From: Nicolas Fetchko
To: Nicolas Fetchko
Sent: Thu Jan 20 15:22:57 2011
Subject: TIA-USIBC Submission on TRAI Consultation Paper on Encouraging Telecom Equipment Manufacturing in India

tdra@trai.gov.in; tdra.trai@gmail.com

Dear Mr. Gupta,

Please find attached a joint submission by the Telecommunications Industry Association and the U.S.-India Business Council on the TRAI Consultation Paper on Encouraging Telecom Equipment Manufacturing in India.

Thank you and best regards.

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January 21, 2011

Via Electronic Mail to tdra@trai.gov.in

Dr. J. S. Sarma, Chairperson
The Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg
(Old Minto Road) New Delhi 110 002
India

RE: TIA and USIBC Comments on Consultation Paper on "Encouraging Telecom Equipment Manufacturing in India."

Dear Chairman Sarma:

The Telecommunications Industry Association (TIA) and the U.S. India Business Council (USIBC) appreciate the opportunity to comment on the Telecom Regulatory Authority of India's Consultation Paper on "Encouraging Telecom Equipment Manufacturing in India." TIA and USIBC represent hundreds of global ICT companies that have invested billions of dollars in India, established numerous R&D centers in India, employed hundreds of thousands of Indian citizens, and continue to pay taxes to the Indian government.

TIA and USIBC have been very active in the information and communication technology policy arena through their work as industry conveners for the U.S.-India ICT Working Group led by the U.S. Department of State and the Indian Department of Information Technology. That forum and the exchanges that we have been able to have with TRAI have been extremely helpful in increasing understanding of the goals and interests of both sides on a multitude of different issues related to ICT policy and market issues.

As the TRAI Consultation Paper notes, there are a number of different international examples where governments have attempted to foster innovation and domestic investment in the ICT and other sectors. While there are many examples, we encourage India to focus on efforts that will result in positive and sustainable innovation over the long term. We believe the best way to benefit Indian citizens is to foster an open and competitive environment to promote innovation and optimize costs to Indian consumers.

Creating a Healthy and Prosperous Business Environment

Creating a successful, healthy, and enabling policy environment that promotes innovation, investment, and maximizes benefits to consumers begins with an essential foundation of transparent and predictable regulations. TRAI's model of public consultation on proposed policy recommendations is a very important element of creating such transparency and predictability – a model that we strongly hope that the Government of India will continue to deploy across all government institutions and ministries.

In our experience, the lack of such institutionalized stakeholder consultation in India has created a confusing, opaque, and unpredictable regulatory environment that has inhibited the government's ability to harness the full potential of its private sector. In many cases, policies are issued in final form without the public having been consulted or notified that such policies were being considered. The consequences of this approach have created uncertainty in the marketplace and disrupted the flow of investment until regulations are clarified and/or revised.

Systematic public consultation with stakeholders is an accepted international best practice employed in the world's most innovative economies and is required for technical regulations that significantly affect trade (See WTO Agreement on Technical Barriers to Trade, Article 2.9). Moreover, with respect to TRAI's Consultation Paper on Encouraging Telecom Equipment Manufacturing in India, we respectfully note that the timeframe for comments was relatively short. We recommend that future consultations provide more time, a minimum of 60 days, to generate thoughtful and comprehensive responses on such critical issues that will affect the direction of a very strategic industry, billions of dollars in investments, and many thousands of high paying jobs in India.

With respect to the questions posed in TRAI's Consultation Paper Encouraging Telecom Equipment Manufacturing in India (hereinafter "Consultation Paper") we are surprised that the ideas in the paper have evolved largely from an incentive-based perspective to a significant discussion on an exclusionary set of policy considerations. As noted below, the latter raises significant economic considerations as well as legal and policy issues under applicable WTO international agreements. Our comments are organized under the general headings outlined at the end of the Consultation Paper:

Research and Development (R&D)

It is our view that the conduct of R&D in the telecom space should be directed by the private sector. The language in the section on R&D implies that the government should have a role in what sorts of technologies are developed. Today's successful telecommunications technologies have virtually all been developed by a combination of private sector and academic initiative. While governments can provide research grants through academic and other research institutes to facilitate pre-competitive research on general science and math projects, the initiative for specific technologies to be developed should be flexible and should come only from the private sector and the academic institutions themselves. In that light, we have supported the concept of India's Telecom Centers of Excellence, which offer a collaborative model for industry and research institutes to work together to develop new technologies and to meet the evolving needs of the telecommunications sector.

