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Chair, Trade Policy Staff Committee
ATTN: Section 1377 Comments
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RE: USTR's Request for comments concerning compliance with all U.S. trade agreements regarding telecommunications products and services. Countries/regions covered in this submission include Argentina, Brazil, China, Costa Rica, Ecuador, the European Union, India, Indonesia, and the Republic of Korea.

Dear Mr. Bell:

In response to the Federal Register Notice issued on November 26, 2012, the Telecommunications Industry Association (TIA) and its hundreds of member companies would like to thank you for the opportunity to submit comments regarding the operation, effectiveness, and implementation of, and compliance with U.S. telecommunications trade agreements.

TIA represents the global information and communications technology (ICT) industry through standards development, policy initiatives, business opportunities, market intelligence, and networking events. With support from hundreds of members, TIA enhances the business environment for companies involved in telecommunications, broadband, mobile wireless, information technology, networks, cable, satellite, unified communications, emergency communications, and the greening of technology. TIA is accredited by the American National Standards Institute (ANSI) as a standards development organization.

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 (GPA)
- WTO Information Technology Agreement (ITA)
- WTO Agreement on Technical Barriers to Trade (TBT)
- WTO Agreement on Import Licensing Procedures
- North American Free Trade Agreement
- WTO Agreement on Trade-Related Investment Measures (TRIMs) 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 Import Licenses and Pre-Approval Requirements

Impact: Argentina utilizes non-automatic import licenses and other pre-approval requirements to restrict imports in a way that is not compliant with its WTO obligations. As many as 4,000 finished products in over 600 harmonized tariff codes are subject to non-automatic import licenses, including electronics. Non-automatic import license approvals face significant delays beyond the 60-day period outlined by the WTO, and some companies continue to wait over a year to obtain import licenses. Article 3.5(f) of the WTO Agreement on Import Licensing Procedures states that “the period for processing applications shall not be longer than 30 days if applications are considered as and when received and not longer than 60 days if applications are considered simultaneously.” Companies are facing delays well beyond the 60-day requirement.

The Government of Argentina has also introduced pre-approval requirements, which mandate that companies seek advance approval prior to importing any goods into Argentina. The Government of Argentina’s use of non-automatic import licenses and pre-approval requirements is inconsistent with WTO law and practice in distorting trade. The WTO Agreement on Import Licensing Articles 1.2 & 3.2 has been interpreted by the Dispute Settlement Body of the WTO to mean that the requirement to prevent trade distortion “refers to any trade distortion that may be caused by the introduction or operation of licensing procedures, and is not necessarily limited to that part of trade to which the licensing procedures themselves apply.” *Resoluciones Generales Nos. 3252 and 3255* require all importers to provide a sworn affidavit to the Government of Argentina’s tax agency (AFIP). Additionally, the Secretary of Domestic Commerce announced a requirement that importers provide a separate Petition Form directly to the Secretariat. This additional requirement has been mandated without formal publication in the Argentine Government’s Official Bulletin. Additionally, *Resolucion General No. 3276* obligated companies in the service industry to file a sworn declaration to both the AFIP as well as directly to the Secretariat, including information on services delivered between parties in Argentina and abroad. These requirements lack transparency and have added significant delays to the release of imported goods by creating a multiple track application process.

Recommendation: TIA urges the Government of Argentina to comply with its WTO obligations, expeditiously process non-automatic import licenses, and to modify the pre-approval requirements in a manner that is not trade-distorting.

Issue 2: Trade Compensation Requirements

Impact: Through an informal process, the Government of Argentina is requesting companies in a number of sectors to partially (and maybe totally in some cases) compensate with exports the dollar amount needed to import goods with a view to pursuing Argentina’s stated policy objectives of elimination of trade balance deficits with import substitution. Companies are being asked to export locally-made goods or services within their product portfolio, engage in new export-oriented projects that require up front investments or invest in companies that are export-oriented. These “trade compensation” requests are informal as there is no regulation supporting them.

