



December 12, 2008

Via Online Submission [www.regulations.gov](http://www.regulations.gov)

Ms. Gloria Blue  
Executive Secretary, Trade Policy Staff Committee  
ATTN: Section 1377 Comments  
Office of the U.S. Trade Representative  
600 17th Street, N.W.  
Washington, DC 20036

RE: USTR's 2009 1377 Report. Countries/regions covered in this submission include China, India, Republic of Korea, the European Union, Brazil and Mexico.

Dear Ms. Blue:

In response to the Federal Register notice issued on November 25, 2008, the Telecommunications Industry Association (TIA) and its hundreds of member companies would like to thank you for the opportunity to submit comments regarding compliance with U.S. telecommunications trade agreements.

TIA represents providers of communications and information technology products and services for the global marketplace through its core competencies in standards development, domestic and international advocacy, as well as market development and trade promotion programs. The association facilitates the convergence of new communications networks while working for a competitive and innovative market environment. TIA strives to further members' business opportunities, economic growth and the betterment of humanity through improved communication.

This submission references the following agreements:

- World Trade Organization (WTO) Basic Telecommunications Agreement (BTA) and the associated reference paper
- WTO General Agreement on Trade in Services (GATS)
- WTO Information Technology Agreement (ITA)
- WTO Technical Barriers to Trade (TBT) Agreement
- North American Free Trade Agreement
- Pending United States and Republic of Korea Free Trade Agreement

Please see commentary about specific markets below.



## China

**Issue 1:** Liberalization of telecommunication services.

**Impact:** Value added services are technically open, but are effectively blocked by the following: 1) High-entry barriers through licensing and narrow definitions; 2) Foreign ventures are subject to restrictions – geographic limitations, strict joint venture requirements (JV participants cannot bill customers directly or collect payments); and 3) The \$146 million capitalization requirement for basic telecommunications services is a significant restriction.

**Recommendation:** TIA urges China to 1) Continue to lower its capital requirement for investment in basic services; 2) Permit joint ventures to be established as “inter-provincial;” 3) Permit joint ventures to manage end-to-end customer experience, including billing; 4) Permit joint ventures to partner with Chinese investors other than the existing state-owned enterprise carriers; and 5) Comply with its WTO Reference Paper Section 5 commitments establishing an independent regulator.

**Issue 2:** Technology neutrality with regard to its 3G policy.

**Impact:** China is expected to issue third-generation (3G) licenses in the next one to three months, following the country’s restructuring of its telecommunications carriers and Ministry of Industry and Information Technology (MIIT). TIA continues to urge the Chinese government to stand by its commitment to the principle of technology neutrality in issuing the licenses for 3G services. China continues to promote its own 3G mobile phone standard, known as TD-SCDMA. TIA is concerned that, despite China’s claims that it will be technology neutral in issuing licenses for competing 3G standards such as CDMA2000 and WCDMA, the Chinese government’s subsidization and support, as well as test deployment for TD-SCDMA, will give that technology an unfair advantage.

**Recommendation:** TIA reiterates its position that the decision to provide 3G services should be a commercial one, that the regulator should be agnostic regarding technology choice, and that China’s 3G policy be announced as soon as possible.

**Issue 3:** Technical Barriers to Trade

**Impact:** 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. China has not once used a U.S. accredited certification 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 related U.S. visa process issues.



China has engaged within the Worldwide System for Conformity Testing and certification of Electrical Equipment (IECEE) Conformity Body (CB). 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.

TIA recognizes that China has made significant strides to conform to its obligations under the WTO Technical Barriers to Trade (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 Annex IV of the TBT Agreement, and negatively affects many U.S. and other global manufacturers that rely on international standards developed outside of the Geneva-based organizations.

**Recommendation:** TIA asks the Chinese government to improve the application of international conformity body scheme reports by national laboratories and eliminate the need for additional samples and redundant testing. TIA also urges China to recognize international standards beyond those developed by the Geneva-based organizations in a manner consistent with the spirit of Annex IV of the WTO TBT agreement.

**Issue 4:** Technical Barrier to Trade – Wireless Authentication and Privacy Infrastructure (WAPI).

**Impact:** TIA understands that MIIT plans to issue a regulation allowing handset manufacturers to seek type approval for WiFi-enabled handsets. However, TIA also understands that the MIIT regulation would *require* handset manufactures to use WAPI and allow them to use WPA2. It is unclear why MIIT would require WAPI when an international standard exists for WiFi (WPA2, which is used internationally as the encryption method in IEEE 802.11i).

