



**Comments from the
U.S. Information Technology Office (USITO)**

**to the Ministry of Science and Technology (MOST), the National Development
and Reform Commission (NDRC), and the Ministry of Finance (MOF)**

**on the
*Notice on Launching the Accreditation of National Indigenous Innovation
Products in 2010***

**Jointly Signed by
Information Technology Industry Council
Semiconductor Industry Association
Software and Information Industry Association
TechAmerica
Telecommunications Industry Association**

May 10, 2010

General Comments on Innovation Policy

USITO appreciates the opportunity to comment on the *Notice on Launching the Accreditation of National Indigenous Innovation Products in 2010* and commends China's efforts to revise some of the more troubling aspects of the accreditation program, including the IPR-related provisions. USITO also appreciates the constructive discussions we have had with MOST, in particular, on the Indigenous Innovation policy and the various notices that have been put forward.

Transparency and predictability in the business policy environment are two essential factors in creating a healthy innovation system, and this public comment period is an important step. We welcome China's decision to release the proposed Notice in draft form and to solicit stakeholder comment prior to its adoption. We urge China to take into consideration the substantive views of the various international stakeholders as it continues to advance its *Medium- and Long-term*



Information Technology Industry Council
Leading Policy for the Innovation Economy



SIA SEMICONDUCTOR
INDUSTRY
ASSOCIATION

**Software & Information
Industry Association**
www.siaa.net



TechAmerica
WHERE THE FUTURE BEGINS
THE ASSOCIATION OF COMPANIES DRIVING INNOVATION WORLDWIDE



National Plan for Science and Technology Development and other related indigenous innovation policies.

As an association representing hundreds of global ICT companies that have invested billions of dollars in China, created numerous R&D centers in China, employed hundreds of thousands of Chinese citizens, and provided taxes to the Chinese Government, USITO welcomes China's efforts to create more innovative companies and to promote the development of innovative capabilities. We have decades of experience creating innovative products in countries throughout the world, with IPR protection being at the core of spurring innovation.

Before commenting on this particular Notice, we want to join with our global industry colleagues to emphasize that the challenges posed by China's Indigenous Innovation policy are not just about this one Notice. The many policies that encompass China's Indigenous Innovation drive are a structural issue with direct consequences for market access and the ability of U.S. and other foreign firms to compete on a level playing field in China. Preference policies that favor one technology over another—or one product over another—are counterproductive to promoting long-term successful innovation.

Moreover, the policy runs counter to a number of key commitments that China has made and hinders the path that China has undertaken to become a leader in the global economic community.

First, it runs counter to the commitments at the July 2009 Strategic & Economic Dialogue (S&ED) that both countries would “work for a more open global trade and investment system,” including, e.g., the commitment “to treat, under its Government Procurement Law, products produced in China by foreign invested enterprises the same as products produced in China by Chinese enterprises.”

In addition, the Indigenous Innovation policy and this Notice run counter to mutual understanding that the United States and China have with respect to “the importance of non-discriminatory government procurement policies” and the agreement last July to “strengthen their cooperation in order to accelerate China's accession to the WTO Government Procurement Agreement (GPA).” They are also generally inconsistent with China's accession commitment to initiate discussions to join the WTO Government Procurement Agreement.

The road to innovation is not through the development of product lists by governments, which risks dampening greater foreign investment in China and discouraging innovative partnerships between Chinese and foreign firms. We see the list approach as neither effective for promoting innovation nor competition. Product lists, by their very nature, are limited, do not accommodate innovative new technologies, and therefore have the opposite of the intended effect on innovation. As our own experiences demonstrate, efforts to separate innovation efforts from the international economy will result in much less productive innovation.

Overarching Request with Respect to the Notice

While we commend the Chinese Government's efforts to revise some of the more troubling aspects of the 2009 National Indigenous Innovation Product (NIIP) Accreditation Notice, including the IPR-related provisions, USITO shares the views of our colleagues in the global ICT industry that many concerns over this program remain. We respectfully urge MOST, NDRC and MOF to not publish the indigenous innovation product list and not carry forward this program. We also urge China to adopt global approaches to successful innovation policies.

Implementation of the program will restrict China's capacity for innovation, impose onerous and discriminatory requirements on companies seeking to sell into the Chinese government procurement market, promote systematic import substitution and contravene multiple commitments of China's leadership to resist trade and investment protectionism and promote open government procurement policies.

The program will hinder, rather than promote, China's own goals of advancing its science and technology capabilities. Instead, we would hope the Chinese Government would be open to dialogue with us and other international stakeholders on how best to advance its science and technology goals and to promote innovation through fair, transparent, and technology neutral processes that reflect international best practices.

