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Shri Arvind Kumar
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Telecom Regulatory Authority of India
Udyog Bhawan
New Delhi, India

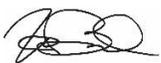
Re: USIBC Response to Consultation Paper on Promoting Local Telecom Equipment Manufacturing

Dear Shri Kumar,

The U.S. Chamber of Commerce's U.S.-India Business Council (USIBC) supports the Telecommunications Regulatory of Authority of India (TRAI) for its commitment to light-tough regulation and pro-growth digital policies embodied by the Prime Minister's *Digital India* vision. Representing some 350 Indian, U.S. and global companies, USIBC remains committed to a growing, prosperous India. Our members are significant investors, manufacturers, exporters and employers across India's diverse economy, and are critical drivers of India's digital transformation. Our membership includes approximately 100 digital companies, including 10 of the top 20 Indian information technology (IT) leaders, as well as large, small and entrepreneurial enterprises from the telecommunications, equipment manufacturing, fintech, and cybersecurity sectors. While USIBC supports and advocates for the objectives of *Digital India* and *Make-in-India* – increased investment, employment, and innovation – **central elements of the consultation referenced are counter-productive to these goals, and in fact, would dampen investor interest, reduce India's economic competitiveness, and negatively impact the services and entrepreneurship that depend on advanced telecommunications networks and services.**

USIBC and our members hope that our comments will be given a timely and sympathetic consideration. We welcome the opportunity to discuss in person these policy issues with you and your staff. In the meanwhile, please do not hesitate to contact me or my staff: Jay Gullish, jgullish@usibc.com, in Washington, D.C., Abhishek Kishore, akishore@usibc.com, in New Delhi. Once again, I would like to personally thank you for your leadership, and the Council and its members hope to discuss these recommendations at your convenience.

Sincerely,



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Issues for Consultation

In response to the central issue for consultation, USIBC believes preferential market access (PMA) policies favoring domestic manufactured products by the Government of India (GOI) or government-licensed operators are counterproductive to the goals of *Digital India* and *Make-in-India* because these measures undermine investor confidence, increase the cost of doing business, and are contrary to India's commitments under the World Trade Organization (WTO). Therefore, while USIBC and our members strongly support the objectives and need to increase domestic employment, we caution TRAI not to recommend any mandates, rather to work constructively with domestic and global industry, as well as bilaterally with the United States via the U.S.-India Information and Communications Technology (ICT) Working Group (ICTWG).

USIBC also cautions linking import substitution policies such as those outlined in the consultation paper to increases in manufacturing employment. Any nominal gains from PMA policies are not sustainable, and would be ultimately offset by a loss of economic competitiveness, higher input costs, and potential retaliation by critical export markets – thus threatening India's highly competitive and growing \$150B information technology industry.¹ The limits and pitfalls on the digital economy of this economic strategy are clear, suggesting the GOI should focus on the ease-of-doing business, human capital development, infrastructure, and entrepreneurship to create a highly competitive, innovative, and robust ICT ecosystem.

The USIBC mission promotes U.S.-India commercial ties and the socio-economic well-being of its citizens. Toward this end, the follow principles apply to this consultation and are embedded in our responses to selected questions raised in the consultation.

- USIBC promotes the bilateral movement of all economic resources – capital, labor, technology and data – in order to enhance competitiveness and productivity, which maximizes the socio-economic well-being of citizen in both countries.
- Preferential domestic procurement policies deprive India from global cutting-edge technologies, hinders innovation, stifles ancillary economic development, elevates security risks, and increases costs for everyone.
- Mandates that force telecom licensees, both state-owned public service providers and private operators, likely violate India's WTO commitments.

¹ <https://economictimes.indiatimes.com/tech/ites/nasscom-trims-software-services-growth-projection-to-10-12/articleshow/50848292.cms>

- PMA policies create economic inefficiencies, raise costs, and could reduce the quality of service – all of which have a negative indirect effect on India’s wider economic competitiveness and ease-of-doing business – and deprive Indian consumers and businesses from best available technologies in the market.
- The GOI should focus on the underlying policy environment, manufacturing incentives, human capital development, and infrastructure to attract domestic production.
- Any PMA measures could create a backlash in India’s export markets such as Europe and the United States, which could hurt India’s IT sector, which have successful export models.
- There are many third-party, internationally-tested and certified security technologies/products, and standards available in the market. The GOI should recognize these standards and should not introduce local standards that increase business burden and reduce access to advanced cyber solutions.
- The GOI should utilize the robust U.S.-India bilateral processes and India’s other bilateral mechanisms already in place to explore discussions on global best practices in innovation and manufacturing policy.

