



December 14, 2011

Via Online Submission www.regulations.gov

Donald W. Eiss, Trade Policy Staff Committee
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the U.S. Trade Representative
1724 F Street, N.W.
Washington, DC 20508

**TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

HEADQUARTERS

2500 Wilson Boulevard
Suite 300
Arlington, VA 22201-3834
+1.703.907.7700

D.C. OFFICE

10 G Street, N.E., Suite
550 Washington, DC 20002
+1.202.346.3240 MAIN
+1.202.346.3241 FAX

tiaonline.org

RE: USTR's 2012 1377 Report. Countries/regions covered in this submission include Argentina, Brazil, China, Costa Rica, the European Union, India, Indonesia, and the Republic of Korea.

Dear Mr. Eiss:

In response to the Federal Register notice issued on November 18, 2011, the Telecommunications Industry Association (TIA) and its hundreds of member companies would like to thank you for the opportunity to submit comments regarding compliance with U.S. telecommunications trade agreements.

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. Since 1923, the association has facilitated the convergence of new communications networks while working for a competitive and innovative market environment.

This submission references the following agreements:

- World Trade Organization (WTO) Basic Telecommunications Agreement (BTA) and the associated reference paper
- WTO General Agreement on Trade in Services (GATS)
- WTO Government Procurement Agreement
- WTO Information Technology Agreement (ITA)
- WTO Technical Barriers to Trade (TBT) Agreement
- North American Free Trade Agreement
- Agreement on Trade-Related Investment Measures (TRIM) and Annex
- General Agreement on Tariffs and Trade (GATT) 1994
- U.S.-Korea Free Trade Agreement

Please see commentary about specific markets below.

Argentina

Issue 1: Non-Automatic Licensing (NAL) Measures

Impact: This year, Argentina added hundreds of products to its list of imports subject to non-automatic licensing (NAL) measures. The list now stands at 4,000 products in 600 Harmonized Tariff Schedule lines, including smartphones and laptops. While NALs are permitted under the WTO, this is true only when licenses are processed within 60 days and are not trade-distorting. In Argentina, licenses are not granted in less than 60 days unless affected companies meet unrelated government demands, such as agreeing to export or to manufacture locally.

Recommendation: TIA urges Argentina to comply with its WTO obligations and to expeditiously process NALs in a manner that is not trade-distorting.

Brazil

Issue 1: Complex tax system.

Impact: 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 in Brazil through its high degree of complexity and by having one of the highest tax rates in the world on telecommunications services.

Recommendation: TIA supports and encourages Brazil to join the WTO's Information Technology Agreement, which would reduce the price of ICT products in Brazil. Brazil should explore simplifying its tax system to be better aligned with other tax systems observed globally and should explore streamlining the legal process under which taxpayers can challenge assessments raised by the Brazilian tax authorities.

Issue 2: Testing and Certification.

Impact: TIA is concerned about Brazilian regulator Anatel not accepting test data generated outside of Brazil, except in those cases where the equipment is too physically large and/or costly to transport. Therefore, virtually all testing for IT/Telecom equipment (including everything from cell phones to optic cables) must be physically done in Brazil. This requirement that testing be done "in country" limits TIA members' ability to service customers based on a "business case," in the interest of minimizing certification time and cost.

Recommendation: TIA recommends that the United States and Brazil negotiate and conclude a Mutual Recognition Agreement under the CITELE framework to reduce technical barriers to trade between the two countries.

Issue 3: Government Procurement

Impact: According Decree 7174/2010, ICT bids for goods and services considered "strategic" may be limited to those with technology developed in Brazil. Furthermore, recently the Brazilian government has been announcing and implementing a series of defensive trade measures and policies to boost manufacturing, promote innovation, and research and development. Several aspects of these measures may disadvantage foreign players.

Recommendation: Industry supports efforts to encourage Brazil to accede to the WTO Government Procurement Agreement to increase transparency in the procurement process.

China

Issue 1: Technical Barriers to Trade

Impact: In 2003, the China National Certification and Accreditation Administration (CNCA) implemented China's CCC certification policy which requires a factory inspection before issuance of the CCC certificate. The policy's intention, in principle, is that all initial factory inspections should be conducted by the Chinese certification organizations themselves. Only under extreme circumstances (*i.e.*, a delay in receiving products impacting a major project in China) will CNCA allow the accredited certification organizations to subcontract the initial factory inspection to a foreign organization. This policy continues to create serious delays for U.S. manufacturers in obtaining the CCC certificate due to China's cumbersome internal approval process for overseas trips and related U.S. visa process issues.

