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June 5, 2018

Erland Herfindahl
Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences (GSP)
Office of the United States Trade Representative
1724 F Street NW
Washington, DC 20508

Dear Mr. Herfindahl:

On behalf of the Telecommunications Industry Association (TIA), I would like to provide input for your consideration as the Office of the U.S. Trade Representative reviews India's eligibility for GSP.

A number of Indian measures have had a negative impact on the U.S. information and communications technology (ICT) industry. We wish to draw attention to these developments, as we believe a better policy environment would facilitate sales of ICT products to India. Our industry's main concerns may be summarized as follows:

- <u>Tariffs in violation of WTO commitments</u>. On five separate occasions since 2014, India has imposed duties on imported telecom products from U.S. and other foreign suppliers. These duty impositions mark a breach of New Delhi's commitment, as documented in its GATT schedule, to provide duty-free treatment to the goods in question.

- <u>Excessive and redundant requirements for in-country tests</u>. In 2017 India introduced a sweeping system of required in-country tests for telecom equipment that will take effect in October 2018. The new regulatory scheme creates yet another layer of locally-based tests on top of existing requirements for safety testing to take place within India. The requirements are redundant and impose needless costs on ICT companies, which already conduct such tests in internationally accredited labs in other geographies.

In short, TIA's chief concern is that India has demonstrated a pattern of creating WTO-inconsistent tariff and non-tariff barriers.

Section 502 of the Trade Act of 1974 says that a given country's GSP eligibility depends, among other things, on whether the country "provide[s] equitable and reasonable access to the markets." New Delhi's imposition of a series of duties on ICT goods make American and other foreign imports more expensive and less competitive in India, effectively decreasing market access.

Another criterion for GSP beneficiary countries cited under Section 502 is the extent to which a nation has "reduced[d] trade distorting investment practices and policies." The Indian government's multiple duties on telecom products in clear conflict with its GATT schedule commitments suggests that, far from seeking to end such practices, it persists in them.

TIA has continually worked to convey member concerns on telecom duties to the Indian government. We have appended to the end of this set of comments three separate advocacy communications we have provided to New Delhi on the subject of duties. They include a 2017 multi-association letter led by TIA; a 2018 multi-association letter to which TIA was a signatory; and a relevant excerpt from comments TIA submitted to India in 2018 as the government prepared its draft national digital communications policy.

We hope you may consider raising the issues faced by our industry in discussions with India about its eligibility for GSP preferences. Thank you, and please don't hesitate to get in touch with any questions or for additional discussion.

Sincerely yours,

K.C. Swanson

Cc: Ashley Miller
Brendan Lynch

Enclosures:

Enc. 1 – January 2017 multi-association letter to Finance Minister Arun Jaitley
Enc. 2 – January 2018 multi-association letter to Minister of Electronics and Information Technology Ravi Shankar Prasad
Enc. 3 - Comments Submitted to the Telecom Regulatory Authority of India on Inputs for Formulation of National Telecom Policy – 2018, excerpt of pages 1-2

About TIA

TIA represents approximately 250 manufacturers and suppliers of telecommunications networks and services here in the United States and around the world. TIA is also an ANSI-accredited standards development organization. Our members' products and services empower communications in many industries and markets, including healthcare, education, public safety, and transportation.

Indian ICT Policies of Concern

India has emerged as one of the world's largest consumers of technology products. It now claims over 1 billion wireless phone connections, with the second largest smart-phone subscriber base in the world (275 million)[1] and an estimated 500 million Internet users.[2] Given the substantial purchasing power of Indian consumers and businesses, New Delhi's trade policy stands to have meaningful financial consequences for U.S. firms. Unfortunately, in recent years the government has advanced measures that make it more difficult and expensive for American companies to sell ICT goods and services within its borders.

Duties on Telecom Equipment Products

The issue of greatest concern to the U.S. telecom equipment industry is New Delhi's imposition of import duties that violate its obligations as a WTO member.

When India joined the Information Technology Agreement in 1996, it agreed to grant zero-duty treatment to many ICT goods, including telecom equipment products classified under the 8517 harmonized system (HS) heading. In 1997 the Indian government modified its GATT schedule to reflect those changes, and under a staging process, introduced a plan to eliminate duties on all 8517 products by 2005. In accord with its WTO obligations, in 2005 India formally updated domestic customs regulations to provide for zero-duty rates on the goods.

However, in a clear breach of those commitments, India has subsequently levied duties on covered products on five separate occasions. These actions violate the basic WTO obligations on duty treatment documented in India's GATT schedule.