Recommendation: TIA urges the Government of Argentina to comply with its WTO obligations and stop the informal process of requesting companies to balance imports with exports.

Issue 3: Market Surveillance Controls

Impact: Argentina has adopted measures requiring all importers of a certain product to provide market surveillance reports before products can clear customs. These market surveillance requirements go beyond the goal of market surveillance controls to ensure that dangerous and noncompliant goods are removed from the market and the workplace. The controls require repetitive testing of the same product and delay time to market for importers, giving select domestically manufactured goods a competitive advantage over imported products. Article 2.2 of the Agreement on Technical Barriers to Trade states that, “Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create”. In addition to market surveillance requirements, Argentina also requires initial product safety certification, factory audits, and periodic verification of essential safety requirements as well as price-control policies. The product families for which market surveillance requirements exist have not been adequately defined, making a broad range of products potentially liable to meet the requirements. Additionally, local testing labs lack the capacity to conduct product examinations in a timely manner, exacerbating the negative impact of these policies on importers. The market surveillance requirements mandated by the Government of Argentina are more trade-restrictive than necessary to achieve their stated purpose.

Recommendation: TIA urges the Government of Argentina to comply with its WTO obligations by eliminating the trade-restrictive aspects of its market surveillance controls.

Brazil

Issue 1: Protectionist Measures Favoring Domestic ICT Industry

Impact: There is a growing trend in Brazil to protect domestic manufacturing and technology development at the expense of foreign goods. One example of this protectionist trend is the bidding for spectrum bands promoted by ANATEL (Brazilian Agency of Telecommunications) in June 2012. Companies who were given the right to explore the 2.5 GHz and 450 MHz spectrum bands were required to prove investments that include a high percentage of products, equipment, and telecommunication systems with local content – this includes goods manufactured in Brazil according to the “basic manufacturing process” (*processo produtivo básico* - PPB) rules and locally developed technology. There is a concern that these local content requirements may be inconsistent with the Government of Brazil’s WTO obligations, including Article 2 of the WTO Agreement on Trade-Related Investment Measures (TRIMs). In addition, Brazil is currently working to develop a methodology that will allow locally developed software to receive government procurement preference.

Recommendation: TIA urges the Government of Brazil to eliminate all local content requirements, in particular, those that may prevent fair access to the future spectrum auction processes for foreign companies. TIA also recommends that the methodology for software certification for local-development be rescinded as a tool to grow and develop Brazil’s domestic software industry. We believe that market dynamics, not government requirements, should be the main factors determining which technologies should be deployed based on customer needs. Brazilian consumers, including government agencies, as well as businesses should benefit from

competition and have access to world-class technologies, irrespective of where they are produced.

Issue 2: Complex Tax System.

Impact: Brazil places high import tariffs on imported telecommunications products, including a 16 percent import tax on mobile phones, and a system of multiple cascading taxes makes the effective tax rate much higher. Double taxation is an issue that affects many multinational companies doing business in Brazil, even the ones headquartered in countries with which Brazil has a Bilateral Tax Treaty in effect. While the multiple layers and cumulative nature of taxation in Brazil is a cross-sectoral challenge, there are special complexities regarding taxes on telecom services, which reach as high as 40 percent in some states. A variety of tax incentives disadvantage foreign goods and favor domestically produced products. Brazil's complex tax system often leads to litigation, and there is currently no process for mediation.

Recommendation: Lowering taxes and tariffs on ICT products and simplifying the Brazilian tax system would increase trade, lower the cost of ICT products in the region, and facilitate business opportunities for U.S. companies. An unnecessarily complicated tax system leads to higher prices that will subsequently be passed on to consumers. 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, which should include the implementation of a tax mediation procedure. TIA supports and encourages Brazil to join the WTO Information Technology Agreement, which would reduce the price of ICT products in Brazil while helping to boost Brazilian ICT exports. 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 3: Testing and Certification

Impact: TIA is concerned about Brazilian regulator ANATEL (Brazilian Agency of Telecommunications) not accepting test data generated outside of Brazil, except in those cases where the equipment is physically too large and/or costly to transport. Test data is only accepted when it is generated by a laboratory located in Brazil, and when witnessed by an approved certification body. These requirements are counter to Brazil's WTO commitments by adding cost and delaying market availability. Some certification delays can take three to four months, without any increase in value to Brazilian consumers. These Brazilian requirements may also impact other South American countries, which are likely to follow in adopting such trade-restrictive conformity assessment procedures.