China has engaged within the Worldwide System for Conformity Testing and certification of Electrical Equipment (IECEE) Conformity Body (CB). However, laboratories in China are not making the best use of these international programs, requiring additional samples and repeat testing, resulting in substantial delays. The product testing and certification process in China is significantly more difficult than in other markets, which increases the costs of U.S. products for sale in the Chinese market.

TIA recognizes that China has made efforts to conform to its obligations under the WTO Technical Barriers to Trade (TBT) Agreement to base its technical regulations on international standards. However, China continues to define "international standards" as only those developed in international forums like the ISO, IEC, and ITU. China's narrow interpretation and acceptance of "international standards" is inconsistent with the spirit of Annex III of the TBT Agreement, and negatively affects many U.S. and other global manufacturers that rely on international standards developed outside of the Geneva-based organizations.

Recommendation: TIA asks the Chinese government to improve the application of international conformity body scheme reports by national laboratories and eliminate the need for additional samples and redundant testing. TIA also urges China to recognize international standards beyond those developed by the Geneva-based organizations in a manner consistent with the spirit of Annex III of the WTO TBT agreement.

Issue 2: Technical Barriers to Trade – Indigenous Innovation Program.

Impact: TIA recognizes China's desire to foster domestic innovation; however, the country's current industrial policies run counter to its commitments at the May 2011 Strategic & Economic Dialogue (S&ED) that both countries would "take further steps to liberalize global trade and investment, and to oppose all forms of trade and investment protectionism." China's policies have indicated a troubling trend to mandate standards (such as requirements on information security product certification and WAPI) that are developed outside of international standard setting processes. Most recently, TIA is concerned about China's development of the Enhanced Ultra-High Throughput (EUHT) standard, also known as the UHT (Ultra-High Throughput) standard. In June 2011, the Chinese Communications Standards Association began a process to move forward a new Wireless Local Area Network (LAN) standard called EUHT as a Chinese competitor for the internationally recognized Institute of Electrical and Electronics Engineer's (IEEE's) 802.11 (AKA WiFi) suite of standards. Despite significant objections based on procedural and technical compatibility grounds, the CCSA pushed

forward with finalizing the standard, sending the standard to MIIT for final adoption as a Chinese national standard. Despite assurances by MIIT that the EUHT standard would be a voluntary standard, industry is concerned that, as in the case of WAPI in prior years, MIIT may discriminate against adoption of current and future 802.11 standards in order to promote EUHT and UHT expressly or indirectly by making type approval for telecom equipment and consumer products contingent upon inclusion of the standard. TIA is further concerned that although EUHT is currently being considered as a voluntary industry standard in China, its future may not be determined by the market but rather by government mandate and/or preference. The many policies that comprise China's indigenous innovation drive create a structural barrier for market access and the ability of non-Chinese firms to compete on a level playing field in China.

Recommendation: TIA urges the Chinese government to develop and implement policies in a manner that maximizes private sector participation and cooperation is non-discriminatory, recognizes established global standards, respects intellectual property rights, avoids technology mandates and recognizes the global and collaborate nature of research and development.

Issue 3: Government Procurement– Indigenous Innovation Program.

Impact: 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.

TIA and its members appreciate the work of the U.S. and Chinese governments in the context of the S&ED to address industry concerns over the 2009 announcements by the Ministry of Science and Technology (MOST), the National Development and Reform Commission (NDRC) and the Ministry of Finance (MOF) to establish an indigenous innovation product list for the purposes of government procurement that would discriminate against foreign companies. Despite assurances made by President Hu's January 2011 visit and China's commitment in the May 2011 S&ED to not create a product catalogue list of indigenous innovation products, we understand that provinces within China have not come in line with the national commitment and are moving forward with establishing such lists, which pose significant barriers to companies trying to access government procurement contracts. Specifically, in May 2011, the Guangdong provincial government published new indigenous innovation product accreditation legislation stipulating that products certified by the Science and Technology Department will be added to a government procurement catalog. As a result of the 2011 JCCT, TIA understands that the Chinese government on a national level has officially repudiated the establishment of such lists at the provincial level and has officially notify the public of its decision to not move forward with such product lists.

