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December 17, 2010

Via Online Submission www.regulations.gov

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the U.S. Trade Representative
1724 F Street, N.W.
Washington, DC 20508

RE: USTR's 2011 1377 Report. Countries/regions covered in this submission include Brazil, China, Costa Rica, India, Indonesia and Mexico.

Dear Ms. Blue:

In response to the Federal Register notice issued on November 18, 2010, 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. For over 85 years, 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 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

Please see commentary about specific markets below.

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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. Furthermore, the government should address the problems created by the tax system in order to help achieve the goals of its National Broadband Plan.

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 CITEL framework to reduce technical barriers to trade between the two countries.

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 July 2009 Strategic & Economic Dialogue (S&ED) that both countries would "work for a more open global trade and investment system." China's policies have indicated a troubling trend to mandate standards (such as requirements on information security product certification, local IP requirements for security products used by critical infrastructure in the MLPS regime, and WAPI) that are developed outside of international standard setting processes. 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. TIA and its members recognize China's desire to stimulate innovation, but believe strongly that its policies should be developed and implemented in a manner that maximizes private sector participation is non-discriminatory, respects intellectual property rights, avoids technology mandates and recognizes the global and collaborate nature of research and development.
Recommendation: TIA urges the Ministry of Science and Technology (MOST), the National Development and Reform Commission (NDRC) and the Ministry of Finance (MOF) not to publish an indigenous innovation product list and treat foreign and domestic companies equally.

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.

Furthermore, last year's 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 would have discriminated against foreign companies. Despite China's commitment in the June 2010 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 poses significant barriers to companies trying to access government procurement contracts.

TIA notes that China has taken initial steps to join the WTO Government Procurement Agreement (GPA), which is based on the principles of openness, transparency and non-discrimination. This Agreement will benefit China and the United States, as suppliers of goods and services, as both countries seek business opportunities in each others' markets. ***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.

Under China's Network Access License (NAL) there are unnecessary testing requirements that contribute to increasing delays for entry of a product to market and increasing the costs of companies seeking product approval through the NAL 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. 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.

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.
Recommendation: TIA urges China to adopt the principle of technology neutrality, in 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 new telecommunications regulator published new testing and certification requirements for mobile handsets and devices using unlicensed spectrum in 2010. One of the requirements mandates a special procedure for retesting and recertification of mobile handset hardware after each software or firmware update. This procedure is unique to Costa Rica, and is not required by any other regulator worldwide. Online 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.
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.

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India

Issue 1: Department of Telecom Security-Related License Amendments
Impact: Beginning in December 2009, India has imposed a series of increasingly onerous license amendments for licensed providers on an array of telecommunications services. These successive regulations have instituted transfer of technology requirements on commercial procurements with criminal penalties for non-compliance, India nationality requirements for network maintenance engineers, and in July 2010, a mandatory security template agreement required between telecommunications operators and vendors that includes escrowing of source code, among other troubling provisions.

In December 2009, the Department of Telecommunications ("DoT") adopted license amendments requiring licensees to apply to the DoT for a security approval prior to finalizing the purchase of telecommunications equipment and software for use in their networks. Such applications were subject to a 30-day review period by the DoT. In March 2010, the DoT further amended licenses to require licensees to include in their purchase orders with foreign equipment and software suppliers a clause "for Transfer of Technology (ToT) of all critical equipments/software to Indian manufacturers(s) within a period of three years from the date of purchase order." As equipment manufactured or developed in India by Indian controlled or –owned suppliers is exempt from this requirement, the March 2010 amendments deny national treatment to U.S. and other non-Indian equipment and software suppliers seeking to sell in the Indian market. These requirements apply to foreign suppliers regardless of whether or not they supply their own or third-party equipment or software and regardless of whether or not they hold the underlying intellectual property rights to such equipment or software.

In July 2010, the DoT adopted license amendments requiring licensees to enter into a mandatory contract (the so called "template agreement") with all suppliers of equipment and software (including upgrades) used for the provisioning of telecommunications services. The template requires the escrow of all information and documentation, including programmer's notes, regarding proprietary source code, design documents, hardware and software. The template agreement mandates the hiring by foreign equipment and software suppliers of Indian nationals with Indian security clearances as "security contact" personnel.

TIA is encouraged that the Indian Prime Minister's Office in early August requested that the Indian Department of Telecommunications and the Ministry of Home Affairs review the most recent security regulations and determine whether there are alternative mechanisms based on international best practices to resolve the concerns expressed by industry. However, at the end of 2010, the issue remained unresolved and the international telecommunications industry still harbors concerns as to the ultimate outcome of Indian Government policy, particularly as meetings with the Indian government on this issue indicate that the Government of India does not intend to release its revised regulations in draft form for public comment prior to instituting them.

Recommendation: 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: Freedom to Use Strong Encryption- Technology Neutrality
Impact: TIA urges India to adopt policies that protect the freedom to use strong encryption, which uses robust encryption algorithms, online to protect corporate and personal information. 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 liberalize the present encryption policy as strong encryption also enables India's rapidly growing IT and BPO industries, which 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 3: 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 4: 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.
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.
Recommendation: Indonesia should 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.

Mexico

Issue 1: Standards, Testing, Labeling and Certification.
Impact: Mexico is working on a conformity assessment procedure for telecommunications products where testing would be mandatory and performed only by recognized labs; this reinforces the need for Mexico to recognize U.S. and Canadian accreditation and certification bodies to avoid duplicate testing.
Recommendation: TIA urges the government of Mexico to implement its Chapter 9 NAFTA obligations to recognize conformity assessment bodies in the United States and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Also, the transparency of the application process structure and timeframe for application submissions need to be improved.

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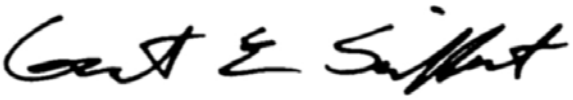
Conclusion

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,



Grant Seiffert
President