



ADVANCING GLOBAL COMMUNICATIONS

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November 8, 2007

Via Electronic Mail to FR0717@USTR.EOP.GOV

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20036

RE: USTR's 2008 National Trade Estimate on Foreign Trade Barriers report. Countries/regions covered in this submission include China, India, Republic of Korea, Mexico, the European Union, and Brazil.

Dear Ms. Blue:

In response to the Federal Register notice issued on August 29, 2007, the Telecommunications Industry Association (TIA) and its 600 member companies would like to thank you for the opportunity to comment on the 2008 National Trade Estimate on Foreign Trade Barriers (NTE) report. Obstacles still remain for U.S. exports of goods and services around the world, and we would like to highlight the following trade barriers faced by TIA members:

People's Republic of China

At the outset, we note that there has been some improvement in the U.S.-China trade and investment relationship over the last several years. U.S. exporters and investors still see China as a key destination. U.S. exports of information and communications technologies (ICT) to China are increasing. One ICT product category, telecommunications equipment exports, has increased 5.9 percent from \$664 million in 2004 to \$703 million in 2005. However, we remain concerned about lack of progress in the several key areas.

Telecommunication Services and Technology Neutrality

With respect to liberalization of the telecommunication services market, there has been little progress in China. While a number of value-added services are technically open to foreign competition through joint ventures, to date MII has effectively blocked the foreign provision of value added services by maintaining high-entry barriers, both through its licensing authority and its ability to define narrowly the scope of services included in each value-added category. In addition, the process for reviewing and approving applications is opaque, discretionary and conducted with a conservative view that the listed services represent a ceiling, rather than a floor, for what MII is inclined to approve. Those foreign ventures in telecom services that do receive approval are subject to onerous restrictions, such as geographic limitations, which keep ventures from selling their services outside one city or even a single district of one city, and strict joint venture requirements, in which foreign joint venture participants may not bill customers directly for telecom services, control the billing process, or collect payment. They cannot provide assurances of service quality, and their ability to manage network security is severely constrained by a confusing legal regime centered around encryption technologies.

In addition to the market access barriers discussed above, China's \$260 million capitalization requirement for basic telecommunications services is a significant restriction for most companies. Other impediments to the provision of telecom services in China include regulatory ambiguity; inconsistent interconnection rights;



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restrictive personnel requirements, such as lack of representation by foreign boards of directors; and licensing restrictions for basic services.

With these impediments in mind, TIA urges the Chinese government to (1) lower the capital requirement for investment in basic services; (2) eliminate or change the MII “Catalogue of Telecommunication Service Categories” such that every new service offering by foreign providers is not subject to review and approval by MII; (3) permit joint ventures to be established as “inter-provincial” value-added service enterprises; (4) permit joint ventures to manage the end-to-end customer experience, including billing; (5) permit joint ventures to hire qualified staff using clear qualification criteria, as opposed to using quotas from the two principals; (6) permit joint ventures to partner with Chinese investors other than the existing state-owned enterprise carriers; and (7) to comply with its Reference Paper commitments to establish an independent regulator.

Finally, we urge the Chinese government to subscribe to the principle of technology neutrality on the part of the regulator. We note that Chinese Vice Premier Wu Yi stated on April 11, 2006, that China would adopt a technology neutral approach in its 3G policy, and that in May 2007, MII approved the use of global wireless standards WCDMA and CDMA2000, in addition to China's home-grown 3G standard, TD-SCDMA. However, the Chinese government has not yet signaled when licenses will be issued or how many will be awarded. Accordingly, TIA reiterates its position that the decision to provide 3G services should be a commercial one, the regulator should be agnostic regarding technology choice, and that China's 3G policy, including timing and number of licenses should be announced as soon as possible.

Type Approval, Certification and Standards (Technical Barriers to Trade Agreement)

Factory Inspection: We have been informed that the China National Certification and Accreditation Administration (CNCA) has issued a new policy, which clearly indicates that in principle, all initial factory inspections should be conducted by the Chinese certification organizations themselves. Only under extreme circumstances (e.g., a delay in receiving the products would impact a major project in China) will CNCA allow the accredited certification organizations to subcontract the initial factory inspection to a foreign organization. This action creates serious delays for U.S. manufacturers in obtaining the CCC certificate, due to China's cumbersome internal approval process for overseas trips and related US visa process issues. (It often takes months to schedule visa interviews.)