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 other's

markets. TIA looks forward to reviewing China's robust, second revised offer, which should include sub-central entities, to the WTO Government Procurement Committee before the Committee's final meeting in 2011.

Recommendation: TIA joins other global associations in urging China to stay true to its S&ED and JCCT commitments and halt implementation of its Indigenous Innovation Product Catalogue. Additionally, 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.

Issue 4: Type Approval, Certification and Standards (Technical Barriers to Trade Agreement).

Impact: China's current certification requirements for telecommunications equipment conflict with its WTO obligations of limiting imported products to no more than one conformity assessment scheme and requiring the same mark for all products (Article 13.4(a) of China's WTO Accession). China has three different licensing regimes—the Radio Type Approval, the Network Access License, and the China Compulsory Certification. Therefore, for a given piece of equipment, it can cost between U.S. \$30,000-35,000 to test for all three licenses (NAL, RTA, CCC). MIIT indicates on its website that it processes approximately 4000 applications a year, which represents approximately \$140 million in testing fees a year.

Moving in the right direction, TIA welcomed the National Development and Reform Commission's (NDRC) regulation No. 890[2011], effective June 2011, which reduced the testing fees (NAL, CCC, and Radio Type Approval (RTA)) for mobile phones by approximately 40 percent. The regulation removed battery performance testing from the NAL, reduced the number of testing categories from 30 to 19, and specifically stated that MIIT and CNCA should "avoid duplication of testing and charges." However, under China's Network Access License (NAL) unnecessary testing requirements still exist and contribute to delays in product market entry and increased costs of companies seeking product approval through the NAL process. Additionally, conditioning CCC certification on approval of NAL testing adds unnecessary delays and costs into the entire certification process. Ideally, China should eliminate the NAL as a product licensing requirement. However, recognizing the structural/legal problems that would pose, TIA and its members recommend that, in the interim, China reduce the number of tests required by the NAL to a bare minimum. Furthermore, TIA recommends dissociating the CCC certification process from other certifications, such as the NAL certification process. As China's telecommunications operators are already requiring their own tests, it would be more appropriate for the network operators in China to establish their own testing and certification needs tailored to their unique technological parameters.

Recommendation: In order to increase business certainty, reduce redundant testing requirements and bring China into compliance with its WTO commitments, TIA recommends that China 1) as part of reducing these NAL testing requirements, eliminate mandatory testing for specific enhancement functions such as WAPI and take a technology neutral approach that does not promote certain technologies; 2) eliminate functionality testing from the NAL since the functionality of product is a consumer choice and therefore should be tested by service providers; 3) publish and maintain an easily available web-based list of testing requirements and

specifications, which changes to the list be notified via a public announcement and in accordance with WTO notification procedures; 4) negotiate and conclude with the United States a Mutual Recognition Agreement for testing a conformity assessment; and (5) disassociate the CCC certification process from the other certifications, such as the NAL certification process.

Issue 5: Technology Neutrality

Impact: China's policies restrict the use of Voice over Internet Protocol (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. Furthermore, China telecommunications carriers should be free to select 3G and 4G technologies based on their business interests and not encouraged by the government to use certain technologies.

Recommendation: TIA urges China to adopt the principle of technology neutrality, so that all technologies are given the chance to compete in the marketplace.

Issue 6: Independent Regulator

Impact: Applying laws and regulations from multiple regulatory authorities can lead to overlapping and sometimes contradicting regulation over the same service, potentially creating market uncertainty and confusion that deter investment and market development.

Recommendation: TIA urges China to comply with its WTO Reference Paper Section 5 commitments establishing an independent regulator. Preferably, such a regulator would be the central authority governing the converging telecom, Internet media, and broadcast industries.

Costa Rica

Issue 1: Testing and Certification

Impact: Costa Rica's telecommunications regulator, La Superintendencia de Telecomunicaciones (SUTEL), mandates retesting and recertification of mobile handset hardware after each software or firmware update. While, SUTEL has reduced costs and streamlined procedures for retesting and certification, this procedure is burdensome, unique to Costa Rica, and is not required by any other regulator worldwide. Software and firmware updates allow users to protect their equipment from threats, improve their experience with their phones, computers and other equipment, and potentially avoid having to visit repair centers in the future. Such updates do not require any re-testing or re-certification by regulators as a matter of international best practice.

