Statement for the Record
IBM Corporation
March 13, 2013

Subcommittee on Trade
Committee on Ways and Means

*U.S.-India Trade Relations: Opportunities and Challenges*

IBM is a globally integrated technology and consulting company headquartered in Armonk, New York. With operations in more than 170 countries, IBM attracts and retains some of the world's most talented people to help solve problems and provide an edge for businesses, governments and non-profits. Innovation is at the core of IBM's strategy. The company develops and sells software and systems hardware and a broad range of infrastructure, cloud and consulting services.

Since IBM re-entered India in the late 1990s, we have built a dynamic presence that supports our growing business within the country. Our ability to compete fairly in India supports jobs, innovation and growth here in the United States. It also enhances our global competiveness, ensuring that the company can compete and win in other critical markets.

We are deeply concerned by a number of new policies that have been issued by the Government of India (GOI) that discriminate against IBM and other foreign companies. Indeed, these troubling policies signal a marked departure from what, to date, had been a positive policy trajectory of opening the market to competition and international participation. These policies, which impact most sectors in India, include unfair tax polices directed at foreign multinationals; increased tariffs, duties and other market-distorting fees; and very specific government regulations designed to disadvantage foreign companies over Indian companies. Many of these policies appear to be inconsistent with India's obligations under the World Trade Organization and other international norms and standards.

Within this overall context, IBM and other Information and Communications Technology (ICT) companies are confronted with two new policies that are especially troubling.

***The Preferential Market Access Policy***

Published on February 10, 2012 by the Ministry of Communications and Information Technology (MCIT), the Preferential Market Access (PMA) Policy and its associated implementation guidelines would impose severe local content and sourcing requirements for the procurement of "electronic products." Importantly, the PMA Policy imposes these onerous requirements not just on the procurement of ICT products by government agencies and government-controlled entities, but also by private sector companies. If these provisions are implemented, they could force foreign companies to transfer technology to Indian partners and establish joint manufacturing ventures with local

Indian companies as a condition of doing business with large segments of private-sector companies in India.

The GOI has already begun implementing this policy for government procurement of desktop PCs, tablets, laptop computers, printers and certain telecommunications equipment. More troublesome is that despite more than a year of dialogue with foreign companies and governments, the GOI is preparing to implement the PMA Policy for purchases of electronic products by private telecommunications operators, and there are indications that it may expand the scope and coverage of the policy to other critical sectors of the economy.

Such a step would represent significant interference in the operations of private Indian companies, create disruptions in key sectors of the Indian economy, and undermine the ability of IBM and other ICT companies to compete fairly. Forcing companies to source locally for private contracts would also plainly violate India's core commitments as a member of the World Trade Organization.

In response to the PMA Policy, American ICT companies have partnered with domestic and global business associations and the U.S. and foreign governments to engage Indian government and business leaders. These efforts have focused on (1) rescinding the PMA Policy and its policy antecedents and (2) supporting incentive-based, non-discriminatory policies that would better accomplish the objectives the PMA Policy is designed to promote.

Despite these efforts, however, the GOI seems determined to implement the PMA Policy and has made clear that it will impose the Policy's local content requirements on foreign companies for both government and private sector procurement.

Last year, more than 50 Members of Congress sent letters to Ambassador Ron Kirk and Indian Ambassador Nirupama Rao raising concerns about the PMA Policy. IBM believes it is critical that the PMA policy be rescinded and that American companies be assured of fair and open access to the Indian market for electronic products.

***India Compulsory Testing and Registration***

In October 2012, MCIT's Department for Electronics and Information Technology (DEITY) issued a new "Compulsory Registration Order" intended to safeguard consumers from sub-standard electrical and electronic items. Under the order, new equipment cannot be imported into or sold in India after April 3, 2013, unless it is tested and registered with Bureau of Indian Standards (BIS)-approved testing labs in India. This order was initially applicable only to consumer products, such as laptops, printers, set top boxes, microwaves, speakers, TVs, etc.; Indian manufacturers would not fall under this requirement.

These new requirements were developed with limited consultation with outside stakeholders, including foreign companies that manufacture and import these products into India.

More seriously, however, in February 2013, DEITY issued new guidance (in the form of FAQs) that extended the registration and testing requirements to a far larger range of ICT products, including commercial and industrial ICT defined simply as "Automatic Data Processing Machines." This definition may now capture PCs, tablet computers, servers, and storage machines. Under the rules, imported products will be stopped at port unless they have been tested and registered with a BIS lab and labeled with a valid registration number.

These new testing requirements deviate significantly from internationally accepted safety and certification norms and protocols. The testing requirements, as published, are particularly onerous on high-end systems where sample cost and complexity greatly add to the impact of the registration process. It can typically take several weeks or months to properly test and certify high-end ICT technology, such as servers. The process in testing requirements will have a far greater impact on high-end, professional use ICT that is not typically a target of most consumer products safety regulations.

Because BIS requires that testing must be done in India at a limited number of BIS recognized laboratories, this extension to a far larger set of ICT products is likely to overwhelm testing capacity and infrastructure necessary to implement this requirement within the timeframes established. Indeed, it is unclear how many testing labs exist in India, whether they have been accredited by international standards bodies and who, in fact, controls them. BIS has ignored the primary international mutual recognition agreement for product safety test reports performed by internationally accredited laboratories under the International Electrotechnical Commission's System for Conformity Testing and Certification of Electrotechnical Equipment and Components (IECEE), an agreement under which India is already a signatory.

Despite repeated requests by companies and industry bodies to change, modify and delay the implementation of these new requirements, Indian officials have stated that the requirements will come into effect on April 3.

This raises concerns under the Technical Barriers to Trade (TBT) measures of the WTO, and we understand that officials from the U.S., European Union, and Japan may plan to raise the new requirements at the next meeting of the TBT Committee.

We thank the Committee on Ways and Means for its continued interest in market access in India and appreciate the opportunity to provide these views.

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