Recommendation: TIA supports ANATEL reforms that allow manufacturers to manage their own test process to minimize cost and redundancy, and declare conformity with Brazilian requirements in the manner described in ISO/IEC 17050 Part 1 and Part 2. ANATEL could then focus more attention on enforcement and less on equipment certification. This would also provide innovative products to Brazilian consumers sooner and at lower cost than under current requirements. TIA also requests Brazil to permit acceptance of foreign test reports and to engage in Mutual Recognition Agreements, if necessary, to facilitate acceptance of foreign test reports.

Issue 4: Government Procurement

Impact: Decree 7174/2010, which regulates the procurement of a number of goods including ICT goods and services, allows federal agencies and state entities to give preferential treatment to locally manufactured products and goods or services with technology developed in Brazil based on compliance with the "basic manufacturing process" (*processo produtivo básico* - PPB). ICT bids for goods and services considered "strategic" may be limited to those with technology developed in Brazil.

Recommendation: TIA 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 the China Compulsory Certification (CCC) 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, by 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. For example, China has opted out of the CB scheme for electromagnetic compatibility (EMC) testing, with the result that such testing must be done in-country. EMC requirements emerged out of a collective international effort and many countries participate in the EMC component of the CB scheme and accept CB scheme test reports generated by other participating members.

China has uneven and unclear requirements for inclusion of foreign-invested companies and institutions in technical committees that devise nationally adopted standards, including how technical committees are constituted and who may participate, as well as the rights and obligations of participants. Furthermore, while several standards development organizations allow foreign-invested companies and institutions full participation and observation rights, foreign-invested companies and institutions are still blocked from the final decision point – the vote. We encourage China to press forward and open up this opportunity to non-domestic companies and institutions that have a vested interest in China's growth and development.

TIA recognizes that China has made efforts to conform to its obligations under the WTO Agreement on Technical Barriers to Trade (TBT) 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 global manufacturers that rely on international standards developed outside of the Geneva-based organizations.

Recommendation: TIA asks the Government of China to improve the application of international conformity body scheme reports by national laboratories and eliminate the need for additional samples and redundant testing. TIA requests the Government of China to publish clear requirements for foreign-invested companies and institutions to participate and vote in standards setting organizations. 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: Indigenous Innovation Program, Enhanced Ultra-High Throughput

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 2012 Strategic & Economic Dialogue (S&ED) that both countries “are committed to building a more open global trade system and jointly resisting trade 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. TIA remains 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 (CCSA) 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 (*i.e.* WiFi) suite of standards. Despite significant objections based on procedural and technical compatibility grounds, CCSA pushed forward with finalizing the standard, sending the standard to the Ministry of Industry and Information Technology (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 outright mandate or 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: ZUC 4G LTE Encryption Algorithm

Impact: ZUC is China’s government-developed indigenous encryption algorithm created for usage in 4G LTE networks, and perhaps in other national communications networks. ZUC is the first encryption algorithm that China proactively brought to the international standards community – it was approved as an international voluntary standard by the 3rd Generation Partnership Project (3GPP) in September of 2011. While we welcome China taking its standard through the international standardization process, China’s State Cryptography Administration (SCA) has confirmed that implementation of the ZUC algorithm and related standards will be mandatory in the commercial market – this is outside of global norms as no other major country has mandated a specific algorithm for use in the commercial telecommunications market as a baseline for market access. Of greater concern are the testing and certification requirements, which will require an extensive process that includes a review of source code and other proprietary information. The mandate to include the ZUC algorithm is not consistent with the Agreement on Technical Barriers to Trade, including Article 2.8 that specifies “wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics”.