Recommendation: Costa Rica should follow international procedures for the testing and certification of mobile handsets and other ICT products. Elimination of this requirement will remove an artificial regulatory barrier to user access to the latest versions of their equipment.

European Union

Issue 1: WTO Information Technology Agreement

Impact: 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). While the WTO's decision is favorable to the U.S., TIA is concerned about reports of the EU still applying tariffs, although less, on multifunction machines. Furthermore, while the EU has taken some steps to come into compliance and provide duty-free import of products such as set-top boxes and flat-panel displays, it is still unclear whether these products will actually entry duty free because the EU has not provided explicit guidelines to customs officials for this allowance. At this time, set-top boxes and flat-panel displays still incur tariffs.

Recommendation: The EU should quickly comply with the WTO's Dispute Settlement Board's (DSB) recommendations and rulings from its September 2010 meeting to ensure that all ICT products are treated fairly under the ITA.

India

Issue 1: Department of Telecom Security-Related License Amendments

Impact: Beginning in December 2009, India imposed a series of increasingly onerous license amendments on telecommunications operators governing the procurement of telecommunications equipment and software. These successive regulations instituted transfer of technology requirements on commercial procurements with criminal penalties for non-compliance, India nationality requirements for network maintenance engineers, and a mandatory security agreement required between telecommunications operators and vendors that included escrowing of source code, among other troubling provisions.

In June 2011, the Indian government reversed course and issued a revised, more business-friendly set of regulations. The removal of the mandatory technology transfer requirements, the mandatory 3rd party escrow requirements, and the mandatory contractual terms represent a much-needed step forward in improving the regulatory approach to securing India's telecommunications networks in line with global best practices and standards. As a result, our member companies are now able to compete on a more equitable footing in this growing market, supporting job creation, economic growth and innovation here in the United States.

While the revised license amendment represents important improvement, certain elements of the revised regulations are concerning due to their deviation from global practice whilst others require clarification to understand how they will be implemented to ensure that these do not become stumbling blocks or have unintended consequences. Of primary concern is the expected implementation of mandatory in-country security assurance testing beginning April 1, 2013. While we understand that the Indian government may feel products tested locally may provide greater security assurance, there is no evidence that the geography of development or testing of a product corresponds with the level of assurance provided by the product.

Furthermore, the revised regulations require that the vendor, through its agreement with the telecommunications service provider (TSP), allow the TSP, licensor/DoT, and or its designated agencies to inspect the hardware, software, design, development, manufacturing facility and supply chain, and subject all software to a

security/threat check any time during the supply of equipment. Given the proprietary and sensitive issues surrounding the design of products, this provision creates concerns as to the intrusive nature of such a request into the intellectual property rights, legal obligations and business operations of vendors. In addition, such inspections will be time consuming, costly, and overly burdensome, and will likely negatively impact a vendor's ability to effectively and efficiently get products into the marketplace.

Last, the revised regulations establish penalties for "inadvertent inadequacy/inadequacies in precaution" and "inadequate measures, act of intentional omissions, deliberate vulnerability left into the equipment or in case of deliberate attempt for a security breach." The amendment provides for the imposition of a strict liability penalty in addition to possible "blacklisting" of a vendor from the Indian market. These provisions have a potentially significant adverse impact on telecommunications service providers and vendors. First, the concept of what would constitute adequacy remains undefined in the amendment. We assume this determination would be left to the discretion of a five member committee to identify and define. This system presents several concerns: 1) the ability to achieve a consistent and predictable definition of "adequate;" 2) the composition and expertise of the five-member panel, how they are appointed and whose interest they represent; 3) the process for conducting an investigation into the breach and determining adequacy; 4) the ability for a service provider or vendor to effectively respond to an allegation of an intentional omission or deliberate vulnerability; and 5) there is no appeal mechanism. Unfortunately, there is very little information provided on the legal due process that would be involved in making a determination in these instances. The lack of clear judicial procedures and rights of appeal, create regulatory uncertainty that could create unforeseen complications for DoT, vendors, and TSPs in the future.