Certification: We note that China has engaged within the Worldwide System for Conformity Testing and Certification of Electrical Equipment (IECEE) Conformity Body (CB) scheme for safety test report acceptance, which is essential for market access and to eliminate redundant testing of products at multiple laboratories. However, laboratories in China are not making the best use of these international programs, requiring additional samples and repeat testing, resulting in substantial delays. The product testing and certification process in China is significantly more difficult than in other markets, which increases the cost of imports. Additionally, we note that China has opted out of the CB scheme for electromagnetic compatibility (EMC) testing, with the result that such testing must be done in-country. EMC requirements emerged out of a collective international effort and most of the world participates in the EMC component of the CB scheme and accepts CB scheme test reports generated by other participating members. We encourage the Chinese government to improve the application of the IECEE CB Scheme by accepting CB Scheme reports by national laboratories and eliminating the need for additional samples and redundant testing. We would also welcome China's participation in the IECEE CB Scheme for EMC.

Standards: China has uneven and unclear requirements for inclusion of foreign-invested companies and institutions in technical committees that devise nationally adopted standards. TIA urges the Chinese government to publish a standard that indicates clearly how technical committees are constituted and who may participate, as



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well as the rights of participants. TIA recognizes that China has made significant strides to conform to their obligations under the WTO TBT Agreement to base their technical regulations on international standards. However, we are concerned that China continues to define “international standards” as only those developed in international forums like the ISO, IEC, and ITU. China’s narrow interpretation and acceptance of “international standards” is inconsistent with the spirit of Annex IV of the TBT Agreement, and negatively affects many US and other global manufacturers that rely on international standards developed outside of the Geneva-based organizations. China is currently in the process of revising its “Standardization Law.” We hope USTR will continue to reinforce the principles of the TBT Annex IV and encourage China’s open consideration and acceptance of all globally relevant standards that are developed in accordance with the TBT Code of Good Practice.

Recently, we have become concerned with mandatory standards for cell phone batteries, which China introduced earlier this year. While we support China’s goal of protecting the environment and promoting consumer safety, we are concerned that the battery may in fact harm consumers and impede innovation in battery and handset development. TIA is working through its affiliate organization, USITO, in Beijing to voice its concerns to Chinese government officials, and will update relevant U.S. government agencies as the situation develops.

Imports and Import Discrimination

China has met its commitments to the WTO Information Technology Agreement (ITA) by reducing tariffs on the great majority of ICT products to zero between the years 2002-2004. However, we urge the government to include Multi-Chip Packages (MCPs) in the products to which zero-tariff status has been extended. MCPs are simply a more advanced form of integrated circuits, which already have received zero-tariff treatment.

With respect to import discrimination, in key telecommunications sectors, China continues to struggle with economic inefficiencies, exacerbated by preferences for domestic industries and pricing and procurement practices that discriminate against imports. Specifically, it appears that in some telecom procurements, companies are ignoring their published criteria for bid evaluation, resulting in the selection of “national” champions, which are state-invested enterprises. As a result of these practices, importers have been excluded from the market.

India

TIA recognizes India’s significant progress in unilateral liberalization of the telecommunications market. We note that India has emerged as one of the world’s fastest growing ICT markets, with wireless and landline connections more than doubling over the past 3 years. Government initiatives have played a significant role in this growth acceleration. The reduction of import duties has reduced handset costs and the government’s campaign to boost penetration in poor areas has increased demand for infrastructure equipment. Keeping these positive trends in mind, we encourage further liberalization to further spur ICT, speed the development and adoption of new technologies, introduce new competition and promote multilateral collaboration. India is also in the process of accepting new wireless service providers in the Unified Access Service (UASL) arena. Finally, TIA is pleased that in June 2007 India’s regulatory agency, the Telecommunications Regulatory Authority of India (TRAI), issued its notification on cable landing stations, which will require access to and interconnection with cable landing stations on non-discriminatory terms. The notification will become effective upon publication in the Official Gazette.