Recommendation: TIA urges the Chinese government to remove the requirement to utilize the ZUC algorithm and any mandatory conformity assessment procedures that would require the disclosure of sensitive proprietary information, including source code.

Issue 4: 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 telecommunications 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 Strategic & Economic Dialogue (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 during his 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 U.S.-China Joint Commission on Commerce and Trade (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, revised offer, which should include sub-central entities, to the WTO Government Procurement Committee before the Committee's final meeting in 2012.

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 latest 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 5: Type Approval, Certification, and Standards

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 (RTA), the Network Access License (NAL), and the China Compulsory Certification (CCC). Therefore, for a given piece of equipment, it can cost between U.S. \$30,000-\$35,000 to test for all three licenses (RTA, NAL, and CCC). MIIT indicates on its website that it processes approximately 4,000 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 (RTA, NAL, and CCC) 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 Ministry of Industry and Information Technology (MIIT) and China National Certification and Accreditation Administration (CNCA) should "avoid duplication of testing and charges." However, under China's 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.

Furthermore, 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.

Additionally, MIIT's lack of clear labeling requirement rules for type approval is creating inconsistent application of labeling requirements at the provincial level. Although MIIT has informed companies that labels can be affixed to packaging, some provincial government officials have required companies to affix the label to the product. Given that NAL labels must be purchased from MIIT directly at a cost of approximately 30 cents per label, this lack of certainty results in millions of dollars in re-labeling costs for products approved for sale in China. Some companies are reporting labeling costs of approximately \$6 million. Written and transparent labeling requirements will reduce the amount of re-labeling and thus the significant cost.

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 a 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, with changes to the list notified via a public announcement and in accordance with WTO notification procedures; 4) clarify labeling requirement rules for type approval to ensure consistent treatment at the provincial-level; 5) negotiate and conclude with the United States a Mutual Recognition Agreement for testing a conformity assessment; and 6) disassociate the CCC certification process from the other certifications, such as the NAL certification process.

Issue 6: 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 7: 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.

Issue 8: Mobile Smart Phone Security Standards

Impact: On November 21, 2012 the Chinese government, through the Ministry of Industry and Information Technology (MIIT), notified the WTO of the impending implementation of the *Notice Regarding Strengthening of Network Access Management for Mobile Smart Terminals* (the "Notice") and two corresponding standards related to mobile device security that would be

enforced via the Notice. The *Test Methods for Security Capability of Smart Mobile Terminal* (the “Test Methods”) and the *Technical Requirements for Security Capability of Smart Mobile Terminal* (the “Technical Requirements”) relate to testing methods and technical requirements. TIA is deeply concerned that these standards will be made mandatory through their inclusion as testing elements under the Network Access License (NAL) type approval process. Moreover, the overly prescriptive nature of the Test Methods and Technical Requirements are problematic in that the measures have the potential to dictate design and/or design characteristics and are more trade restrictive than necessary in contradiction to the Agreement on Technical Barriers to Trade. We also remain concerned that the Test Methods and Technical Requirements will create additional market access burdens without significantly improving privacy and security of mobile smart phones.

Recommendation: TIA requests China to delay implementation of the Notice and the two corresponding standards in its WTO TBT Notification from November 21, 2012, and engage foreign and domestic stakeholders in technical consultations on the measures. Further consultations will contribute to improving the technical aspects of the measures and to meeting China’s goals of improving privacy and security, while minimizing obstacles to trade. In addition, we urge China to ensure that these measures remain voluntary and not mandated through inclusion in the NAL type approval process.

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 security 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. Costa Rica’s re-testing and re-certification mandate is inconsistent with the WTO Agreement on Technical Barriers to Trade, Article 2.2, which requires WTO Members to ensure “technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade”.

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.