Recommendation: TIA urges India to adopt global practices that serve to promote trade and investment as it works through the implementation of these regulations and find practical and effective solutions to issues of 1) in-country security assurance testing beginning April 1, 2013; 2) facility inspections; and 3) the blacklisting of products due to a security breach. Additionally, TIA continues to urge the Government of India to seek and consider further stakeholder input on a path forward using international best practices and standards, including establishing a public-private partnership framework to address evolving security concerns going forward. These approaches will permit alternative security mechanisms that do not discriminate against U.S. and other non-Indian equipment and software suppliers. By doing so, TIA believes the Government of India will better enhance the security of Indian telecommunications networks and services while better ensuring access by its citizens to the best information and communication technologies the world has to offer.

Issue: 2: Encouraging Domestic Manufacturing/Government Procurement Preferences (Draft National Policies on Electronics, Information Technology and Telecommunications)

Impact: TIA is very alarmed that India is seriously contemplating policy approaches that would reverse the pro-growth and competition policy trajectory that has benefitted India in favor of policies that would seek to make India's ICT market less competitive and establish barriers to investment. The proposed

provisions in the Draft National Policies on Electronics, Information Technology and Telecommunications, along with the recommendations proposed to the Department of Telecommunications (DoT) by the Telecommunications Regulatory Authority of India (TRAI) to encourage domestic manufacturing of telecommunications equipment, and the Planning Commission's draft procurement preferences for electronic products are all very problematic as written.

Specifically, those policy recommendations pushing for mandatory national standards, incentives based on inclusion of local content in ICT procurement, incentives for exports of ICT, allocation of spectrum for indigenous equipment, and the leverage of domestic market demand to increase local manufacturing likely will be counterproductive to the Indian economy and/or run afoul of India's international obligations.

More generally, we are concerned that the Ministry of Communications and Information Technology (MCIT) is considering policies that will not enable it to achieve some of its legitimate objectives. Innovation is increasingly collaborative and cross-border, and the ICT industry is based on a complex, global supply chain. Attempts to develop an entire domestic ICT infrastructure for security and economic reasons by using protectionist trade measures will probably fail. Indeed, closing off parts of its market to foreign ICT products through preferred market access provisions or other market distorting mechanisms, will likely reduce, not increase, both India's competitiveness in the technology sector and the security of its own ICT digital products and networks.

In addition to the draft policies, TRAI bases its recommendations on establishing a preference program for domestically manufactured products on a belief that government licensed entities, including private telecommunications service providers, can be treated as government entities as it relates to their procurement practices. This assertion is clearly contradicted by the WTO's rules, which state under Article III of the General Agreement on Tariffs and Trade (GATT) that generally requires that imported products be treated no less favorably than domestic products. The TRAI recommendations' assertion that entities licensed by the government can be categorized as "government" for the purposes of procurement policies is not supported by the WTO.

In addition to the negative consequences for meeting India's ICT connectivity goals and hampering its ability to benefit from global collaboration, these policies run counter to India's longstanding international trade commitments under the WTO, its national treatment obligations under the GATT, and its G20 pledge in 2008 not to increase barriers to trade. Non-discriminatory, technology neutral and incentive-based policies are preferable to discriminatory policies that favor one producer over another.

Recommendation: TIA encourages the Government of India to reject, preference policies, quotas, and other trade barriers that run counter to the market opening reforms that India has implemented and which provided the catalyst for the unprecedented economic growth the country has experienced in recent years. Furthermore, TIA strongly counsels that India adopt global standards rather than adopting mandatory national standards, which will inhibit India's long-term growth and potentially run counter to WTO TBT provisions.

Issue 3: Freedom to Use Strong Encryption- Technology Neutrality

Impact: TIA urges India to adopt policies allowing the use of strong encryption algorithms that have been reviewed by international experts for robustness and security assurance to protect corporate and personal information online. The freedom to use strong encryption is a global standard for securing information online, such as confidential business information, financial information, online transactions and internal government communications, from intrusion by hackers, thieves, competitors and other wrongdoers.

Recommendation: TIA urges the Government of India to amend its current encryption policy to allow for more robust encryption which will enable India's rapidly growing IT and BPO industries that rely on strong encryption to secure their global clients' confidential information. India should adopt policies that protect the freedom to use strong encryption online and, consistent with global practice; do not set limits on the type of encryption technologies employable by the private sector.

Issue 4: Internet Protocol (IP) Enabled Services.

Impact: 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.

Recommendation: TIA recommends that the Indian government follow TRAI's August 2008 recommendations on Internet telephony and establish a time-frame for addressing this issue.

