



October 3, 2011

Via Electronic Mail to [www.regulations.gov](http://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

**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](http://tiaonline.org)

RE: USTR's 2012 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 12, 2011, the Telecommunications Industry Association (TIA) and its member companies would like to thank you for the opportunity to comment on the 2012 National Trade Estimate (NTE) on Foreign Trade Barriers report. TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshow, 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 launches 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 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, 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 markets, not governments, are best positioned to decide which technologies 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.

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 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. 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.

## **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). 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.

## **India**

Despite the global economic slowdown, India continues to be one of the world's fastest growing ICT markets. Since 2006, India's total wireline and wireless telephone subscribers have increased from approximately 164 million to over 846 million, representing almost 416% growth in five years. Broadband (> 256 kbps) has grown over 500% since August 2006 to over 11 million subscribers, yet numbers of connections remain low relative to the population. While India has undertaken a number of policy initiatives to open the market, areas of concern remain.

***Department of Telecom License Amendments-Tech Transfer*** - 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 an improved set of regulations. The removal of technology transfer requirements, the mandatory 3rd party source code escrow, and the mandatory contractual terms represent a much-needed step forward in improving the regulatory approach to improving the security of 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. TIA looks forward to engaging with the Indian government and the U.S. government as India works through the

implementation of these regulations to find practical and effective solutions to the issues raised below:

- 1) **In country security assurance testing beginning April 1, 2013:** The new regulations require that all equipment procured by telecommunications service providers licensed in India be tested in Indian laboratories starting 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 this requirement is broadly impractical and inconsistent with the mutual recognition provision of the Common Criteria Agreement. There are longstanding internationally accredited/recognized laboratories conducting testing in this area and the location where the test is performed, in accordance with global best practice, should and does have no bearing on the accuracy of the test in question as long as the laboratory has achieved the appropriate certification.
- 2) **Facility Inspection:** The new 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. Also, equipment and software suppliers in many jurisdictions must also satisfy national-level legal and regulatory obligations with respect to any customer inspections or visits, which could create another obstacle to fulfilling this obligation. Finally, if a product has achieved the necessary testing certifications by an accredited lab, it is unclear what an intrusive, overly burdensome and unprecedented requirement such as this would achieve in practical terms.
- 3) **Security Breach/Blacklisting of Products:** The new 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; and 4) the ability for a service provider or vendor to effectively respond to an allegation of an intentional omission or deliberate vulnerability and 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.

TIA encourages the U.S. government to continue engaging with the Indian government as it works through the implementation of these regulations to find practical and effective solutions to issues of 1) in-country security assurance testing beginning April 1, 2013; 2) facility inspections; and 3) the black-listing of products due to a security breach.

### ***Encouraging Domestic Manufacturing/Government Procurement Preferences***

TIA is very concerned over discriminatory policy proposals that India is contemplating aimed at increasing manufacturing and innovation in the ICT sector, and that this signals a reversal of the generally open-market and pro-competitive policies India has taken in this sector. Specifically, TIA and its members are very concerned about the recommendations proposed to the Department of Telecommunications (DoT) by the Telecommunications Regulatory Authority of India (TRAI) to encourage domestic manufacturing of telecommunications equipment in India. Preference policies, quotas, and other trade barriers 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.

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.

In addition to the TRAI's recommendations, India's Planning Commission drafted a proposal that would require 30% of all electronic procurements by the Government be reserved for domestically manufactured products. While not yet implemented, the proposal is currently undergoing a review by the Indian Cabinet for possible approval. If implemented, this policy will undermine the country's ability to innovate, will impose discriminatory and unrealistic requirements on companies seeking to sell to the Indian Government, will increase the Indian government's own costs by restricting procurement options, and will violate critical commitments that the Government of India has made to resist trade and investment protectionism.

### ***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 Indian government continues to only permit 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 resolve this issue immediately.

### ***Licensing and Regulatory Efficiency***

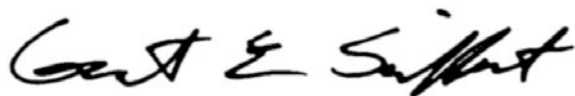
**Capitalization and Licensing Fees:** TIA urges India to reevaluate the basis for license application fees, capitalization requirements, and bank guarantees as it applies to telecommunications service provider licenses. As a general matter, application fees should reflect the cost of processing an application. 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](mailto:nfetchko@tiaonline.org).

Sincerely,



Grant Seiffert  
President