**Recommendation:** TIA seeks to understand what the regulatory justification is for requiring WAPI to be used in order for manufacturers to get type approval for WiFi-enabled handsets. Further, TIA would urge USTR to remind the Chinese government of its 2004 JCCT commitment not to mandate WAPI, and would ask that USTR press MIIT to remove WAPI as a condition of getting type approval for WiFi-enabled handsets in China.

**Issue 5:** Indigenous Innovation Program.

**Impact:** TIA recognizes China’s desire to foster domestic innovation. However, China’s policies have led to the mandating of regulations and standards (such as pending requirements on information security product certification as well as potential cell phone battery standards) that are developed outside of international standard setting processes. Preferences given to domestic technology producers in government procurement also lead to the exclusion of foreign technology suppliers.



**Recommendation:** TIA encourages China to give its consumers access to world-class technologies, irrespective of where they are produced.

## **India**

**Issue 1:** Internet Protocol (IP) Enabled Services.

**Impact:** Although the Telecommunications Regulatory Authority of India (TRAI) has recommended the Department of Telecommunications (DoT) permit voice over Internet protocol (VoIP) to connect to the public switched telephone network (PSTN), the current policy only allows VoIP to be used in closed user groups (CUGs). For example, if a company has two offices, they are allowed to link using an IP trunk and VoIP, but not out to the PSTN. This causes companies to maintain separate systems for internal and external communications, increasing establishment costs. If India permits VoIP to connect 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.

**Recommendation:** TIA recommends that the Indian government follow TRAI's recommendations on Internet telephony and establish a time-frame for addressing this issue.

## **Korea**

**Issue 1:** Technology Neutrality.

**Impact:** TIA and its member companies have commented on standards issues in Korea; specifically, government standards policy decisions are designed to inhibit non-Korean competitors in the Korean market and advantage domestic companies. TIA remains concerned that the Korean Ministry of Information and Communication (MIC) will continue to promote and require Korean technology at the expense of non-Korean competitors.

**Recommendation:** TIA urges USTR to continue to press the Korean government to practice technology neutrality in the appropriate arenas, particularly in light of the yet to be ratified US-Korea Free Trade Agreement.

**Issue2:** Certification.

**Impact:** 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 U.S. 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.

**Recommendation:** TIA urges Korea to follow through on its commitment to signing phase 2 of the APEC Mutual Recognition Agreement (MRA), which allows for mutual recognition of certification for telecom equipment.

### **European Commission**

**Issue 1:** European Union-Information Technology Agreement (ITA) Violation.

**Impact:** TIA and its member companies remain concerned about the European Commission's (EC) imposition of duties on a variety of products that should be free from tariffs, as they are covered by the ITA. TIA applauded USTR's May 28, 2008 formal complaint against the European Union in the WTO over its imposition of up to a 14 percent tariff on three ITA covered products – set-top boxes, flat computer screen monitors, and multi-function printers. TIA is disappointed that the EC did not choose to resolve the dispute by removing tariffs unfairly imposed on ITA-covered products, but fully supports the U.S. government's request on September 23 for the WTO to establish a dispute resolution panel to bring the EC into compliance with the ITA.

TIA is also concerned that Europe may expand tariffs to other products. One product not covered by the U.S. government complaint, but whose tariff treatment is the subject of discussion by the European Commission's Taxation and Customs Union, are cell phones that are GPS enabled or that have Personal Digital Assistant functionality. Currently, cell phones are covered by the ITA. Should the EC unilaterally decide that phones equipped with such technologies are no longer covered by the ITA or, similarly, other ICT products with multiple functions, it will further erode the effectiveness of the ITA and the trading system on which it is based.

**Recommendation:** TIA encourages USTR to continue pursuit of its dispute with the EC within the WTO and warn the EC of potential future action should it expand tariffs to other ITA-covered products.

### **Brazil**

**Issue 1:** Complex tax system.

**Impact:** 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.

**Recommendation:** 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. Furthermore, TIA



supports and encourages Brazil to join the WTO's Information and Technology Agreement.

