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November 03, 2009

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 2010 National Trade Estimate on Foreign Trade Barriers report. Countries/regions covered in this submission include the People's Republic of China, India, the European Union, and Brazil.

Dear Ms. Blue:

In response to the Federal Register notice issued on September 24, 2009, the Telecommunications Industry Association (TIA) and its hundreds of member companies would like to thank you for the opportunity to comment on the 2010 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. For over 80 years, the association has facilitated 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:

People's Republic of China

U.S. exporters and investors still see China as a key destination. Between 2006 and 2007, U.S. exports of telecommunications equipment increased from \$846 million to \$881 million, which is a 4 percent increase. While U.S. exports of information and communications technologies to China are increasing, TIA remains concerned about lack of progress in several key areas.

Technology Neutrality

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.



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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 initial 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 an offer on government procurement that will harmonize its domestic procurement law and ensure that China's WTO GPA accession package is in agreement with international norms.

India

Despite the global economic slowdown, India continues to be one of the world’s fastest growing ICT markets. Between March 2006 and August 2009, India’s total wireline and wireless telephone subscribers increased from approximately 142 million to almost 495 million, representing almost 250% growth in three and half years. In January 2009, India reached a new high, adding over 15 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 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.

International Best Practices

India has a unique opportunity to implement international best practices in spectrum allocation and licensing to ensure that Indian consumers receive the advantages of the best wireless services the market can provide. After much anticipation, TIA applauds India for beginning their spectrum



auction process for 3G and Broadband Wireless Access services, and encourages the Indian government to follow international best practices, by allowing a full and complete opportunity for new and international investors to participate in the auction process. While not suggesting India delay the long-awaited spectrum auction, we would like to reassert that the guidelines, timelines, manner and the eligibility criteria through which the auctions are conducted allow new entrants – especially foreign companies who must form joint ventures with local partners and receive Foreign Investment Promotion Board (FIPB) approval – sufficient time and equal opportunity to meet the auction eligibility criteria.

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.

European Union

WTO Information Technology Agreement

TIA and its member companies remain concerned about the European Commission's (EC) imposition of duties on a variety of products that should be free from tariffs, as they are covered by the Information Technology Agreement (ITA). TIA applauded USTR's May 28, 2008 formal complaint against the European Union 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. TIA is disappointed that the EU did not choose to resolve the dispute through consultations, but fully supports the U.S. government's request the WTO establish a dispute resolution panel. In July of this year the WTO Dispute Resolution Panel estimated that it will issue its final report to the parties in December 2009.

Brazil

WTO Information Technology Agreement

TIA strongly encourages Brazil to join the WTO's Information Technology Agreement. 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.



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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 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 repairs. The requirements are so laborious and complex that companies face many restrictions in providing quality services to customers in Brazil due to significant delays in the export and re-importation process.

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 nketchko@tiaonline.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Grant E. Seiffert', written in a cursive style.

Grant Seiffert
President