R&D today in the ICT field reflects the globalization of the market, with academics, researchers, companies, and other organizations collaborating with counterparts across the globe. Unfortunately, attempts to create "indigenous innovation," a prominent example of which has been cited in the Consultation Paper, often ignore the very important reality that innovation is increasingly collaborative and cross border in nature. In brief, trying to innovate in isolation will reduce the ability of Indian researchers to benefit from international collaboration that produces the advanced technologies that India and the world enjoy today.

It is our recommendation that any funding provided by the government for R&D should recognize this important fact and not discriminate on the basis of national origin of the recipient, but rather select projects based solely on the quality of the application for available funding. Please note that providing "preferred market access" for telecom products developed by Indian R&D and IP as suggested in Section 2.14(vi) of the Consultation Paper would likely violate the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In particular, Article 3(1) of the TRIPS Agreement states that "Each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property." In other words, as a general matter, the Government of India cannot favor Indian IP over foreign IP and still remain in compliance with its WTO obligations.

Moreover, with regards to the comments in section 2.14 about possible measures for promoting R&D, we also believe that given the benefits of broadband and the need for the USO funds to be utilized for this purpose, it is our view that it would be a mistake to dedicate potentially underutilized universal service funds for such activities.

Sourcing of Inputs

We are troubled by the policy implications that parts of this section of the Consultation Paper poses. Policies that place the government in the position of determining what technological components can or should be produced in India are contrary to the open market that India is striving to create and from which it is now benefiting. We strongly believe establishing economic plans or government targets for indigenous manufacture of components will be counterproductive, inefficient, and, ultimately, ineffective.

Moreover, we underscore that India should avoid mandatory quantitative targets on the commercial manufacture process or use of domestic components/inputs, as they are contrary to the national treatment requirements in Articles III.5 and XI of the General Agreement on Tariffs and Trade (GATT). In addition, the government should not consider providing incentives to local Indian manufacturing facilities to buy raw materials or components made in India as that would run afoul of Article 3.1(b) of the WTO Agreement on Subsidies and Countervailing Measures (ASCM), which prohibits "subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods."

India can and should think creatively, however, on how it can legitimately incentivize in a positive way the private investment in ICT products and other sectors in India. For example, as the Consultation Paper recognizes, lowering duties on components made in India would make their manufacture much more competitive with the importation of like components made overseas that benefit from the zero tariff provisions in the WTO Information Technology Agreement. In addition, the government could provide significant tax incentives (e.g. lower corporate income tax rate) for companies which invest in local manufacturing facilities, promote the development of infrastructure (telecommunications networks, roads, ports), and encourage other necessary regulatory improvements such as ensuring an efficient and effective rule of law. We underscore that India should avoid policies that discriminate between domestic or international companies. The most successful and innovative economies have focused on creating an enabling environment that creates an open and even playing field for all private sector players that locate or sell in the country of concern.

Manufacturing of Equipment

As with the "Sourcing of Inputs" section, we have reservations about suggestions that would mandate or set quotas on the commercial sourcing of equipments for commercial use. Such tactics, we believe, will distort the market for telecommunications equipment and ultimately increase costs to India's telecommunications sector. Such quotas raise GATT Article III.4 and XI concerns. Also, incentives given to service providers for use of Indian equipment, as suggested in question 17 of Section 2.25 of the Consultation Paper, would be inconsistent with Article 3.1 (b) of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). These WTO prohibitions exist because they prevent market distortions and thus impede the significant benefits of open trade.

India's telecommunications sector is one of the most efficient and fastest growing in the world precisely because there is open competition between vendors, network integrators and telecommunications service providers to enable the build out of telecommunications networks. By freeing up market forces, India has enabled vast numbers of very poor consumers to access the telecommunications network for the first time as prices have fallen.

Should India create distortions in the market that lead to increased prices for components, operators will be forced to increase their costs, which could potentially lead to fewer consumers being able to connect to the network. It is already a well-known fact that India's Telecommunications Service Providers operate with some of the lowest average revenue per user (ARPU) values in the world. Introducing price- and quantity-distorting policies would disrupt the market's ability to meet the demands of Indian consumers who have come to rely on access to the telecommunications network in order to improve their daily lives.

