



October 15, 2012

Via Electronic Mail to www.regulations.gov

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Mr. Donald W. Eiss
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20036

RE: USTR's 2013 National Trade Estimate on Foreign Trade Barriers report. Countries covered in this submission include the Brazil, China, India, and Mexico.

Dear Mr. Eiss:

In response to the Federal Register notice issued on August 15, 2012, the Telecommunications Industry Association (TIA) and its member companies would like to thank you for the opportunity to comment on the 2013 National Trade Estimate (NTE) on Foreign Trade Barriers report. TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshow, business opportunities, market intelligence and world-wide environmental regulatory analysis. TIA continues to facilitate the convergence of new communications networks while working for a competitive and innovative market environment. 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:

Brazil

Testing and Certification

TIA is concerned about Brazilian regulator 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 optical cables) must be physically done in Brazil. This requirement that testing be done "in country" limits TIA members' ability to flexibly and cost effectively service customers, creating unnecessary barriers in terms of certification time and increased cost. TIA recommends that the United States and Brazil negotiate and conclude a Mutual Recognition Agreement under the CITEL framework to reduce technical barriers to trade between the two countries.

Costa Rica

Testing and Certification

Costa Rica's telecommunications regulator, La Superintendencia de Telecomunicaciones (SUTEL), mandates retesting and recertification of mobile handset hardware after each software or firmware update. While SUTEL has reduced costs and streamlined procedures for retesting and certification, this procedure is burdensome, unique to Costa Rica, and is not required by any other regulator worldwide. Software and firmware updates allow users

to protect their equipment from threats, improve their experience with their phones, computers and other equipment, and potentially avoid having to visit repair centers in the future. Such updates do not require any re-testing or re-certification by regulators as a matter of international best practice. Costa Rica should follow international procedures for the testing and certification of mobile handsets and other ICT products. Elimination of this requirement will remove an artificial regulatory barrier to user access to the latest versions of their equipment.

People's Republic of China

U.S. exporters and investors still see China as a key destination. While U.S. exports of information and communications technologies to China are increasing, TIA remains concerned about lack of progress in several key areas.

Technology Neutrality

Indigenous Innovation: TIA recognizes China's desire to foster domestic innovation; however, the country's current industrial policies run counter to its commitments at the May 2011 Strategic & Economic Dialogue (S&ED) that both countries would "take further steps to liberalize global trade and investment, and to oppose all forms of trade and investment protectionism." China's policies have indicated a troubling trend to mandate standards (such as requirements on information security product certification and WAPI) that are developed outside of international standard setting processes. Most recently, TIA has become concerned about China's development of the Enhanced Ultra-High Throughput (EUHT) standard. In June 2011, the Chinese Communications Standards Association began a process to move forward a new Wireless Local Area Network (LAN) standard called EUHT as a Chinese competitor for the internationally recognized 802.11 (AKA WiFi) suite of standards. Despite significant objections based on procedural and technical compatibility grounds, the CCSA has pushed forward with finalizing the standard in order that it may be sent to MIIT for final adoption as a Chinese national standard. Industry is concerned that, like the case of WAPI in prior years, MIIT may discriminate against current and future 802.11 standards in order to promote EUHT and UHT by outright mandate or making type approval for telecom equipment contingent on inclusion of the standard. TIA is further concerned that while EUHT is currently being considered as a voluntary industry standard in China, its future may not be determined by the market by rather by government mandate and/or preference.

The many policies that comprise China's indigenous innovation drive create a structural barrier for market access and the ability of non-Chinese firms to compete on a level playing field in China. TIA and its members recognize China's desire to stimulate innovation, but believe strongly that its policies should be developed and implemented in a manner that maximizes private sector participation is non-discriminatory, respects intellectual property rights, avoids technology mandates and recognizes the global and collaborate nature of research and development.