Specific Comments on the Notice

While we appreciate the hard work that went into developing the *Notice on Launching the Accreditation of National Indigenous Innovation Products* and the revisions that were made, many of the key concerns of the global ICT industry about this Notice have not been addressed. Areas that remain problematic include:

- *The link between the Catalogue and government procurement preferences:* While MOST has made assurances to individual companies and global associations that its indigenous innovation product catalog is not tied to government procurement, certain Ministry of Finance (MOF) regulations indicate otherwise, including the draft Government Procurement Law implementing regulations released in January 2010. We strongly urge China to sever any link with government procurement preferences. This is not the international norm.
- *Intellectual property (IP) as criteria for indigenous innovation:* Although we acknowledge the adjustment in at least the wording of the IP criteria for receiving indigenous innovation product accreditation, the use of IP as a criterion for both government procurement preferences and innovation promotion is not an international best practice. More specifically, nothing in the revised criteria clearly addresses our concerns that IP transfers will not be required (Accreditation Condition 2). We also note the requirement in this Condition that the IP in the product "does not have any disputes or controversies with other products' IP" is not merely vague, it is very likely to be abused by meritless claims.

- *Vague, unworkable and problematic nature of requirements:* Both foreign and domestic companies alike in China rely on predictability and transparency in the business environment to conduct commerce and offer goods and services that Chinese consumers, including government ministries, enjoy and from which they benefit. The National Indigenous Innovation Product accreditation program, however, remains fraught with questions, impracticality and uncertainty, including:
 - The Criteria indicate the product must comply with “national industry policies and technology policies.” (Accreditation Condition 1) What specific policies does this include? To the degree that these policies include IPR requirements or other restrictions on market access, such conditions remain deeply problematic.
 - The Criteria that a product be “advanced” and have “potential economic benefits and bright market prospects” is subjective and prone to cause unfair results. How will these standards be evaluated in a transparent and non-discriminatory manner? (Accreditation Condition 4 and 6).
 - The Notice does not clarify how the indigenous innovation list will interact with other provincial-level catalogs.
 - The Notice does not specify how business confidential information submitted in applications will be protected.
 - How will provincial authorities organize experts to choose products for the list? What does the "public objection" phrase refer to?
 - The Application for the revised program is no longer available for review. The Application from the initial Notice included many problematic elements, including the requirement for the percentage of Chinese investment in the applicant to exceed 50 percent and the inquiry as to whether an applying product can substitute for an imported one. It is not clear to us why MOST did not post the Application for comment at the same time as the Notice.
 - The exact nature of the preferences to be awarded remains unclear—and more particularly, whether and when authorities can procure products that are not included in the Accreditation Catalog.

- The public comment period ends on the same date the application period starts for the revised program. This is inconsistent with ensuring the opportunity for meaningful comment. It is unclear to us how MOST will take into account the substantive concerns of the global ICT industry and incorporate comments before the application process begins.

Additional Challenges Posed by China’s Indigenous Innovation Policy

The challenges posed by China’s indigenous innovation policy are not just about this one Notice. The many policies that comprise China’s indigenous innovation drive are a structural issue with consequences for market access and the ability of non-Chinese firms to compete on a level playing field in China.

Many businesses remain concerned over other Chinese policies that hinder foreign-invested enterprises in China from participating fully in China's procurement marketplace or otherwise impede market access. These barriers undermine any progress China has made in revising the draft Notice.

The draft Notice fuels growing concern that China is pursuing a policy of import substitution. It follows publication of the *Guiding Catalogue of Major Indigenous Innovative Technologies and Equipment 2009*, which specifies import substitution in its criteria. As we have previously noted in our submissions to the Chinese government, the Government Procurement Law states that the government "shall procure domestic goods, construction and services," and the proposed Implementation Rules, which establish narrow standards for determining when a good or service qualifies as "domestic," discourage the procurement of imported products.

Concluding Comments

The global ICT industry strongly supports and wants to encourage innovation in China. We also deeply appreciate the commitment, at the highest levels of the Chinese government, to "create an equitable environment for the operation of foreign businesses in China and enable foreign businesses to enjoy national treatment like their Chinese counterparts."¹ Unfortunately, this draft Notice and the Indigenous Innovation policies that underlie it are not steps forward on this path.

USITO looks forward to working with the Chinese Government to encourage an environment that enhances opportunities for innovation in China, including the promotion of non-discriminatory and merit-based procurement and full and open competition in the Chinese market – competition which ultimately serves the interests of both the international community and China.

- To do so most effectively, we respectfully urge MOST, NDRC and MOF not to publish the indigenous innovation product list and not carry forward this program.
- We also encourage China to continue ongoing dialogue with U.S. and other industry stakeholders on best policies and practices that promote innovation and do not discriminate against foreign firms' participation in the Chinese market.
- In that regard, as an essential first step, the Chinese government should undertake an immediate review of all indigenous innovation policies to ensure they do not discriminate between foreign and domestic suppliers.

¹ Full text of PRC Premier Wen Jiabao's News Conference with Chinese and foreign reporters at the Great Hall of the People in Beijing 14 Mar 2010.