www.tiaonline.org | 10 G Street, NE, Suite 550
Washington, DC 20002 | Tel: +1.202.346.3240
Fax: +1.202.346.3241

July 7, 2010

Via Electronic Mail to https://edis.usitc.gov.

Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

RE: Investigation No. 332-514. China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects of the U.S. Economy

Dear Ms. Abbott:

In response to the Federal Register notice issued on May 5, 2010, the Telecommunications Industry Association (TIA) and its hundreds of member companies would like to thank you for the opportunity to comment on China's indigenous innovation polices and their negative impact on our member companies. TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshows, business opportunities, market intelligence and world-wide environmental regulatory analysis. For over 80 years, the association has facilitated the convergence of new communications networks while working for a competitive and innovative market environment.

It is important to note that the challenges posed by China's Indigenous Innovation policies go beyond the most recent Chinese government plans to establish an indigenous innovation accreditation product catalogue for the purposes of government procurement. While this is indeed of great concern to U.S. industry, there are many policies that make up China's indigenous innovation strategy, and they have become 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. Indigenous innovation appears in many forms, and, as China assumes ever greater responsibility in the international community, it must fulfill its international commitments and adopt international norms and practices that recognize that innovation takes place on a global scale and features a great deal of cross border collaboration.

Promotion of Domestic Standards

TIA continues to express concerns that China mandates the use of domestic standards and technologies, and conducts its policy and regulatory formulation with very limited, if any, transparency. These practices have a direct affect on the vibrancy of the U.S. economy, U.S. competitiveness, and global innovation.

For example, China has uneven and unclear eligibility requirements for inclusion of foreign companies and institutions in technical committees that devise nationally adopted standards. Chinese government policies over the past several years have indicated a troubling trend to mandate standards (such as the requirements on information security product certification that, in effect, shut out foreign products and WAPI) that are developed outside of international standard setting processes. Despite the availability of commercially available parental control software to filter content, China is currently developing a mobile phone browser standard and proposed mobile phone content filtering standard. Although it is not yet clear how it will be implemented, the standard could potentially create similar difficulties for mobile phone manufacturers that China's "Green Dam" software posed for personal computer manufacturers.

In order to keep with international norms, the Chinese government should publish guidelines that indicate clearly how technical committees are constituted while opening participation to any company (domestic or foreign) that may want to participate. TIA recognizes that China has made some progress to conform to its obligations under the World Trade Organization (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 III 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. China should open consideration and acceptance of all globally relevant standards that are developed in accordance with the TBT Code of Good Practice. China's mandating of domestic standards discourages the procurement of imported products, which, as a result, can cause U.S. companies to reduce investment and manufacturing in the U.S., with a corresponding impact on jobs in the U.S.

Product Preference Practices

China continues to use preference policies for domestic companies or technologies in a way that discriminates against imports. Specifically, it appears that in some telecom procurements, companies are ignoring published criteria for bid evaluation, resulting in the selection of "national" champions, which are state-invested enterprises. Not only in government procurement, but in general, regulations in China are selectively enforced, with the hardship on foreign companies almost always more than that of domestic companies. As a result of these practices, foreign companies are at a disadvantage when bidding against Chinese suppliers.

An example of clear preference has been TD-SCDMA. With China's issuance of third-generation (3G) licenses in January 2009, the Chinese government, through its agencies, research institutions, and state owned enterprises, continues to heavily promote and support its own 3G mobile phone standard, TD-SCDMA. China supports this homegrown standard through subsidization and other forms of public support, including its 2009 stimulus package for the ICT sector. TIA remains concerned that TD-SCDMA technology receives an unfair advantage in the marketplace, which leads to a competitive disadvantage for foreign technology suppliers, particularly as the state owns the telecommunications carriers in China. This trend now appears to be becoming institutionalized within Chinese government agencies and regulators. While there is a veil of independence by the carriers (China Mobile, China Telecom and China Unicom), the legacy of state control has not been broken given that they are still state-owned and subject to political influence.

China should adhere to technology neutral principles and allow the consumer market to decide which technologies succeed. Technology neutral policies will help ensure that that one technology does not have an unfair advantage over another. Policies that favor one technology over another not only create trade barriers; they are also detrimental to China's goal of fostering an innovative economy.

TIA appreciates the opportunity to comment on the International Trade Commission's investigation. If there are any questions concerning the issues we have raised, please contact Nick Fetchko, Director for International and Government Affairs, at 202-346-3246 or nfetchko@tiaonline.org.

Sincerely,

Grant E Seiffert

Grant Seiffert
President