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Telecommunications Industry Association (TIA)

Comments to

**the International Trade Administration, Department of Commerce;
Office of the United States Trade Representative; and Executive Office of the President**

on U.S. International Government Procurement Obligations

September 18, 2017

The Telecommunications Industry Association (TIA) appreciates the opportunity to provide comments on the costs and benefits to industry of U.S. international government procurement obligations.

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, security, public safety, transportation, and government.

Below, we provide comments on U.S. policies both as they relate to domestic and to foreign government procurement.

ICT Industry – Globalizing Market, Growing U.S. Work Force

As a starting point, we consider it important to acknowledge that the ICT industry has become increasingly global both in terms of customers and competitors. Not only do a growing number of key markets exist outside the United States, but U.S. firms must now compete with rivals in countries with low labor costs. Both to serve a large base of customers overseas and to remain cost-competitive, American companies have built out a complex and sophisticated web of global supply chains over a period of years.

A. Double-digit growth in high-wage American ICT jobs

While adapting to changing market and competitive dynamics, the ICT industry has generated double-digit job growth in the U.S. work force. According to the latest information from the Bureau of Labor

Statistics[1], the number of American computer and information technology jobs is expected to grow by an average of 12 percent a year from 2014 to 2024, adding nearly half a half a million jobs to total about 4.4 million jobs by the end of the period. The median annual wage for computer and information technology occupations, which includes jobs such as computer network architect, software developer, and information research scientist, was $82,860 in May 2016. That salary is more than double the median annual wage for all occupations of $37,040.

B. Leading in global innovation

Amid this job growth, the US. industry has continued to generate cutting-edge technologies, claiming global leadership in areas such as cloud computing and big data.

In short, the present structure has yielded positive results for the ICT industry measured in terms of both domestic employment and innovation.

Considering these favorable dynamics, we believe it is important that U.S. companies be allowed to continue to make their own decisions about critical elements of strategy. This includes retaining the flexibility to organize their supply chains and source according to evolving business needs.

C. Potential costs of expanded "Buy American" policies for the ICT industry

We are concerned that government-led local content requirements to encourage "buying American," however well-intentioned, could in fact handicap the ability of U.S. firms to compete. Under the current system, the domestic ICT industry has produced a significant and growing number of well-paying American jobs every year. Government policies to force the remaking of supply chains could undermine the cost competitiveness of U.S. industry and as a result, jeopardize these gains.

In addition, Buy American and similar government policies incur substantial industry compliance costs in staff labor and paperwork.

For these reasons, we would urge the U.S. government to reconsider any proposals to alter domestic policies in relation to ICT goods and services used in American government procurement.

We would also note that U.S. access to foreign government procurement markets, as provided in U.S. free trade agreements and the Agreement on Government Procurement (GPA) in foreign markets, is based on reciprocity. Any policy changes to diminish foreign companies' access to U.S. government procurement markets would in turn put at risk U.S. access to foreign markets. This would threaten sales opportunities for American companies and associated job growth.

D. Size of foreign government procurement market

The foreign government procurement market is a meaningful source of revenues for U.S. firms: according to the WTO, government procurement typically accounts for 10-15 percent of a country's GDP.[2] The U.S. telecom equipment industry is well positioned to benefit from access to foreign government procurement markets.

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[1] See https://www.bls.gov/ooh/computer-and-information-technology/home.htm, accessed September 2017

[2] See, e.g., https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm.

E. U.S. net surplus in telecom equipment with GP trading partners

Recall that the Federal Register notice requesting comment in this matter identified 33 trading partners with which the U.S. has international government procurement obligations[3]. Analysis shows that as of 2016, American firms selling telecom equipment products enjoyed a surplus with 28 of those respective countries and regions[4].

And overall, last year U.S. firms posted a net surplus in telecom equipment products with the group of 33 trading partners listed in the Federal Register notice. The fact that U.S. firms already maintain a surplus with the majority of the trading partners cited would suggest that, assuming the government procurement process is transparent and fair, they are in a reasonably strong position to compete for government contracts.

By the same reasoning, one can assume that there are very substantial benefits for the U.S. telecom equipment industry in maintaining (and ideally expanding) the current system of government procurement through reciprocal access as reflected in free trade agreements and the Agreement on Government Procurement.