TIA and its members appreciate the work of the U.S. and Chinese governments in the context of the S&ED to address industry concerns over the 2009 announcements by the Ministry of Science and Technology (MOST), the National Development and Reform Commission (NDRC) and the Ministry of Finance (MOF) to establish an indigenous innovation product list for the purposes of government procurement that would have discriminated against foreign companies. Despite President Hu's January 2011 visit and China's commitment in the May 2011 S&ED to not create a product catalogue list of

indigenous innovation products, we understand that provinces within China have not come in line with the national commitment and are moving forward with establishing such lists, which pose significant barriers to companies trying to access government procurement contracts. Specifically, in May 2011, the Guangdong provincial government published new indigenous innovation product accreditation legislation stipulating that products certified by the Science and Technology Department will be added to a government procurement catalog. We urge the Chinese government on a national level to officially repudiate the establishment of such lists at the provincial level and to officially notify the public of its decision to not move forward with its product list.

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

Type Approval Process: The product testing and certification process in China is significantly more burdensome than in other markets, which increases the costs of exporting products to China. Under China's Network Access License (NAL) there are unnecessary testing requirements that contribute to increasing delays for entry of a product to market and increasing the costs of companies seeking product approval through the NAL process. Ideally, China should eliminate the NAL as a product licensing requirement. However, recognizing the structural/legal problems that would pose, TIA and its members recommend that, in the interim, China reduce the number of tests required by the NAL to a bare minimum or at least streamline the process so that testing is as efficient as possible. As China's telecommunications operators are already requiring their own tests, it would be more appropriate for the network operators in China to establish their own testing and certification needs tailored to their unique technological parameters.

Moving in the right direction, TIA welcomed the National Development and Reform Commission's (NDRC) regulation No. 890[2011], effective June 2011, which reduced the testing fees (NAL, CCC, and Radio Type Approval (RTA)) for mobile phones by approximately 40 percent. The regulation removed battery performance testing from the NAL, reduced the number of testing categories from 30 to 19, and specifically stated that MIIT and CNCA should "avoid duplication of testing and charges."

As part of reducing these NAL testing requirements, TIA encourages China to further eliminate mandatory testing for specific enhancement functions such as WAPI and take a technology neutral approach that does not promote certain technologies. Additionally, it should eliminate functionality testing from the NAL since the functionality of product is a consumer choice and therefore should be tested by service providers.

Additionally, MIIT's lack of clear labeling requirement rules for type approval is creating inconsistent application of labeling at the provincial level. Although MIIT has told companies that labels can be affixed to packaging, some provincial government officials have required companies to affix the label to the product. Given that NAL labels must be purchased from MIIT directly at a cost of approximately 30 cents per label, this lack of certainty results in millions of dollars in re-labeling costs for products approved for sale in China. Some companies are reporting labeling costs of approximately \$6 million. Written and transparent labeling requirements will reduce the amount of re-labeling and thus the significant cost.

China's current certification requirements for telecommunications equipment conflict with its WTO obligations of limiting imported products to no more than one conformity assessment scheme and requiring the same mark for all products (Article 13.4(a) of

China's WTO Accession). China has three different licensing regimes—the Radio Type Approval, the Network Access License, and the China Compulsory Certification. Therefore, for a given piece of equipment, it can cost between U.S. \$30,000-35,000 to test for all three licenses (NAL, RTA, CCC). MIIT indicates on its website that it processes approximately 4000 applications a year, which represents approximately \$140 million in testing fees a year. TIA appreciates the work of the U.S. Government in following up on China's 2010 JCCT commitment to continue engagement with MIIT to address these concerns.

EMC Testing/Certification: TIA notes 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 eliminating 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 costs of U.S. products for sale in the Chinese market. Additionally, 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 many countries participate in the EMC component of the CB scheme and accept CB scheme test reports generated by other participating members. TIA encourages 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. TIA would also welcome China's participation in the IECEE CB scheme for EMC.