New Entrants in Unified Access Services (UASL)

The Department of Telecommunications (DoT) has received 575 applications from 46 companies for licenses in its 22 service areas. The current process and pricing for UAS licenses was set in 2001 through a bidding process for a fourth cellular license when there were 4.2 million subscribers. Since then the market has changed



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dramatically, with a current mobile subscriber base of 210 million expected to reach 500 million by 2011 and 750 million by 2017. In its recommendations of August 28, 2007, TRAI clearly stated that there is a need to lay down a predictable path for the allocation of spectrum to new entrants. In view of the massive demand for scarce 2G and 3G spectrum it is most important that the DoT seeks the recommendations of TRAI as stipulated in Section 11 of the TRAI Act. A public consultation by TRAI would allow diverse stakeholder comments to be included when setting a policy for allocating LoI/licenses/spectrum. A method other than one emerging from a TRAI consultation, which would allow for a fair, transparent and market based allocation of license/spectrum, would discourage private and international investment. Given that this may be the last spectrum allocation that the Government of India will undertake for decades it is important that due process and international best practices be brought into play. We strongly propose the publication of a DoT reference paper specific to the introduction of new service providers, terms and conditions before setting the final policy for issuance of LoI/licenses/spectrum for applicants and new entrants.

Access Deficit Charge (ADC)

TRAI is applauded for significant changes to the ADC regime as it phases out the universal service plan by 2009. U.S. industry supports additional consideration of a proposed revenue share plan that would help address the gray market in international calling. The plan would remove the discrepancy between domestic and international termination rates; and make the system more efficient, equitable and non-discriminatory, by fairly applying costs to all industry players. We note that international operators have not yet benefited from the ADC reduction initiated in April 2007. Accordingly, we recommend that the Government of India reduce the ADC to zero by March 2008 on incoming ILD calls, while ensuring that ADC is not replaced by an unjustifiably high mobile termination charge (MTC); and ensure that reduction of the ADC is reflected in lower international settlement rates.

Internet Protocol (IP) –Enabled Services

Currently, VoIP can only be used in closed user groups (CUGs), or just among sites. For example, if a company has two offices, they are allowed to link using an IP trunk and VoIP, but not out to the Public Switched Telephone Network (PSTN). This causes companies to maintain separate systems for internal and external communications, increasing establishment costs. If India had VoIP provided over public networks that connected to the PSTN the requirement of users to have a dual-investment in infrastructure would be eliminated. Additionally, enterprise users would realize enormous savings in the cost of moving telephones or adding telephones and company investment in Internet communications would realize a higher return because more applications could be managed on a single infrastructure. We recommend the Indian government provides a time-frame for addressing this issue.

Licensing

Several of the licensing conditions currently in place for an international long distance (ILD) and national long distance (NLD) license have not been modified to appropriately reflect policy considerations for the next generation of services and service providers. As presently written, many of the regulations are drafted to cover policy concerns solely appropriate for mass market consumer voice telephony, and have not been modified to reflect data and IP services, or the considerations of business enterprise customers. For example, the entire suite of VPN services are now under the ILD license but there is no modification in the text to ensure compliance specific to these next generation services. In addition, the procedure for processing of applications for ILD and NLD licenses is unclear, with periods in which the basis for inaction is not apparent. We recommend that India explore the possibility of revisions to relevant areas in the ILD and NLD license; clarify and expedite license application processing times; and adopt reasonable licensing fee requirements.



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Service tax

India's FY 2007-08 Finance Bill amends the existing definition of "telephone service" now subject to the national 12.3% service tax, which currently applies only to domestic telephone services in India. The legislation would apply this tax to a broader category of "telecommunications services" provided by both domestic and international service providers. Although the full impact of the service tax is not yet known, U.S. industry is concerned that this legislation could harm both U.S. and Indian consumers, and set a dangerous international precedent for consideration by other governments. The application of a national tax on foreign operators would directly violate the International Telecommunications Regulations (ITRs).

In addition, a trans-border imposition of the service tax would have a profound impact on American consumers and the U.S. telecom industry as a whole. Given the heavy volume of bilateral U.S.-India traffic, service providers would pay an increase of 12.3% to cover the tax, and would be forced to pass along the increased costs to their end-users, increasing rates for U.S. consumers.

Republic of Korea

TIA applauds the completion of the Korea-U.S. Free Trade Agreement (FTA) earlier this year. TIA is pleased that the FTA contains strong language on technology neutrality, recognizing that competition and openly developed and transparent processes are important to ICT-sector growth and limiting conditions under which parties can specify technology. Telecom companies will benefit from other commitments, including commitments on access to and use of the public switched network, interconnection, number portability, resale of services, networking unbundling, submarine cable landing stations, regulatory independence and foreign direct investment. In addition, Korea has committed to signing phase 2 of the APEC MRA, which allows for mutual recognition of certification for telecom equipment. Many of these commitments go beyond Korea's World Trade Organization obligations. However, until the agreement is approved and implemented, we continue to raise the following concerns in the Korean market.