To summarize, it is simply not the case for the ICT industry that by opening up U.S. government procurement markets to competition, American industry loses. To the contrary, U.S. companies are well-positioned not only in relation to domestic government contracts but, by virtue of their strong market standing, with foreign government contracts as well.

If the goal is to stimulate U.S. job growth and strengthen American economic leadership, we would urge that rather than closing down the U.S. government procurement market, the current Administration instead pursue the further opening of foreign government procurement markets.

As such, we offer below a few more thoughts on the primary vehicles for promoting expanded access to foreign government procurement, GPA and free trade agreements.

Value of the GPA and FTAs

Both in furthering market access and in ensuring high standards for the treatment of government contracts, the GPA has set an invaluable precedent.

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[3] As noted in the FRN, the trading partners with which the United States has international government procurement obligations are: Armenia, Aruba, Australia, Bahrain, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Dominican Republic, El Salvador, the European Union (which includes Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom), Guatemala, Honduras, Hong Kong, Iceland, Israel, Japan, the Republic of Korea, Liechtenstein, Mexico, the Republic of Moldova, Montenegro, Morocco, New Zealand, Nicaragua, Norway, Oman, Panama, Peru, Singapore, Switzerland, and Ukraine.

[4] Surplus and deficit data derived from https://www.census.gov/foreign-trade/statistics/country/index.html, see export and import details under “Country by 5-digit End-Use Code, Annual totals, 2007 – 2016”

A. Market Access

The agreement covers approximately $1 trillion in annual trade,[5] and a 2014 amendment (the revised GPA) expanded these opportunities for U.S. companies by an additional $80-$100 billion annually. The principal benefit of the GPA for U.S. companies is the access it provides to foreign government procurement contracts and the national treatment and non-discrimination that it guarantees with respect to the goods, services and construction services that the agreement covers. As a result of these provisions, for covered procurements, U.S. exporters are shielded from domestic preferences and discriminatory purchasing requirements that foreign governments could otherwise use to unfairly favor their own suppliers.

The expansion of the agreement's membership is a principal negotiating objective under trade promotion authority (TPA).[6] Several countries are currently negotiating their accession to the agreement.[7]

In addition to the benefits U.S. exporters realize from the GPA rules themselves, they also benefit from the equivalent rules in U.S. FTAs, as the procurement chapters in most U.S. FTAs incorporate many GPA provisions.[8]

Some agreements have built further on the foundation of the GPA: trade agreements with Canada, Singapore, and Korea – all of which are GPA members – have included higher standards in areas such as access to technical specifications, limited tendering, and timeliness of information[9].

B. Transparency

A second important benefit of the GPA for U.S. exporters is the transparency it requires in government procurement processes. While the United States typically runs its procurements in a transparent manner, this is often not the case in foreign markets. The GPA addresses this issue by establishing minimum standards for the publication of procurement legislation and potential contract opportunities covered by the agreement. This makes it easier for U.S. companies to identify potentially interesting contracts and submit their bids.

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[5] USTR, United States Welcomes New Opportunities for U.S. Suppliers Under Revised WTO Government Procurement Agreement (April 2014). A more recent WTO publication included a higher estimate of $1.7 trillion per year. WTO, Government Procurement Agreement, Opening Markets and Promoting Good Governance (2015).
[6] See Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA), section 102(b)(13)(B).
[7] Ten WTO Members are in the process of acceding to the GPA (Albania; Australia; China; Georgia; Jordan; Kyrgyz Republic; Oman; Russian Federation; Tajikistan; and the former Yugoslav Republic of Macedonia). The process has been slow in some cases, however. China, for example, committed in 2001 to commence its negotiations "as soon as possible," but its proposed commitments have lacked ambition and have not been acceptable to the existing GPA members. Five other WTO members undertook commitments in their WTO accession protocols to initiate accession (Afghanistan, Kazakhstan, Mongolia, Saudi Arabia and Seychelles).
[8] Steve Woolcock and Jean Heilman Greir, Public Procurement in the Transatlantic Trade and Investment Partnership Negotiations, at 26 (Feb. 2015) (noting that the United States and the EU have effectively exported the GPA framework of rules to many other countries via FTA negotiations).
9 USITC, Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, https://www.usitc.gov/publications/332/pub4614.pdf, at 96 (June 2016).