1) In July 2014, India rescinded a duty exemption and implemented a 10 percent basic duty on a range of advanced telecom technologies classified under the 8517 heading.[3]

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[1] *Annual Report 2016-17*, Department of Telecommunications, Ministry of Communications, Government of India, at iv.

[2] "Internet users in India expected to reach 500 million by June: IAMAI," *The Economic Times* (Feb. 20, 2018) https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-expected-to-reach-500-million-by-june-iamai/articleshow/63000198.cms

[3] Government of India, Ministry of Finance, Department of Revenue, Notification No. 11/2014-Customs (July 11, 2014).

2) Three years later in July 2017, New Delhi again imposed import duties of 10 percent, this time on a much broader group of telecom equipment products including mobile phones, smart phones, and base stations.[4]

3) Only five months later in December 2017, India boosted the duty rate on cell phones and smart phones once more, from 10 percent to 15 percent.[5]

4) In February 2018, India further increased the duty on cellular mobile phones from 15 percent to 20 percent, while raising duties on phone parts from a range of 7.5-10 percent to 15 percent. The duty on wearable devices was raised from 10 percent to 20 percent.[6]

5) In April 2018, India announced it will impose a 10 percent duty on populated printed circuit boards (PCBs) used in mobile phones.[7]

On a number of occasions Indian officials have positioned duties on telecom imports as a means to promote local manufacturing and support Prime Minister Modi's Make in India campaign.

For example, in September 2017, the Telecommunications Regulatory Authority of India (TRAI) issued a consultation paper on the telecom equipment industry that set a goal to "transition [India] from an import-dependent industry to a global hub for manufacturing."[8] The paper asked whether there are "any issues under ITA which need to be addressed for making the local telecom manufacturing more competitive and robust."[9] In light of recent duty hikes, the line of questioning suggests India may be looking to domestic industry for justification to impose more telecom tariffs.

In February 2018, Indian Finance Minister Arun Jaitley said in a speech that the aim of a new round of duties on cell phones and phone parts was "to further incentivise the domestic value addition and Make in India..."[10]

Along similar lines, India's draft National Digital Communications Policy released in May 2018 floated the idea of "rationalising taxes, levies and differential duties to incentivize local manufacturing of

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[4] Government of India, Ministry of Finance, Department of Revenue, Notification No. 56/2017-Customs (June 30, 2017).

[5] Government of India, Ministry of Finance, Department of Revenue, Notification No. 91/2017-Customs (Dec. 14, 2017).

[6] Budget 2018-2019 Speech of Arun Jaitley, Minister of Finance (Feb. 1, 2018), at 54-55, (Budget speech) https://www.indiabudget.gov.in/ub2018-19/bs/bs.pdf

[7] Government of India, Ministry of Finance, Department of Revenue, Notification 36/2018-Customs (April 2, 2018).

[8] Telecom Regulatory Authority of India, Consultation Paper on Promoting Local Telecom Equipment Manufacturing, New Delhi. (Sept. 18th 2017), at 7, http://www.trai.gov.in/sites/default/files/CP_on_Manufacturing_18_09_17.pdf

[9] *Id*. at 28.

[10] Budget speech at 32.

equipment, networks and devices."[11] On a separate but related track, the draft policy proposed granting preferential treatment to local goods within the private sector by "incentivizing private operators to buy domestic telecom products."[12]

In short, India's imposition of multiple rounds of duties appears to be part of a broader industrial policy for the telecom sector intended to favor local companies at the expense of U.S. and other foreign firms. The result is to make imported goods from American and other suppliers more expensive and less competitive in the Indian market.

Redundant In-country Testing and Certification

India's growing number of testing requirements constitute an unnecessary obstacle to international trade.

They contravene the principles of conformity assessment outlined in the Agreement on Technical Barriers to Trade that India has agreed to abide by as a WTO member – among them, that conformity assessment procedures not create unnecessary obstacles to trade and not be applied more strictly than needed (5.1.2), that siting of testing facilities not cause an unnecessary inconvenience (5.2.6); that countries explain the rationale for new procedures (TBT 5.6.2); and that governments allow adequate time to take into account stakeholder comment on proposed procedures (5.6.4).

- Telecom Equipment Certification Procedure

In 2017 the Department of Telecommunications announced plans to implement in the following year a system of mandatory testing and certification for telecom equipment (MTCTE), to be conducted by Indian accredited labs. The policy was not notified to the WTO in draft form. Though the government has said it will require the certifications starting in October 2018, related requirements are still in the process of being finalized, making it difficult for companies to prepare for the new rules.