Certification

In Korea, all products must be certified by a "national" (read domestic) certifier (e.g. KTL, KETI), and experience indicates that these bodies are not receptive to working with non-domestic entities. Restrictive testing and certification regimes are inconvenient, time consuming, and costly for all players, including Korean companies. The inability of U.S. companies to test and certify products directly for the Korean market means that US manufacturers have to re-test in Korea and utilize additional certification organizations. It is expensive to send samples to Asia and often manufacturers cannot get their products certified in a timely fashion resulting in millions of dollars in lost sales for U.S. companies. In today's highly competitive and challenging global economy, it is more important than ever to minimize such impediments to the efficient flow of goods, while maintaining high levels of product safety.

Technology Neutrality

On a number of occasions in recent years, TIA and its member companies have commented on standards issues in Korea; specifically, government standards policy decisions we believe are designed to inhibit non-Korean competitors in the Korean market and advantage domestic companies. We remain concerned that the Korean Ministry of Information and Communication Industry (MIC) will continue to promote and require Korean technology at the expense of non-Korean competitors.

TIA supports innovation and market competition, and more important to our industry, policies that promote technology neutrality (also, "technology choice"), in which standards and products are developed by market-driven dynamics and open, transparent processes. We urge USTR to continue to press the Korean government to



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practice technology neutrality in the appropriate arenas, particularly in light of the ongoing US-Korea Free Trade Agreement.

Mexico

Standards, Testing, Labeling and Certification

Mexico is required under its NAFTA obligations, starting January 1, 1998, to recognize conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Mexico initially indicated that it would conform to these obligations only when the Government of Mexico determines that additional capacity is needed in conformity assessment services.

Mexico now acknowledges that its NAFTA obligations require national treatment and acceptance of applications from U.S. and Canadian certification organizations. Yet no U.S. or Canadian conformity assessment bodies have been recognized by Mexico to offer Norma Oficial Mexicana (NOM) certification in any key U.S. export product category. The Mexican government's delay in issuing the "call for certifiers" notice, the lack of transparency in the application submission process, and the continuous administrative burdens suggest that Mexico indeed is delaying the process in order to protect domestic interests. Additionally, we know that Mexico is working on a conformity assessment procedure for telecom products where testing would be mandatory and performed only by recognized labs; this reinforces the need for Mexico to recognize U.S. and Canadian accreditation and certification bodies to avoid duplicate testing. Thus, we urge the government of Mexico to implement their NAFTA obligations to recognize conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Moreover, the transparency of the application process structure and timeframe for application submissions need to be improved.

European Union

Certification and Testing

The European Union (EU) Commission adopted a "Global Approach to Certification and Testing" in 1989, which inherently lacks the national treatment principle for conformity assessment organizations in the area of regulated products. Member States are responsible for designating an authority for the notification of Notified Bodies that can test, certify and inspect products to result in the CE Marking for use in the EU. These organizations may notify only bodies within their territories. Therefore, U.S. conformity assessment organizations cannot provide cross-border conformity assessment services in the European system. A soil-based presence is required.

In some cases, governments have turned to government-to-government Mutual Recognition Agreements (MRAs) to address the issue of market access for U.S. testing and certification organizations. One example is the U.S.-EU MRA. Negotiations for this agreement lasted more than six years, with only two of six sectoral annexes operational, and at least one annex suspended. For all this effort, only a handful of products have utilized the MRA. TIA strongly supports the U.S.-EU MRA and hopes for a more effective negotiations to move the MRA forward.

WTO Information Technology Agreement

TIA and its member companies are concerned about the European Commission's (EC) steps to impose duties on a variety of products covered by the Information Technology Agreement (ITA), potentially violating its ITA commitments. One telecom-related product, set-top boxes (STBs), is clearly covered by the ITA; nonetheless, the EU threatens to reclassify most STBs out of the ITA duty-free classification and into higher duty-rate categories. While STB technology has evolved, TIA believes that additional functionalities, such as a hard drive or Ethernet modem, do not change the primary function of the device.



