 346-3246 or nfetchko@tiaonline.org.

Sincerely,

Grant E Seiffert

Grant Seiffert
President