Meanwhile, it is clear that the new tests and certifications will be redundant and expensive. Testing fees may cost up to 50 lakhs rupees or $78,000 per product when carried out by government labs, and no price cap has been established for commercial labs. The certification will cover all types of telecom equipment, ranging from simple IoT devices to fully-functioning base stations.

Also, starting April 1, 2019, testing must take place within India (or in a country that has an MRA with India – currently, only Singapore fits that requirement). However, India's lab capacity is currently extremely limited. At the moment there are only a small number of labs in India that can do certain types of testing, including for electromagnetic compatibility (EMC) and electromagnetic interference (EMI), and only four certification bodies exist nationwide to review results and summary reports.

Moreover, there is no need for India-based tests, as global vendors already certify products to a high level of international standards in areas such as radio frequency and safety. Requirements to test once

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[11] Department of Telecommunications, National Digital Communications Policy 2018 (draft for consultation), (May 1, 2018), at 16.

[12] *Id.* at 16.

again for the Indian market will not improve safety but merely incur needless and unnecessary costs for suppliers.

In addition, there is currently no international baseline to serve as a reference point for security testing. It is not clear exactly what security checks India will employ, but there is general consensus among security experts that a checklist of tests is an ineffective response to the dynamic risk of cyber threats.

Meanwhile, companies are concerned that if implemented, the regulation could potentially allow for leaks of proprietary information – in violation of TBT 5.2.4, which underscores the importance of protecting confidential product information in the conformity assessment process.

TIA has asked the Indian government to continue to allow testing in internationally-accredited labs while also extending the timeline for the effective date of mandatory testing and certification by at least one year, to minimize the described impacts to Indian citizens while moving to update the national policy.

- Compulsory Registration Order

In addition to the plans described above, India already maintains requirements for repetitive and redundant telecom equipment tests for safety through its compulsory registration order (CRO).

Since 2012 India has been steadily expanding the scope of the CRO, which now mandates that 50 imported ICT products must undergo safety tests within India itself (including cell phones, smart watches, tablets and notebooks, among other items). In 2017 Indian authorities indicated they are studying whether to bring still more products, including routers, switches and customer premises equipment, to the list.

Conclusion

As noted above, we wish to document the expanding web of Indian policies that disadvantage sales of U.S. telecom products to India -- most notably, duties that violate India's own WTO commitments. In this respect, India does not meet the criteria to provide "equitable and reasonable access to its market" as required for GSP beneficiary countries. Thank you for considering our comments.

Enclosure 1

January 18, 2017

Shri Arun Jaitley
Union Finance Minister
134, North Block,
Ministry of Finance
New Delhi – 110001

Subject: Consideration of ICT Duties in Budget Season

Dear Honorable Minister:

As the 2017 budget season approaches, India's political leadership will make decisions on import duties that have an important impact on the nation's business climate. Against this backdrop, our members, representing the most innovative information and communications technology (ICT) companies in the world, would like to highlight the value of a stable and predictable tariff regime.

While many countries around the world continue to lower import duties on ICT products, India has in recent years raised duties multiple times on a wide array of ICT items. These actions undermine business confidence on two counts. Not only do higher duties make it more expensive to manufacture and sell products, but the unexpected imposition of new fees creates a destabilizing sense of uncertainty.

Companies find it harder to plan for the future when faced with the prospect that operating costs could rise unexpectedly. This makes it difficult to justify expanded investments in facilities and staff.

For example, last year's unexpected increase in ICT customs duties raised input costs by up to 10 percent for many technology suppliers. The fee increase followed an earlier unexpected round of duty hikes on ICT products in 2014, including on Information Technology Agreement products. While we applaud the government's decision to repeal some of the 2016 levies, many ICT duties remain in effect.

In short, our members have major concerns over the future direction of tariffs, when they will change, and how those changes will impact their ability to invest in India. And this uncertainty weighs on Indian as well as foreign firms. Indeed, reduced import duties are one of the top items on the wish list for both domestic and foreign manufacturers in India, according to a Department of Telecommunications survey referenced in the 2015 *National Telecom M2M Roadmap*.

Influential voices within India have highlighted the benefits of streamlining current tax and fee systems. Under Prime Minister Modi's leadership, India has made remarkable progress toward implementing a GST to rationalize the nation's internal tax structure. In May, NITI Aayog published a paper, *Make in India Strategy for Electronic Products*, which called for the reduction of duties on intermediary inputs to the same level as their respective final products. This paper positioned duties reform as a key component in a broader plan to promote India's electronics industry.