Accordingly, we believe India should avoid any regulations that would set domestic content quotas on operators or vendors and provide incentives for the purchase of local equipment. Instead, India should ensure that telecommunications service providers are free to purchase technology solutions that best meet their needs, irrespective of where it is manufactured.

Promoting Domestic Manufacture

Similar to the concerns raised above, we think that the concept of "reserving" a percentage of the Indian market for Indian manufacturers undermines the very foundation for the Indian telecommunications sector's success and would violate the non-discrimination provisions and quota prohibitions in GATT Article II.5 and XI. Moreover, regulatory measures that allow telecom investments in India only on condition that equipment, components or raw material be purchased from local suppliers likely would violate the WTO Agreement on Trade-Related Investment Measures (TRIMS). India should further be mindful of its obligations to refrain from imposing new non-tariff barriers as a means of encouraging telecommunications equipment manufacturing. Such measures are inconsistent with India's national treatment obligations under Article III(1) of the WTO General Agreement on Tariffs and Trade which provides that:

> "laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production."

India cannot reserve a portion of the market for Indian manufacturers without violating its GATT and other WTO commitments. TRAI should ensure that any measures under consideration are consistent with these treaty obligations.

Promoting innovation and investment, while laudable goals, needs to be undertaken in a way that will not disrupt the market, favor local over foreign products, and impede growth in the sector. The build-out of the telecommunications sector has attracted foreign investment in the BPO sector. Further investment in networks has resulted in the creation of new services and business opportunities for Indian citizens. Should India implement policies that impede growth of the telecom sector in an attempt to promote domestic manufacturing of ICTs, it should carefully weigh the consequences of doing so.

Setting up Special Zones or Telecom Clusters

India has had success in establishing Software Technology Parks to promote tax free zones to encourage software development in India. A similar concept could be applied to encourage manufacturing of telecommunications equipment in India. As in the case of the software technology parks, it is important that the terms for participation by companies be non-discriminatory, transparent, and predictable.

Testing, Standardization and Accreditation

TIA and USIBC are strongly committed to the use of international standards developed through voluntary and consensus-based processes based on reasonable and non-discriminatory approaches to intellectual property. We encourage India to participate in the development of international standards and to implement international standards rather than creating unique Indian standards. Using international standards promotes consistency and protects Indian consumers from higher prices caused by increased compliance costs.

Building laboratories to test to a variety of different standards can be quite costly to create and maintain. India should carefully evaluate and prioritize what its needs are in this area. Are there specific conformance problems that India is trying to address? While some testing may be desirable from a radio frequency interference or electrical safety perspective, careful consideration should be given as to how standards are set; laboratories are established and maintained; and, the ultimate cost to the market for requiring such tests as opposed to other approaches that might be less costly and burdensome to the market.

Funding/FDI

Similar to our comments made above, positive incentives that are offered in a manner that does not discriminate between domestic and foreign products could be beneficial in promoting the manufacture and R&D of telecommunications equipment in India. The Industrial Technology Research Institute model from Taiwan suggested in the Consultation Paper might be another model for India to consider, provided that the sale of any technology developed by such bodies is available on a non-discriminatory basis (i.e. any company, domestic or foreign, can purchase on equal terms).

Duties and Levies

The Consultation Paper correctly notes that, as a signatory to the WTO's Information Technology Agreement (ITA), India has benefited from its participation in this important international agreement. We strongly recommend against any regulations that would discriminate between a domestic or foreign manufacturer by subsidizing spectrum or any other licensing fee to a telecom service provider. Telecom Service Providers should be free to choose technologies that best meet their technical and operational needs.

Conclusion

TIA and USIBC recognize the legitimate desire of India to create an environment conducive to economic growth. However, we believe that regulations or incentive structures that distort the market or create preferences for domestic products at the expense of like foreign products will lead to a less efficient and prosperous telecommunications sector. That, in turn, may increase costs for Indian consumers already committing a significant part of their income to connect to the telecommunications infrastructure. We strongly encourage the TRAI and the government of India to carefully evaluate legal and policy implications as well as the costs that such incentive programs would create.

If TRAI has any questions about this document or if TIA and USIBC can assist you in other way, please do not hesitate to contact Nick Fetchko at nfetchko@tiaonline.org or Michael DiPaula-Coyle at mcoyle@uschamber.com.

Sincerely,

Grant Seiffert
President TIA

Ron Somers
President USIBC