Issue 5: Satellite Service Access.

Impact: To sustain communications services and applications, companies and end-users rely on robust infrastructure and the ability to select the technology and provider based on cost, effectiveness and availability. This ability to source the best-suited infrastructure for a given application or service enhances the resulting service and may advance its service launch or reduce consumer costs. For satellite infrastructure, the U.S. and many WTO members have adopted policies that permit users of satellite services the flexibility to work directly with any satellite operator that has the ability to serve them, without constraint by government preferences.

Recommendation: TIA encourages India to adopt such an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider and technology that best suits their business requirements.

Indonesia

Issue 1: Barrier to Trade and Non-discrimination.

Impact: The Indonesian Ministry for Communications and Information Technology issued two decrees, a wireless broadband decree and a telecommunications decree, that place restrictive local content requirements and sourcing requirements on service providers. The "wireless broadband decree" requires local content of 30 to 50 percent in the wireless broadband sector. The

“telecommunications decree” requires all service operators to spend 35 percent of their capital expenditures on domestically manufactured equipment. Currently, at least 40 percent of the equipment must be locally sourced, but within the next five years it is expected to increase to 50 percent. These provisions are reiterated in Article 6 of the 2011 decree on the use of the 2.3 GHz Radio Frequency Band (19/PER/M.KOMINFO/09/2011).

Indonesia’s Trade Ministry released a draft Trade Bill, which in its Article 10 promotes domestic products. It is unknown how the Government intends to fully implement Article 10 if adopted or in what manner domestic industry would be provided with preferences. The article would seem to provide a legal basis for import substitution and local content requirements and encourages the creation of barriers to trade and non-discrimination. Use of this Article in sectors such as telecommunications where development and production is global in nature may hinder Indonesia’s national competitiveness.

Recommendation: TIA urges the government of Indonesia to remove the capital expenditure requirements and give service operators the freedom to choose the technology solutions that are most appropriate for their business. These types of restrictions ignore the global nature of technology development and production and will hinder Indonesia’s ability to efficiently and effectively build out its telecommunications network.

Issue 2: Technology Neutrality.

Impact: Indonesian regulators have allocated spectrum in a non-internationally harmonized manner to benefit domestic manufacturers. This calls into question Indonesia’s commitment to technology neutrality under the TBT Agreement. Recently, Indonesian regulators have relaxed such rules associated with the 2360 – 2390 MHz band ((19/PER/M.KOMINFO/09/2011).

Recommendation: Indonesia should build on recent positive developments to follow international best practices and allocate spectrum on a technology neutral and an internationally harmonized basis to ensure economies of scale that will benefit consumers.

Republic of Korea

Issue 1: Procurement Guideline Issued by the Ministry of Knowledge Economy

Impact: In December of 2010, the Korean Ministry of Knowledge Economy (MKE) issued a Notification that establishes new procedures and evaluation criteria for procurements conducted under the Ministry’s purview. TIA is of the understanding that the MKE guideline requires the establishment of an appraisal board that reviews and scores bids from vendors and that 90 percent of the score is based on technical merit and 10 percent on price. Of the 90 points for technical merit, five points are specifically set aside for small- and medium-sized domestic vendors, so foreign-based vendors are automatically placed at a disadvantage in any procurement evaluation. While the evaluation criteria are not published, several recent tenders issued under MKE direction contain the five-point reserve, and foreign-based companies are losing business as a direct result of discriminatory treatment. Since Korea is a member of the WTO’s Government Procurement Agreement, this procurement guideline would be contrary to the principle of non-discrimination under those commitments. TIA is concerned that the procedures and

practices established under the MKE Notification will not only foreclose open market opportunities within those entities under MKE's purview, but also that the government may adopt the MKE approach for all government procurement.

Recommendation: TIA urges the U.S. government to work with the Korean government to support bringing greater transparency to the evaluation criteria and decision-making of the Appraisal Board with a view towards ensuring that the government of Korea upholds its existing commitments under the WTO Government Procurement Agreement and its new commitments under the Korea-U.S. Free Trade Agreement.

Conclusion

TIA strongly believes that 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. 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 we can assist you in other ways, please do not hesitate to contact Nick Fetchko at 202-346-3246 or at nfetchko@tiaonline.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant E. Seiffert". The signature is written in a cursive, flowing style.

Grant Seiffert
President