**Issue 2:** Intellectual Property.

**Impact:** Since 2002, the United States has repeatedly appealed and lost a dispute resolution case brought by Brazil in the WTO over U.S. subsidies to cotton farmers. After persistently overcoming U.S. appeals on this issue, the Brazilian government is seeking WTO approval to cross retaliate by suspending its intellectual property rights (IPR) trade commitments with the United States. In conjunction with this action at the WTO, the Brazilian legislature is also moving forward with a bill (PL 1893/2007) that would authorize the Brazilian government to take cross retaliatory action should it not be able to effectively achieve compliance with trade commitments under the WTO dispute resolution process.

If the WTO was to authorize cross-retaliation, or Brazil takes such action unilaterally, there could be severe consequences for holders of U.S. patents across many sectors, including the ICT industry. This type of action could effectively stop exports to Brazil of the products affected by any Brazilian cross-retaliatory action, potentially harming Brazilian consumers' access (including the Brazilian government and business customers) to important U.S. technologies and services. All parties may be negatively impacted if U.S. companies can no longer do business in Brazil with confidence that their intellectual property will be respected.

**Recommendation:** TIA urges USTR to convey to Brazil the serious potential consequences of carrying through with this action and call on the U.S. and Brazilian governments to find a solution to this dispute that does not result in harming the interests of U.S. patent holders.

**Issue 3:** Spectrum policy reform.

**Impact:** Brazil's regulator, Anatel, is in the closing stages of considering rules for auctioning broadband spectrum from 3.4 - 3.6 GHz in a proceeding that is expected to complete in the summer of 2009. There are three issues of concern. First, some officials within the Brazilian government have been urging Anatel to require some sort of domestic sourcing of network or client device equipment, using a Brazilian-only version of industry standards. Second, Anatel's current proposal would only allow some wireless broadband technologies (those using frequency division duplexing, a system with "paired" spectrum blocks whose uplink and downlink connections use different spectrum blocks) in lieu of a technology neutral approach that would allow some opportunity for both FDD and time division duplexing (TDD) technologies. TDD technologies use a single block of spectrum to both uplink and downlink data. Third, Anatel stated in a public consultation that it is considering imposing asymmetrical obligations on 3 GHz licensees to contribute to research and development projects in the area of telecommunications conducted in Brazil. These types of obligations do not exist for spectrum licensees and fixed line licensees across the board.



**Recommendation:** TIA urges Brazil to: 1) Support a result that allows Brazilian networks to take advantage of global economies of scale by using technology built to global standards, not yet-to-be defined Brazilian ones; 2) Encourage Anatel to adopt a final technology neutral band plan that allows prospective bidders to bid on parts of the band that would support their technology of choice; 3) Persuade Anatel to refrain from imposing asymmetrical obligations on 3 GHz licensees.

**Issue 4:** Testing and Certification.

**Impact:** 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 optic cables) must be physically done in Brazil. This requirement that testing be done “in country” limits TIA members’ ability to service customers based on a “business case,” in the interest of minimizing certification time and cost.

**Recommendation:** TIA recommends that the United States and Brazil negotiate and conclude a Mutual Recognition Agreement to reduce technical barriers to trade between the two countries.

## **Mexico**

**Issue:** Standards, Testing, Labeling and Certification.

**Impact:** Mexico is working on a conformity assessment procedure for telecommunications 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.

**Recommendation:** TIA urges the government of Mexico to implement its NAFTA obligations to recognize conformity assessment bodies in the United States 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.

**Issue:** Elimination of foreign ownership restrictions in the telecommunications industry.

**Impact:** Mexico is open to most types of foreign investment; however, foreign investment to own and operate basic telecommunications facilities is limited to a 49 percent equity position. This ownership restriction constitutes a major impediment for foreign carriers interested in entering and investing in the market. Mexico is the only major country in Latin America that still does not welcome foreign investment in the telecommunications’ sector. If Mexico does not remove these restrictions we do not see how a competitive telecommunications market could develop. By removing a foreign ownership cap, competition in the marketplace would improve quality of service and lower costs. At this time, TIA understands that there is pending legislation in the Mexican Congress that would repeal the foreign ownership.



**Recommendation:** TIA urges the government of Mexico to pass legislation repealing the foreign ownership cap for fixed line service providers.

**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 Nick Fetchko at 202-346-3246 or at [nfetchko@tiaonline.org](mailto:nfetchko@tiaonline.org).

Sincerely,

A handwritten signature in black ink that reads "Grant E. Seiffert". The signature is written in a cursive, flowing style.

Grant Seiffert  
President