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In some cases, the Commission has put in place temporary duty suspensions (TDS) in an effort to pacify challengers. However, TIA does not believe that a DS is a viable long-term solution, as several Member States are expected to oppose TDS. Moreover, as a trade policy matter, the EU is obliged under the ITA to provide “bound and eliminated” duty-free treatment for ITA items. Re-classification and imposition of the 14 percent duty violates WTO law, as well as EU and World Customs Organization (“WCO”) classification rules. Imposition of duties violates the EC’s ITA commitment to eliminate duties on STBs with communications functions, regardless of where they are classified in the Harmonized System; each of the categories of STBs that the EC proposes to re-classify is covered by terms of that Attachment B commitment. The imposition of duties would also violate Article II: 1 GATT by leading to “treatment less favorable” and duties “in excess of” what is provided for in that Schedule. Any temporary duty suspension the EC may be considering and that would reduce the duty back to zero percent on a less than permanent basis would not cure the underlying WTO inconsistency. Re-classification would risk leading to erosion of the ITA and could spillover to other products as a result of similar actions proposed by the EC.

Brazil

World Trade Organization, Information Technology Agreement

TIA encourages Brazil to join the WTO’s plurilateral Information Technology Agreement (ITA). This agreement removes tariffs on a broad range of ITA products, including telecom equipment products, reducing costs and stimulating demand. Zero tariffs contribute to the globalization of the industry, as manufacturers are able to import intermediate inputs at relatively low cost, manufacture finished products and then ship to final consumers in markets around the world.

Complexity of Tax System

The inherent complexities of the Brazilian tax system pose numerous challenges to foreign companies that seek to increase their business with Brazil. The current taxation system discourages investment and development of the ICT industry in Brazil through too much complexity and one of the highest tax rates in the world on telecommunications services. Special attention should be given to tax disputes among the various states (including unconstitutional discriminatory taxes imposed by state governments), the transfer pricing guidelines, the multiple cascading taxes, the constant changes in the interpretation of tax laws and many other tax-related difficulties. As a concrete example of these difficulties, we can point to the series of restrictions imposed on the export and re-importation of imported equipment that is being sent abroad for repairs. The requirements are so laborious and complex that companies face many restrictions in providing quality services to customers in Brazil due to significant delays in the export and re-importation process. There are currently several Congressional initiatives to reform the fiscal system.

Protection of Intellectual Property (IP)

Although Brazil has greatly improved its efforts to curtail counterfeiting, piracy and other illegal activities related to IP, we still believe that attention should be given to the monitoring and protection of international intellectual capital in the legal disputes that take place within the Brazilian court system.

Incentives to Local Manufacturing and R&D

As part of several initiatives to provide incentives to local manufacturing and local R&D activities, the “Lei de Informática” has produced some favorable results for the country, when it comes to an increase in investments and the development of a competitive base of local infrastructure, intellectual capital and human resources. However, there is still some room for improvements. One specific item that deserves attention is the import and VAT tax incentives on lab and R&D equipment. Currently, setting up R&D operations in Brazil can be considerably more expensive than conducting R&D in other developing countries, such as India and China, due to



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the heavy tax on imported equipment. We believe a specific tax exemption for R&D related equipment would make investment decisions easier and lead to increased investment.

Testing and Certification

TIA is concerned about Anatel not accepting test data generated outside of Brazil, except in those cases where the equipment is too physically large and/or costly to transport. Therefore, virtually all testing for IT/Telecom equipment (including everything from cell phones to optic cables) must be physically done in Brazil. This requirement that testing be done “in country” limits our members’ ability to service customers based on a “business case,” in the interest of minimizing certification time and cost. We have also observed that it is becoming a common practice for Brazil to align with other Mercosur countries in harmonizing standards and creating regulations that affect product certification requirements and accreditation processes for certification organizations. While we see no problem with countries consulting each other on regulatory matters, we believe that if Mercosur partners are creating regulations en bloc, there should be a mechanism for organizations from the United States to comment on the regulatory decisions being made. Right now, we understand that there is no formal mechanism for the U.S. to weigh in on the Mercosur regulatory decision-making process. Finally, in the area of telecommunications equipment, we are increasingly seeing an emphasis on local certification. One recent example is the imposition of a stamp for cellular batteries. This labeling and testing requirement adds cost and delays time-to-market for products without improving safety, in particular as it relates to the “grey” market for batteries.

Conclusion

TIA strongly believes that it is important that the United States continue its efforts, both bilaterally and multilaterally, to bring about a fully competitive world market for ICT equipment. This can be accomplished through the enforcement and expansion of existing trade agreements, as well as the negotiation of new trade agreements.

If you have any questions about this document or if we can assist you in other ways, please do not hesitate to contact Michael Nunes at (703) 907-7725 or mnunes@tiaonline.org.

Sincerely,

A handwritten signature in black ink that reads 'Grant E. Seiffert'. The signature is written in a cursive, slightly slanted style.

Grant Seiffert
President