



June 12, 2009

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Dear Sir/Madam:

On behalf of the Telecommunications Industry Association (TIA), I would like to thank you for your ongoing work on bilateral commercial matters with China. China continues to be an important yet complex market for the information and communications technology (ICT) industry. The leadership of the Office of the United States Trade Representative (USTR) and the Department of Commerce is invaluable as we seek to address challenges in our trade and investment relationship with China.

TIA represents manufacturers and suppliers of ICT 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.

Specifically, TIA and its members support the continuing efforts of USTR and the Commerce Department to engage China on a number of issues of concern to our industry, such as China's information security policies and WAPI. We also appreciate the efforts to create new agreements with China that will enhance market access opportunities through the WTO's Government Procurement Agreement and a bilateral Mutual Recognition Agreement for testing and certification of telecommunications equipment. Furthermore, we are grateful for your continued efforts in urging China to adhere to its commitment under the WTO's Basic Agreement on Telecommunication Services to establish an independent regulator.

The U.S.-China Joint Commission on Commerce and Trade (JCCT) has been a valuable forum to constructively engage China. The work of the JCCT has achieved progress on China's information security requirements and a lowering of the capitalization requirements for telecommunications companies in China. As you begin to formulate your priorities and begin to strategize for the next meeting of the JCCT, TIA respectfully submits the following priority issues for consideration:

- 1) Wireless Local Area Network Authentication and Privacy Infrastructure (WAPI)
- 2) China's Type Approval Process
- 3) Information Security
- 4) Indigenous Innovation Policies
- 5) Voice over Internet Protocol
- 6) Online Video

1. Wireless Local Area Network Authentication and Privacy Infrastructure (WAPI).

During the 2004 JCCT, China agreed to take steps toward a market-based and technology neutral approach to the development of next generation wireless standards and to "suspend indefinitely its proposed implementation of WAPI as a mandatory wireless encryption standard." Today, however, China, through its actions, has effectively mandated its home-grown wireless access encryption algorithm standard, WAPI, for use in handheld devices. TIA is concerned that China's Ministry of Industry and Information Technology (MIIT) may only approve WiFi handsets if WAPI technology also is built into the handset and is enabled. Internal MIIT reference documents specifying technical requirements and testing methods for WLAN mobile terminals provide documentary evidence that China is moving toward requiring WAPI through the Type Approval process. Furthermore, Chinese state owned telecom carriers have begun to issue tenders requiring wireless (WiFi) access nodes to come equipped with WAPI.

The above actions by the Chinese government and its state owned enterprises could: 1) create serious trade concerns; 2) set a troubling precedent for future technology standards; 3) represent a significant departure from global adoption of harmonized ICT standards; 4) create unnecessary technological complexity; 5) compromise the basic

principle of technology neutrality in policy making; 6) undermine China's 2004 JCCT commitment; and 7) limit the ability of Chinese consumers to enjoy access to the most advanced technologies.

TIA recommends 1) China not mandate WAPI or other technologies; 2) the U.S. government look into this apparent indirect method of mandating Chinese technology, despite the existence of widely adopted international standards; and 3) the U.S. government work with China to establish a more transparent type-approval process and ensure that China's 2004 JCCT commitment is upheld.

2. Type Approval Process.

The product testing and certification process in China is significantly more difficult than in other markets, which increases the costs of exporting products to China. While fully acknowledging China's right to have a type approval system for telecommunications equipment to safeguard public safety and network integrity, China's type approval process is redundant, opaque, costly, and inconsistent with its WTO commitments. China's three main type approval certification processes are the Network Access License (NAL), the Radio Type Approval (RTA), and the China Compulsory Certification (CCC).

While they each represent a different certification requirement, there are overlapping testing requirements between them, particularly between the NAL and the RTA (radio telecommunications testing requirements, Electromagnetic Interference), and the NAL and the CCC (electromagnetic compatibility and product safety). These certification requirements conflict with China's 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).

Furthermore, while redundant testing requirements increase both the cost and time of a company to get a product to market, it also increases the number of product samples companies are required to present for testing-- increasing manufacturing and shipping costs for prototype devices that are being tested for the Chinese market.