As India heads into the budget season, we would encourage government leaders to consider the long-term benefits of such an approach. Promoting a stable system of tariffs that is oriented towards lowering – not raising – duties will bolster the Make in India campaign. On the same score, we would also encourage India to accede to the Expanded Information Technology Agreement, which would allow India to play a more important role in the global supply chain of ICT products.

Moreover, while funding considerations are important for any government, we would submit that efforts to improve the business environment and attract investors will ultimately yield a broader and more productive corporate tax base.

In the current unpredictable environment, companies considering new investments in India may hesitate when recalling the unexpected increase in duties in 2016 and 2014, particularly since it seems that the potential exists for further fee hikes in the future. Resolving this uncertainty would provide much-needed clarity for Indian business, paving the way for expanded foreign and domestic investment and advancing the goals of Make in India.

Sincerely,
Australian Information Industry Association (AIIA, Australia)
Canadian Electronics and Communications Association (CECA, Canada)
Communications and Information Network Association of Japan (CIAJ, Japan)
Computing Technology Industry Association (CompTIA, USA)
Consumer Technology Association (CTA, USA)
DIGITALEUROPE (Europe)
Information Technology Industry Council (ITI, U.S.)
Japan Electronics and Information Technology Industries Association (JEITA, Japan)
Japan Information Technology Service Industry Association (JISA, Japan)
Korea Electronics Association (KEA, Korea)
Korea International Trade Association (KITA, Korea)
Semiconductor Industry Association (SIA, U.S.)
Telecommunications Industry Association (TIA, U.S.)
U.S.-India Business Council (USIBC, U.S.)

cc:
Shri Ravi Shankar Prasad, Minister for Electronics and Information Technology
Smt. Nirmala Sitharaman, Minister of State for Commerce and Industry

Enclosure 2

January 18th, 2018

Shri Ravi Shankar Prasad
Hon'ble Minister Law & Justice, Electronics & Information Technology
Electronics Niketan, 6, CGO Complex,
Lodhi Road, New Delhi – 110003
India.

Subject: Recommendations to the Ministry of Electronics and Information Technology to Recall Duties Imposed on Imported ICT Products in 2017 and 2014

Dear Minister Prasad,

We write to you on behalf of the Information Technology Industry Council (ITI), the Telecommunications Industry Association (TIA), and the U.S.-India Business Council (USIBC). Our member companies are deeply invested in India, and we support the Indian government's mission to make the country digitally empowered across the economy. Against this backdrop, we respectfully urge the government to rescind duties imposed on imported ICT products in 2017 and 2014.

As part of Prime Minister Modi's Digital India initiative, the government has set ambitious goals for improving connectivity and empowering citizens through better access to online information and services. But by raising the cost of telecom and other ICT components, duties will make it harder to provide technology at globally competitive prices. In short, by making key telecom and technology components more expensive, the government's actions risk undermining progress toward the goals of Digital India.

Indeed, a 2016 paper from NITI Aayog, *Make in India Strategy for Electronic Products*, observed: "Had [India] pursued import substitution in this [telecommunications] sector and relied on the domestic industry to supply the bulk of the handsets, the telecommunication revolution would have almost surely failed to materialize on the scale it did."

Market considerations aside, the duties imposed on ICT products also violate India's international commitments both as a WTO member and signatory to the ITA. When it joined the ITA in 1997, India agreed to bind its tariffs on a positive list of technology products at zero. By imposing duties on ITA-covered products, the government is going against its WTO tariff bindings. These actions raise serious questions about India's commitment to its international obligations.

At company level, duties have created considerable uncertainty and undermined confidence for companies investing in India. This negatively affects impressions about the 'Ease of doing Business' campaigns and could weigh on efforts to attract FDI. While we understand that revenues are an important consideration for the government, a friendlier and more predictable business environment would serve to attract more investors, and ultimately yield a broader and more productive corporate tax base.

Our associations consider India to be one of the most promising markets around the world, but stability and ease of doing business are important factors for investors to consider. By respecting tariff commitments, the government will improve India's business environment, bolster investor confidence, and facilitate progress toward the goals it has set for Digital India, resulting in a more vibrant economy and improved quality of life for Indian citizens.

We hope that you would consider our concerns and recommendations.

