March 6, 2012

Ambassador Ron Kirk
United States Trade Representative
Washington, D.C. 20508

Dear Ambassador Kirk:

The undersigned trade associations seek your urgent assistance in addressing a troubling development in the U.S.-India commercial relationship that could have a devastating impact on the ability of our companies to compete fairly in this critical market.

Specifically, we are deeply concerned over a new Preferential Market Access (PMA) notification released by the Government of India's Department of Information Technology mandating preferences for domestically manufactured electronic goods— which may include software as well as hardware— for the purpose of government procurement as well as for products that have undefined "security implications." The PMA notification indicates that this new requirement will apply to procurements by government and "Government Licensees" as well as to procurements of electronic hardware as a service from Managed Service Providers (MSPs). Consequently, these rules could apply to private sector entities licensed by the government, including telecommunications service providers and banking and financial services companies. Furthermore, since the term MSPs is not defined and the scope open-ended, it is conceivable that procurements by such entities (whether or not related to government) would be covered. We urge USTR to engage the Government of India (GoI) on this issue as soon as possible and to encourage like-minded foreign governments to do the same.

This notification is the culmination of similar Indian policy proposals over the past year that have proposed discriminatory government procurement policies as a means to stimulate domestic manufacturing of electronics and telecommunications equipment at the expense of foreign companies.[1] In response to each of these proposals, many of our associations have engaged the GoI via formal comments and in bilateral meetings urging it not to move forward on these discriminatory policies and instead to find ways to promote domestic economic development without discriminating against foreign companies. We have stated that, while the GoI has legitimate objectives that include ensuring the security of its telecommunications and IT sectors and fostering greater innovation and job creation in India, the proposed regulations and policies will only impede these goals and could potentially violate India's WTO commitments.

The use of restrictive government procurement policies to boost domestic manufacturing is not an effective public policy tool and certainly is not in keeping with India's stated

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[1] *Recommendations on Telecom Equipment Manufacturing Policy* issued in April 2011 by the Telecom Regulatory Authority of India (TRAI)*; National Manufacturing Policy* issued in October 2011 by the Department of Industrial Planning and Promotion (DIPP)*;* and the *National Electronics Policy 2011, National IT Policy 2011,* and *National Telecommunications Policy 2011*, all issued in October 2011 by the Ministry of Communications and Information Technology.

desire to join the WTO's Government Procurement Agreement (GPA). Further, although the government procurement market falls outside of India's current WTO commitments, "buy domestic" (in this case, "buy India") measures would deny India access to global technological and product innovations and thus weaken rather than strengthen India's security. The ICT sector is a vibrant and dynamic one, and such restrictions as India seeks to impose could undermine a sector that has been a catalyst of India's economic vitality and growth as well as U.S.-India trade and investment over the past 15 years.

Most troubling, however, are the GoI's plans to use its regulatory power to force government *licensees* to purchase domestic electronic products in a manner clearly inconsistent with the letter and spirit of India's WTO commitments (see below). Such a step would abrogate India's WTO commitments; set a dangerous precedent globally; damage the conduct of business in India, in general; and damage U.S.-India trade and investment, in particular.

The broad application of these rules to any entity that receives a government license could potentially affect the procurements of a wide swath of regulated industries in India. This provision of the PMA notification clearly violates the General Agreement on Tariffs and Trade (GATT), Article III.8 (a). The PMA notification cannot be justified by the WTO exception for security, which is meant to apply only to particularly sensitive government functions. We have raised these points repeatedly with the GoI, but this new notification indicates that the GoI has chosen to press ahead regardless of the prospect of contravening its WTO commitments.

That private-sector entities (the licensed telecom providers, MSPs, and companies linked to them) would be forced to alter their procurement decisions for non-government transactions by a mandate imposed via an executive notification and a change in their license terms is especially troubling. It creates a precedent wherein the GoI can intervene in purely private sector business transactions via executive orders, undermining the market and investor confidence in India.

Ultimately, the GoI is in effect seeking the right to discriminate against the most innovative and competitive American ICT products. Our ability to sell American products and services in India will help lead the way to achieving the President's national objective of doubling exports over five years. India must adhere to its WTO commitments to maintain the intended system of global free trade. However, India's PMA notification undermines free trade by imposing a protectionist policy. The policy is particularly damaging to U.S. ICT exporters and their workers, given the significant commitment these entities have already made to the Indian market. Moreover, these policies, if left unchecked, carry with them the potential for a contagion effect, encouraging the GoI to issue similar policies affecting other sectors and providing rationale for other countries to mirror this unfortunate behavior.

We urge the U.S. Government to use every tool available, including utilizing the WTO, to press the Indian Government to suspend implementation of this discriminatory policy and to engage with stakeholders—including the U.S. Government, other governments,

and global industry— to constructively address its economic and security concerns without contravening global trade rules and norms.

Respectfully,

Business Software Alliance (BSA)
Coalition of Service Industries (CSI)
Consumer Electronics Association (CEA)
Emergency Committee for American Trade (ECAT)
European-American Business Council (EABC)
Information Technology Industry Council (ITI)
Software & Information Industry Association (SIIA)
TechAmerica
Telecommunications Industry Association (TIA)
U.S.-India Business Council (USIBC)

CC: Secretary of Commerce John E. Bryson
Secretary of State Hillary Clinton