Q.1 Large number of initiatives have been taken by the government to promote electronics manufacturing, while these initiatives have succeeded in attracting significant investments in other sectors like LED, consumer electronics, mobile handsets, automotive electronics etc., they have failed to attract investments in telecom equipment sector, e.g., PMA has worked very effectively in LED sector but did not work so effectively in telecom. Please enumerate the reasons with justifications for the poor performance of local telecom manufacturing industry in spite of numerous initiatives by the government/industry.

To promote local manufacturing of telecom equipment, the GOI should focus on investing broadly in infrastructure, human capital development, policy stability and transparency, and the ease-of-doing business. Therefore, the GOI should refrain from implementing PMA, focusing rather on integrating cutting edge systems that optimize economic benefit and value-added to the broader economy, which attracts foreign high-tech companies to India across the industrial spectrum. Government policies should also encourage market competition to maximize investment and minimize cost to end users, while at the same time work with industry and academia to develop local talent to stimulate innovation.

In fact, PMA and content limits undercuts the GOI’s *Make-in-India* objectives. Although the procurement mandate attempts to force foreign entities to invest in India’s manufacturing base for electronic goods, the legal contrivance actually discourages foreign direct investment (FDI) in India as it causes harmful market distortions. The search for an electronic goods vendor is a complex process. An ICT provider typically evaluates vendors based on their specialized skill sets, resources, financial stability, commitment to quality, track record, and cost. To conduct the evaluation properly, providers must be free to use their best business

judgment and compare vendors worldwide. That is the only way to survive in today's highly competitive global electronics market.

Forcing a purchaser to bias the vendor selection process by favoring vendors in any one country causes market distortions harmful to foreign investors, consumers and the overall economy. The discriminatory procurement mandate could harm foreign investors by forcing them to breach existing contracts with non-Indian vendors, lose India-related contracts for lack of an Indian supply base, or sign contracts with inferior Indian vendors. For example, a small Indian vendor may lack the large-scale production capacity needed to fulfill a large procurement contract, thus delaying the purchaser from bringing its goods to market. The discriminatory measure, therefore, harms consumers because it protects domestic vendors from foreign competition, thereby letting local sellers raise prices to local consumers. Raising prices to Indian consumers undercuts the GOI's goal of inclusive growth.

The overall economy is impaired because it suffers reduced access to state-of-the-art goods produced elsewhere in the world and reduced opportunities for the kind of technology transfer that sparks local innovation. The economy may be further harmed as foreign investors grow wary of investing in the discriminatory market. As case in point, the Indian telecommunications network largely consists of 2G and 3G wireless technologies. Here, a PMA initiative could delay the implementation and increase the cost of migrating to 4G cellular technology, as well as limit the development of competitive platforms that use wireline, cable, or satellite access technologies.

Finally, the regulatory uncertainty created by the procurement mandate further discourages foreign investors as businesses are reluctant to invest in times of uncertainty. Unfortunately for the Indian economy, the consultation itself produces uncertainty even if the recommendations themselves are not harmful. Therefore, preferential domestic product procurement policy as suggested by this consultation will deprive Indian telecom operators access to advanced technologies, hinder innovation, stifle ancillary economic development, and increase costs within the telecommunications as well as the broader economy.

Q.2 What policy measures are required to be instituted to boost Innovation and productivity of local Telecom manufacturing in our country? Please provide details in terms of Short-Term, Medium-Term and Long-Term objectives.

Preferential treatment creates barriers to innovation and deprives the Indian market from using the latest and most advanced technologies. Using local outdated technologies also significantly increase security risk, as cyber security solutions are increasingly embedded into cutting-edge equipment. Instead of mandating local product usage, India should embark on developing a world-class manufacturing industry that produces advanced products that compete in the market, proactively focusing on building a business ecosystem with a sound infrastructure. Such an environment would accommodate land acquisition, develop systems of transportation, power, and water, streamline taxes, provide skilled labor for manufacturing, fund the research and development

of manufacturing products, protect the ownership of real property and intellectual property, and expedite governmental approvals. In addition, this ecosystem would give investors the regulatory and financial stability they need to take long-term risks.

Q.3 Are the existing patent laws in India sufficient to address the issues of local manufacturers? If No, then suggest the measures to be adopted and amendments that need to be incorporated for supporting the local telecom manufacturing industry.

The Indian government should not view intellectual property rights (IPR) as an impediment to local manufacturers. In fact, the opposite is the case. The Indian government should strengthen IPR enforcement to encourage local technology innovation. If the GOI adopts a conducive and attractive IPR policy environment, then more IPR will be created and held domestically.