In addition to redundancy, China's testing requirements are often unclear and subject to change without written notification and adequate time for companies to adjust. Companies must often determine what testing requirements are applicable by communicating directly with the relevant authority, rather than having access to a comprehensive list of conformity assessment requirements. Companies have reported that in some cases, testing requirements for products can change on an almost monthly basis. TIA believes that these actions indicate that China is not living up to its WTO commitment (Article 13.1 of China's WTO Accession) to publish its conformity assessment criteria.

TIA recommends several actions that will benefit both Chinese and American companies:
1) China should streamline its type approval process to one certification process,

combining the NAL, RTA and CCC certification processes; 2) Publish and maintain an easily available web-based list of testing requirements and specifications; and 3) Negotiate and conclude an MRA for testing and conformity assessment.

3. Information Security.

TIA acknowledges and is encouraged by China's National Certification and Accreditation Agency's (CNCA) decision to postpone implementation of its mandatory information security testing requirements on 13 categories of ICT products until May 1, 2010, and to restrict these requirements to government procurement only. While this step moves China more in line with international encryption practices, TIA is still concerned that China continues to apply these measures broadly to government procurement, not to mention its overall approach to encryption. Specifically, China is implementing a pilot program, the Multi-Level Protection Scheme (MLPS), which ranks certain information systems with general provisions from level 1 being the lowest sensitivity to level 5 being the highest. Fully implementing the MLPS could bar or inhibit foreign companies supplying level 3 equipment or above to the market. In addition to the MLPS, China has also introduced a new tariff classification in January 2009 that could potentially require permits from the State Encryption Management Bureau (SEMB) to either import or export certain products that incorporate encryption technologies. Foreign companies that obtain an import license for these newly classified products will be bound by SEMB's regulations, which limit the product to internal use by a foreign company.

China has also recently announced a so-called "Green Dam" policy requiring computer manufacturers to install filtering software before it can be sold to the public. With virtually no public notice, China has sprung a software requirement on industry that could potentially lead to numerous hardware and software interoperability issues. TIA urges the Chinese government to halt implementation of this new requirement and requests an open and healthy dialogue on how parental control software can be offered in the market in ways that ensure privacy, system reliability, freedom of expression, the free flow of information, security and user choice.

4. Indigenous Innovation.

TIA recognizes China's desire to foster domestic innovation. However, China's policies have led to the mandating of regulations and standards that are developed outside of international standard setting processes. 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 TD-SCDMA through subsidization and other forms of public support, including its recent stimulus package for the ICT sector. TIA is 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. In addition, China's move to require WAPI, Green Dam filtering software and its onerous information security requirements indicates a clear trend to promote indigenous

technology which is developed outside the international standards development system. This trend now appears to be becoming institutionalized within Chinese government agencies and regulators. TIA urges China to be technology neutral and to 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.

5. VOIP.

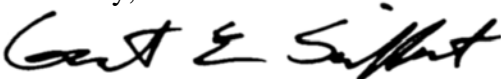
TIA believes technology neutrality is important for promoting competition and ensuring that consumers are empowered to choose technologies that best suit their needs. China's policies restrict the use of VOIP to closed user groups. We encourage China to allow all VOIP providers to offer services that connect to the Public Switched Telephone Network (PSTN) on an unlicensed basis, and eliminate joint venture requirements that apply to non-Chinese companies who wish to offer VOIP services in China.

6. Online Video.

TIA continues to be concerned about China's December 2007 policy announcement that permits provision of online video services by state-owned or state-controlled entities only. While Chinese regulators have since granted licenses to several "privately held" online video websites, this policy still poses additional restrictions/requirements on the Chinese market and unfairly discriminates against companies. In March 2009, the Chinese government issued a policy addendum to the online video regulation that further restricts the type of content that is allowed, and also explicitly broadens the regulation to cover online video on the mobile Internet. While it appears enforcement has been relaxed for the time being, there are concerns that China's State Administration of Radio, Film and Television (SARFT) could reassert control, given Chinese propaganda officials have indicated there are plans to create a "State National Online Video Website." Similar to the concerns raised with respect to VOIP, we encourage China to consider the negative implications of this new policy on the future growth of the telecommunications industry in China.

Thank you again for your continued assistance to TIA and our industry. Should you have questions or desire further information about these issues, please do not hesitate to contact Nicolas Fetchko, Director for International and Government Affairs, at nfetchko@tiaonline.org or 202-346-3246.

Sincerely,



Grant Seiffert
President