Thanking You

Yours Sincerely,
Information Technology Industry Council (ITI)
Telecommunications Industry Association (TIA)
U.S.-India Business Council (USIBC)

CC:
Shri Manoj Sinha
Minister of State – Ministry of Communications
Department of Telecommunications
Sanchar Bhawan 20, Ashoka Road, New Delhi 110001

Dr Hasmukh Adhia
Secretary – Ministry of Finance
North Block
New Delhi – 110001

Shri Ajay Prakash Sawhney
Secretary - Ministry of Electronics and Information Technology
Electronics Niketan, 6, CGO Complex,
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India.

Enclosure 3 (page 1-2 of comments excerpted)

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Comments Submitted to the Telecom Regulatory Authority of India on Inputs for Formulation of National Telecom Policy - 2018
January 19, 2018

TIA represents approximately 250 manufacturers and suppliers of high-tech telecommunications networks and services here in the United States and around the world. TIA is also an ANSI-accredited standards development organization. Our members' products and services empower communications in many industries and markets, including healthcare, education, public safety, and transportation.

We appreciate the opportunity to submit comments on India's forthcoming National Telecom Policy (NTP) 2018. Our member companies are invested in India for the long term, and they benefit from the contributions of its talented and innovative engineers. As India's telecom market matures and expands, TIA members look forward to growing with it.

Through TIA member technologies, we hope to help India make progress toward goals outlined by the Telecom Regulatory Authority of India (TRAI) such as improving the quality of telecom service and expanding internet connectivity. Below, we offer comments on the following elements addressed in TRAI's consultation paper on the NTP:

1) Access to affordable ICT goods
2) Import substitution
3) Spectrum and licensing
4) Broadband deployment benchmarks
5) Alignment on digital trade policies
6) Satellite policy
7) Standard Essential Patents (SEPs)

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1) Access to affordable ICT goods

First, we would like to acknowledge the significant strides India has made in expanding wireless and digital access to its citizens. India's overall score in the 2017 ICT Development Index (its IDI value) from the International Telecommunications Union (ITU) rose nearly 15 percent from 2016[13]. According to the ITU, India was among a handful of countries that saw the biggest year-on-year improvements in citizens' ICT access,[14] based on the penetration of mobile cell phone subscriptions, households with a computer,

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[13] International Telecommunications Union, *Measuring the Information Society 2017*, at 31.

[14] *Id.* at 76.

and other indicators. Yet India continues to lag in international rankings, and TRAI has outlined goals to improve India's rankings on connectivity, increase internet speeds and shrink the digital divide.

With the end of improving ICT access, we would encourage the government to review its policy on ICT duties.

Duties imposed by the Indian government in 2014 and 2017 are ill-considered from a trade perspective because they violate India's GATT schedule commitments. But perhaps more relevant to India's ICT policymakers is the likely negative effect on Digital India: By making products more expensive, such duties stand to undermine the government's goal of making ICT products and services more affordable and available.

It is well documented that high import tariffs can have a significant negative impact on telecom usage. According to UNCTAD, when Kenya exempted mobile handsets from a 16 per cent value-added tax in 2009, the uptake of new handsets tripled[15].

Tanzania imposes significant taxes on mobile services, with a 17 per cent excise tax in addition to a value-added tax; the result is that its 3G adoption rates lag those of its peers. A GSMA study has estimated that removing the excise tax would boost 3G adoption by 800,000 subscriptions, resulting in $115 million more in mobile investment.

Removing duties would help to keep India's ICT prices globally competitive, thereby improving citizens' access to ICT.

2) Import substitution

We acknowledge the government's interest in developing India's ICT industry, as referred to in TRAI's consultation paper. Certainly, policymakers around the globe aim to boost domestic innovation as a means to enhance economic welfare and improve quality of life.

However, we question whether it is an appropriate strategy for a nation to seek self sufficiency in telecom equipment manufacturing – or indeed any area of ICT – given the complex and globalized nature of supply chains. Protectionist policies in the telecom arena are particularly likely to have unintended consequences for economic development. A 2016 consultation paper from NITI Aayog[16] observed: "Had [India] pursued import substitution in in this [telecommunications] sector and relied on the domestic industry to supply the bulk of the handsets, the [Indian] telecommunication revolution would have almost surely failed to materialize on the scale it did."

The same NITI Aayog paper noted that protectionist policies in other Indian sectors have not yielded favorable outcomes. For example, import substitution in India's auto industry had led to car prices up to

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[15] The United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2017: Investment and the Digital Economy*, at 213.

[16] NITI Aayog*, Make in India Strategy for Electronic Products,* (May 2016), at 16.

50 higher than the global average, while similar efforts in textiles have produced a clothing industry with exports lagging much smaller Bangladesh and Vietnam.[17]

[17] *Id.* at 26.