Q.4 Is the existing mechanism of Standardisation, Certification and Testing of Telecom Equipments adequate to support the local telecom manufacturing? If not, then please list out the short-comings and suggest a framework for Standardisation, Certification and Testing of Telecom Equipments.

USIBC supports standards and certification regimes that optimize trade and investment, boost competitiveness within the global economy, and spur innovation. India holds vast potential to be a leader in the global supply chain for electronics and IT products, however, the current standards and certification regime in many ways isolates the Indian market and Indian industry. On standards, USIBC highlights the success of current, international standard-setting regimes that utilizes a public-private partnership (PPP) that links government, industry, academia and civil society to the global standards setting community. The current PPP framework offers expertise aligned to highly technical technologies such as 5G cellular, cybersecurity, Internet of Things (IoT), et al., thus providing the digital economy with tremendous stability, innovation, and interoperability. A PPP approach optimizes the use of standards globally while ensuring that India's views are incorporated into the process. But importantly, this practice ensures transparency and a technology-neutral approach. India's success in supporting local telecom manufacturing is predicated on successfully integrating into the global electronics and IT supply chain. To achieve this, USIBC urges the GOI, via a PPP approach, to continue and expand its engagement with existing international standard setting organizations (SSO) consistent with India's WTO Technical Barriers to Trade commitments.

To the contrary, imposing unique domestic standards and local redundant testing requirements produce significant negative impacts on India's digital ecosystem, and such an approach runs counter to India's WTO commitments. But most importantly, local standards (and mandatory local testing) make India a less attractive place to do business, not just to electronics sectors, but to the entire economy which increasingly relies on globally-connected digital products and services. Local standards also hurt the competitiveness of domestic manufacturers as global producers have the scale and capability to meet Indian standards, while Indian manufacturers will be challenged to target export markets. This distortion will weigh heavier on Indian-only

manufacturers than global producers. Further, mandated India-only standards exacerbates this competitive disadvantage, as smaller India manufacturers will also be required to test products in multiple export markets as some trading partners will invariably apply similar rules to Indian exports. In summary, an India-localized approach to standards and certification is a sure path to leaving India behind in an increasingly competitive global economy where standards are relied upon to bring innovation to market. India's ability to be an innovation leader in telecom equipment is contingent upon being at the table where international standards and certification decisions are made.

Q.7 Are there any issues under ITA which need to be addressed for making the local Telecom Manufacturing more competitive and robust

As proposed, TRAI's push for mandatory local content violates India WTO obligations, and therefore, TRAI must be judicious that its recommendations respect India's international commitments. To do so would undermine investor confidence and result in protracted legal and technical reviews at both bilateral and multilateral fora. Specifically, the Consultation Paper suggests the mandates could cover state-owned enterprises and private sector licensee, which likely violate WTO obligations related to procurement mandates. Applying the procurement mandate to the private sector is significant because the WTO generally prohibits signatory countries from adopting procurement policies that discriminate against foreign private sellers and investors.

For example, Article III of the General Agreement on Tariffs and Trade (GATT) requires a WTO member to offer other members treatment no less favorable than it affords its own citizens and goods. Specifically, Article III states that WTO members may not "establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources." The only exception to this broad prohibition is for government procurement.

TRAI recommendations could also violate WTO Agreement on Subsidies and Countervailing Measures (ASCM), which prohibits subsidies based on the use of local content. The exception applies to "the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale," which suggests that mandates related to state-owned enterprises would not be permitted as well. Lastly, the Agreement on Trade-Related Investment Measures (TRIMS) prohibits investment measures that are inconsistent with the national treatment obligation in GATT Article III, which prohibits discrimination against foreign goods in favor of like domestic goods. Taken individually or as a whole, local content requirements would violate India's WTO obligations, and would further undermine investor confidence, and thus, negatively impact India economy and industry.

Q.9 Does the existing PMA policy require any change? If yes, then please provide complete details with justifications.

USIBC consistently advocates against PMA policies as they distort the economy and reduce economic competitiveness, which ultimately results in lower economic growth, reduced innovation, and stunts job creation.

Q.10 Any other relevant issues that needs to be addressed to encourage local telecom manufacturing in our country.

For domestic sales of equipment manufactured in special economic zones (SEZ), the GOI should eliminate the 10% Basic Customs Duty (BCD) so that these factories are not at competitive disadvantage vis-à-vis domestic manufacturers located outside the SEZ, which currently do not pay the BCD on domestic equipment sales. This would encourage investment in manufacturing facilities in SEZs and create parity among all factories selling to the domestic Indian market.