Ecuador

Issue 1: Import Restrictions

Impact: In June 2012, the Government of Ecuador passed Resolution COMEX 67, which imposes quotas on mobile phone imports and justifies this measure by classifying mobile phones as dangerous to the environment. These import quotas are retroactive to January 2012 and effectively cut imports by 50 percent. While there is a possibility that quotas for 2013 could increase, current indications are that they are likely to remain the same as in 2012. Additionally,

industry is concerned about potential side effects of the import restrictions including expansion of the grey and black markets.

Recommendation: TIA recommends that the Government of Ecuador rescind Resolution COMEX 67 and refrain from imposing any future import quotas on mobile phones.

Issue 2: In-Country Testing and Certification

Impact: Local regulator Supertel has expressed interest in conducting in-country testing and homologation certification, with the goal of becoming the exclusive homologation lab for Ecuador. Should Supertel succeed in its efforts, all manufacturers would be forced to have their products certified in Ecuador, and certifications from internationally recognized homologation labs would no longer be recognized. Such a development would translate into additional costs for manufacturers, additional time to bring products to market, and it would cause disruptions and create inefficiencies.

Recommendation: TIA recommends the Government of Ecuador not demand in-country testing for mobile phones and instead continue to recognize certifications from internationally recognized labs.

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 commitments under the WTO Information Technology Agreement (ITA) and that the products should remain free from tariffs, as they are covered by the ITA. While the WTO's decision is favorable to the United States, 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 Dispute Settlement Board's 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 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 potential inconsistency with the WTO Agreement on Technical Barriers to Trade (TBT) and deviation from global practice, while 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 below:

- 1) In country security assurance testing beginning April 1, 2013:** The new regulations require that all equipment procured by telecommunications service providers (TSPs) 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 not have a bearing on the accuracy of the test in question as long as the laboratory has achieved the appropriate certification.

We understand that the concept of “network elements’ under *clause iii* of the license amendment refers only to “core” network equipment, which is helpful to focusing implementation on protection of the most important network elements or those most susceptible to security breaches. However, even mandatory testing in laboratories in India for only “core” equipment runs counter to Common Criteria and will likely fail to provide greater product security assurance.

Private sector entities, such as TSPs, should have the ability to determine which of their vendors’ products require formal testing and certification and how to most effectively procure certified products. We recommend India allow TSPs this flexibility under the revised license amendments. While in some cases, it may be desirable for a vendor to test their product in laboratory located in India, it may be impractical in some cases where the same product is already being tested and a security certificate is obtained from an internationally accredited laboratory. Providing flexibility in terms of where products are tested is critical for maintaining a trusted global market for ICT products.

- 2) **Facility Inspection:** The new regulations require that the vendor, through its agreement with the TSP, allow the TSP, licensor/Department of Telecommunications (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. We recommend DoT replace the mandatory facility inspection requirement with a provision that allows the equipment/software supplier and the TSP to negotiate mutually acceptable customer assurance arrangements consistent with industry best practices and the relevant national laws governing the equipment/software supplier.
- 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 TSPs 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 TSP or vendor to effectively respond to an allegation of an intentional omission or deliberate vulnerability since 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.

We recommend that the procedures for making a determination of penalty under these provisions be revisited and opened to a public comment procedure. Determining fault in security breaches can be highly complex and require clear legal procedures based on the rule of law. The ramifications for companies in such a scenario are too great to not be grounded in the law. We also recommend the adoption of due process protections and an appeal process which should be extended to include all TSPs and vendors subject to the regulations. Furthermore, given the highly technical and complicated nature of network security, we recommend that the liability provision not be strictly applied in terms of penalties. Rather,

the committee, once properly constituted under a clear framework of due process, should be given the discretion to determine the appropriate penalty in all cases.

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 black-listing 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 implementing policies 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 as well as establish barriers to trade and 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 will likely 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 likely 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 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 each year since 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 provisions in the WTO TBT Agreement.