C. Good Governance

A third significant benefit of the GPA is its impact on good governance. The revised GPA was the first WTO agreement to explicitly address corruption by requiring parties to conduct their procurement activities in a way that avoids conflicts of interest and prevents corrupt practices.[10] In this way, the agreement furthers longstanding U.S. efforts to fight foreign government corruption and to strengthen the rule of law.[11] It also furthers two important Congressional goals for trade negotiations, as TPA includes principal negotiating objectives that call specifically for (1) high standard provisions to prohibit bribery and other practices that secure improper advantages for foreign competitors of U.S. companies;[12] and (2) good governance, transparency and the rule of law.[13]

D. GPA Work Programs

As part of the negotiation of the revised GPA, the parties agreed to a set of future work programs that the WTO GPA Committee would undertake after the revised agreement entered into force. They include programs on the treatment of small and medium-sized enterprises (SMEs); sustainable procurement; the collection and dissemination of statistical data; exclusions and restrictions in parties' annexes; and safety standards in international procurement. The working group on SMEs has made particularly good progress,[14] and is yet another way in which the GPA advances the objectives of TPA.[15]

In the future, some have even suggested the jurisdiction of the GPA could be extended to apply to purchases by state trading companies, including state-owned enterprises[16], which existing multilateral agreements are ill-equipped to address. This could provide a powerful tool in addressing market access problems in countries where SOEs are granted an outsized market role.

E. Improving Statistical Reporting on Value of GPA

To better document the full value of the GPA, it is important to collect information about the extent to which U.S. FTA partner governments open procurement to U.S. suppliers. Unfortunately, these details are not currently available.

TIA members support the recommendations offered in a recent GAO report to improve statistical reporting of government procurement under the GPA and U.S. FTAs. These suggestions included: work with GPA parties to enhance their reporting; resume required data exchange with NAFTA parties;

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10 Revised Agreement on Government Procurement, Art. IV.4 (stating that procuring entities must "conduct covered procurement in a transparent and impartial manner that . . . avoids conflicts of interest . . . and prevents corrupt practices.").

11 See 2017 NTE Report on Foreign Trade Barriers at 6 (March 2017).

12 TPA, section 102(b)(15).

13 Id., section 102(b)(21).

14 USTR, 2017 Annual Report at 111 (noting that work on sustainable procurement and SMEs "was particularly notable in 2016.").

15 One of the overall negotiating objectives of TPA is to "ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities . . . ." TPA, section 102(a)(8).

16 See https://www.nottingham.ac.uk/pprg/documentsarchive/fulltextarticles/wtobookchapter1.pdf, The WTO Regime on Government Procurement: Challenge and Reform, edited by Sue Arrowsmith and Robert D. Anderson, at 45-7. Cambridge: Cambridge University Press (2011).

improve U.S. federal and state procurement data reported to the WTO; and ensure that U.S. statistical notifications to the WTO are well documented and reviewed for accuracy. [17]

F. Expanding the Agreement's membership, including through NAFTA

As noted above, the expansion of the membership of the GPA is a principal TPA negotiating objective and the United States has consistently pressed non-members to accede to the agreement. The renegotiation of NAFTA provides an opportunity to address this Congressional priority, since Mexico is not currently a member.[18]

Indeed, we endorse the goals laid out for government procurement in the USTR's July 17th, 2017 "Summary of Objectives for the NAFTA Renegotiation." These include "increas[ing] opportunities for U.S. firms to sell U.S. products and services into the NAFTA countries; and establish[ing] fair, transparent, predictable, and non-discriminatory rules to govern government procurement in the NAFTA countries, including rules mirroring existing U.S. government procurement practices..."

USTR's language in this document accords with the widely-held view in industry that current U.S. government procurement practices represent the highest standard globally. We would agree with the notion that rather than change these procedures, the Administration would be better served – as in NAFTA – to encourage other countries to promote an approach that fosters open markets and competition in government procurement.

[17] GAO, Government Procurement: United States Reported Opening More Opportunities to Foreign Firms Than Other Countries, But Better Data are Needed (February 2017).

[18] Relatedly, claims by some in Congress that the Administration should strike the procurement provisions in NAFTA because of their purported negative impact on U.S. companies are misguided; as the U.S. Chamber of Commerce has noted, the data show that just one of the 50 largest contractors to the U.S. government in FY2016 was a foreign firm, and that firm was British, not Canadian or Mexican. Indeed, only a single Canadian firm appeared in the top 100 contractors; none was Mexican. John Murphy, Rule 1 for Trade Negotiators, No 'Own Goals' (Feb. 24, 2017).