Factory Inspection: In 2003, the China National Certification and Accreditation Administration (CNCA) implemented China's CCC certification policy which requires a factory inspection before issuance of the CCC certificate. The policy's intention, in principle, is that all initial factory inspections should be conducted by the Chinese certification organizations themselves. Only under extreme circumstances (*i.e.*, a delay in receiving products impacting a major project in China) will CNCA allow the accredited certification organizations to subcontract the initial factory inspection to a foreign organization. This policy continues to create serious delays for U.S. manufacturers in obtaining the CCC certificate due to China's cumbersome internal approval process for overseas trips and U.S. visa processing issues.

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 rules that indicate clearly how technical committees are constituted and who may participate, as well as the rights and obligations of participants. Furthermore, TIA continues to request that foreign-invested companies and institutions be afforded the right to vote within the standards development organizations. While several standards development organizations allow foreign-invested companies and institutions full participation and observation rights, foreign-invested companies and institutions are still blocked from the final decision point – the vote. We encourage China to press forward and open up this opportunity to non-domestic companies and institutions who have a vested interest in China's growth and development.

Additionally, TIA recognizes that China has made strides to conform to its obligations under the WTO TBT Agreement to base its technical regulations on international

standards. However, 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 the TBT Agreement, Annex III Code of Good Practice for the Preparation, Adoption and Applications of Standards, and negatively affects many U.S. and other global manufacturers that rely on international standards developed outside of the Geneva-based organizations. TIA urges USTR to continue to reinforce the principles of the TBT Annex III 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 and obey the attributes of eligibility derived from the WTO principles including, but limited to, openness, consensus, balance, and transparency. TIA also recommends that China allow foreign companies access to and voting rights in Chinese standards setting bodies on par with Chinese companies, and ensure that there is no “presumption of participation” in Chinese standards setting laws, rules or administrative regulations that would allow the Chinese government to unfairly procure the intellectual property of foreign companies on non-market or royalty free terms

India

Despite the global economic slowdown, India continues to be one of the world’s fastest growing ICT markets. Since 2006, India’s total wireline and wireless telephone subscribers have increased from approximately 164 million to over 944 million, representing almost 475% growth in five years. Broadband (> 256 kbps) has grown from 10 million subscribers in August 2010 to over 14.6 million subscribers as of July 2012, yet numbers of connections remain low relative to the population. While India has undertaken a number of policy initiatives to open the market, areas of concern remain.

Freedom to Use Strong Encryption

In addition to the telecommunications license amendments concerns, India does not permit the use of strong encryption online, which has placed many companies in a precarious operating situation in the country. The use of strong encryption is a global norm for securing information online, such as confidential business information, financial information, online transactions and internal government communications, from intrusion by hackers, competitors and other wrongdoers. Strong encryption also enables India’s rapidly growing IT and business processing industries, which rely on strong encryption to secure their global clients’ confidential information. India is expected to release a new encryption policy as part of its implementation of the IT Act Amendments passed by the Indian Parliament in late 2008.

In order to create strong and workable encryption policies, India should follow other developed nations in creating public private partnerships to discuss encryption and broader information security issues. Since information security has a significant effect on privacy, the government should require due process in the judicial system that allows law enforcement access to network information, but at the same time respects the legal rights of an individual.

Mexico

Standards, Testing, Labeling and Certification

TIA applauds the U.S. and Mexican governments for signing a Mutual Recognition Agreement (MRA) in May 2011 that will allow Mexican regulatory authorities to accept tests, which determine the conformity of telecommunications equipment with Mexican technical requirements, performed by recognized U.S. laboratories. Passage of the U.S.-Mexico MRA will reduce technical barriers to trade for U.S. telecommunications manufacturers exporting to Mexico, saving ICT manufacturers the time and expense of additional product testing. TIA is hopeful that the two countries will build confidence in each other's laboratories' tests over the 18-month transition period and that the issues of redundant testing and lack of transparency are permanently resolved.

Conclusion

TIA wishes to express its appreciation to USTR for its efforts on behalf of the U.S. ICT industry. 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. In addition to addressing the issues cited above, this can be accomplished through the enforcement and expansion of existing trade agreements, as well as the negotiation of new trade agreements.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant E. Seiffert". The signature is written in a cursive, slightly slanted style.

Grant Seiffert
President