Issue 3: Preferential Market Access Applying to Government Procurement and Private Sector Procurement

Impact: In 2012, the Government of India circulated a series of draft Notifications through the official Gazette of India to establish the Preferential Market Access (PMA) policy that would mandate preferential market access for locally manufactured electronic products with minimum requirements of 30 percent that increases to a minimum of 45 percent over a period of 5 years. The rules would provide procurement preference to domestically manufactured electronic goods "due to security considerations and in Government procurement". We are deeply concerned with the Government of India's use of vague security concerns to justify the application of comprehensive local content requirements. Today's most advanced and robust global telecommunications networks are built using state-of-the-art technology sourced from cost-effective global supply chains.

The justification that India will make itself more secure by requiring both the private and public sectors to procure increasing amounts of domestically manufactured products shielded from competition contradicts established global practice. Security of an electronic product is based on "how", not "where," it is made. Moreover, any security weakness in an ICT product is most likely to be exposed through competition and broad peer review, not through "buy local" policies. The lack of any justification in the Draft PMA Guidelines for its security concerns, and the failure to include analysis as to why or how the PMA solves those concerns, suggests that India is using "security" as justification to practice protectionism. In furtherance of the PMA policy, on October 5, 2012 the Department of Telecommunications (DoT) officially implemented the PMA policy for government procurement of telecommunications products.

While TIA's initial concerns revolved around the application of the PMA policy for government procurements because it will impair the Indian government from procuring the best available technologies, we are very alarmed with recent developments that indicate that the PMA policy

could be applied to private sector procurements. On October 30, 2012, the DoT circulated for stakeholder comment a draft Notification that would apply the PMA policy to private sector procurements of telecommunications products – specifically to “all Government licensees and their managed service providers”. The application of the PMA mandate to private sector procurements constitutes an unprecedented interference in the private sector and raises questions over India's commitment to the rules based trading system established under the WTO, including the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Investment Measures (TRIMs).

Recommendation: TIA urges the Government of India to suspend consideration of applying the PMA policy to the private sector and, in its place, implement policies that create a stable and predictable business climate that is attractive for investors. A protectionist approach will not only harm Indian consumers, it will make it more difficult for India to meet its economic development goals by restricting access to the world’s most innovative ICT products.

Issue 4: 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 5: 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 Voice over IP (VoIP) to connect to the Public Switched Telephone Network (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 6: 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 United States 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. U.S. industry encourages India to adopt such an “open skies” satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements.

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 WTO Agreement on Technical Barriers to Trade. 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 Government Procurement Agreement (GPA), 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 GPA and its commitments under the Korea-U.S. Free Trade Agreement.

Issue 2: Two-Tiered Electromagnetic Field Strength Rating System for Mobile Phones

Impact: This year the Korean Communications Commission (KCC) issued the draft Notice No. 2012-00, which proposes a new two-tiered rating system for electromagnetic field strength. The proposed regulation creates an unnecessary distinction between specific absorption rates (SAR) for mobile devices since the SAR for both tier 1 and tier 2 mobile phones would meet the Korean government SAR limit of 1.6 watts/kg. TIA believes this new two-tiered rating system for SAR will impede access to Korea's telecommunications market for mobile phones produced by U.S. firms by introducing arbitrary, and potentially discriminatory, distinctions between the two tiers of devices, which all meet the Korean government SAR limit of 1.6 watts/kg. In addition, this draft regulation would require separate labeling requirements for the two tiers of devices, further increasing costs for manufacturers. The overall effect of this draft regulation would be to create an unnecessary obstacle to international trade, which is inconsistent with the WTO Agreement on Technical Barriers to Trade.

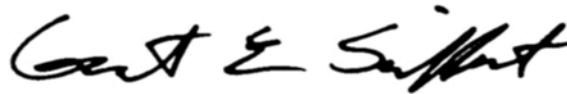
Recommendations: TIA requests the Korean government to eliminate arbitrary distinctions in its SAR labeling requirements for mobile devices that meet the Korean government SAR limit as described in the KCC draft Notice No. 2012-00.

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 Eric Holloway at 703-907-7712 or at eholloway@tiaonline.org.

Sincerely,

A handwritten signature in black ink that reads "Grant E. Seiffert". The signature is written in a cursive style with a large initial "G" and "S".

Grant Seiffert
President