



January 16, 2007

Via Electronic Mail to FR0502@ustr.eop.gov

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
ATTN: Section 1377 Reply Comments
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508

Dear Ms. Blue:

In response to the Federal Register notice issued on November 15, 2006 and pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 3106 ("Section 1377"), the Telecommunications Industry Association (TIA) and its 600 member companies would like to thank you for the opportunity to provide reply comments on the effectiveness of trade agreements that impact the provision of telecommunications products and services. Obtaining greater access in foreign telecommunications equipment markets is one of TIA's priorities.

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 communications.

We have reviewed the comments submitted during the initial round, and we agree generally with the comments submitted by the Coalition of Service Industries, COMPTTEL, the Satellite Industry Association, the U.S. Council for International Business, and the Voice on the Net (VON) Coalition. In our comments below, we echo some of the concerns already raised, and we provide comments on issues important to our members that may have been overlooked.

People's Republic of China

At the outset, we note that there has been some improvement in the U.S.-China trade and investment relationship during 2006. U.S. investors still see China as a key destination, U.S. exports of information technologies are increasing, and the Chinese government is continuing to address trade issues in the appropriate fora. However, we remain concerned about lack of progress in the several key areas.

Telecommunication Services and technological neutrality

With respect to telecommunication services, China still has a long way to go in terms of market liberalization. While a number of value-added services are technically open to foreign competition through joint ventures, to date MII has effectively blocked the foreign provision of value added services by

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maintaining high-entry barriers, both through its licensing authority and its ability to define narrowly the scope of services included in each value-added category. In addition, the process for reviewing and approving applications is opaque, discretionary and conducted with a conservative view that the listed services represent a ceiling, rather than a floor, for what MII is inclined to approve. Those foreign-invested ventures in telecom services that do receive approval are subject to onerous restrictions, such as geographic restrictions, which keep ventures from selling their services outside one city or even a single district of one city, and strict joint venture requirements, in which foreign joint venture participants may not bill customers directly for telecom services, control the billing process, collect payment. They cannot provide assurances of service quality, and their ability to manage network security is severely constrained by a confusing legal regime around encryption technologies.

In addition to the market access barriers discussed above, a \$250 million capitalization requirement is a significant restriction for most companies. Other impediments to the provision of telecom services in China include regulatory ambiguity; inconsistent interconnection rights; restrictive personnel requirements, such as lack of representation by foreign boards of directors; and licensing restrictions for basic services.


With these impediments in mind, TIA urges the Chinese government to (1) lower the capital requirement for investment in basic services; (2) eliminate or change the MII “Catalogue of Telecommunication Service Categories” such that every new service offering by foreign providers is not subject to review and approval by MII; (3) permit joint ventures to be established as “inter-provincial” value-added service enterprises; (4) permit joint ventures to manage the end-to-end customer experience, including billing; (5) permit joint ventures to hire qualified staff using clear qualification criteria, as opposed to using quotas from the two principals; (6) permit joint ventures to partner with Chinese investors other than the existing state-owned enterprise carriers; and (7) to comply with its Reference Paper commitments to establish an independent regulator

Finally, we urge the Chinese government to subscribe to the principle of technology neutrality on the part of the regulator. TIA strongly believes that the decision to provide 3G services should be a commercial one and that the regulator should be agnostic regarding technology choice.

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

Type Approval: Currently in China, telecom terminals must pass through several mandatory certification processes and corresponding testing before they can be sold. Many of the steps are duplicative, and it can take up to 13 weeks for approval, while the international standard is about 30 days. First, telecom terminals must be tested by an MII-accredited lab to obtain a Network Access License (NAL). Second, the Administration of Quality Supervision and Inspection and Quarantine (AQSIQ) requires that telecom terminals obtain the China Compulsory Certification (CCC) certificate before shipment. The China National Certification and Accreditation Administration (CNCA) manages the CCC process, and it accredits certifying bodies. In addition to NAL and CCC processes, for radio products, mobile handsets and cordless phones must be tested by a government-accredited testing lab and get a Radio Type Approval Certificate (TAC). Another testing requirement has been imposed via the Ministry of Health to ensure low Specific Absorption Rates (SAR) in mobile phones.

Factory Inspection: We have been informed that the China National Certification and Accreditation Administration (CNCA) has issued a new policy, which clearly indicates that in principle, all initial factory inspections should be conducted by the Chinese certification organizations themselves.



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Only under extreme circumstances (*e.g.*, a delay in receiving the products would impact a major project in China), will CNCA allow the accredited certification organizations to subcontract the initial factory inspection to a foreign organization. This action creates serious delays for U.S. manufacturers in obtaining the CCC certificate, due to China's cumbersome internal approval process for overseas trips and related US visa process issues. (It often takes months to schedule visa interviews.)

Certification: China has also opted out of international certification schemes to which most all other trading partners belong. China does participate in international schemes, including the Worldwide System for Conformity Testing and Certification of Electrical Equipment (IECEE) Conformity Body (CB) scheme for safety testing. However, under China's regulatory system, electromagnetic compatibility (EMC) testing must be done in-country because China opted out of the CB scheme for EMC. EMC requirements emerged out of a collective international effort and most of the world participates in the EMC component of the CB scheme and accepts CB scheme test reports generated by other participating members. In China, TIA is also concerned that EMC testing is viewed predominately as needing to occur locally (near the manufacturer).

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 a standard that indicates clearly how technical committees are constituted and who may participate, as well as the rights of participants. TIA recognizes that China has made significant strides to conform to their obligations under the WTO TBT Agreement to base their technical regulations on international standards. However, we are concerned that 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 US and other global manufacturers that rely on international standards developed outside of the Geneva-based organizations. China is currently in the process of revising its "Standardization Law." We hope USTR will continue to reinforce the principles of the TBT Annex IV 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.

Imports

China has met its commitments to the WTO Information Technology Agreement (ITA) by reducing tariffs on the great majority of information technology products to zero between the years 2002-2004. However, we urge the government to include Multi-Chip Packages (MCP) in the products to which zero-tariff status has been extended. MCPs are simply a more advanced form of integrated circuits, which already have received zero-tariff treatment. With respect to import discrimination, in key telecommunications sectors, China continues to struggle with economic inefficiencies, exacerbated by preferences for domestic industries and pricing and procurement practices that discriminate against imports. Specifically, it appears that in some telecom procurements, companies are ignoring their published criteria for bid evaluation, resulting in the selection of "national" champions, which are state-invested enterprises. As a result of these practices, importers have been excluded from the market.



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Import Discrimination

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India

We recognize India's progress in unilateral liberalization of the telecommunications market and encourage further liberalization to spur investment in ICT, speed the development and adoption of new technologies, and promote multilateral collaboration.

The Landing Station Bottleneck

VSNL, in which the Indian government owns a 26 percent share, has a dominant position in the Indian market for international telecommunications services. VSNL controls all but one of the cable landing stations in India, including the critical station at Mumbai. VSNL is using this bottleneck control to (1) delay and limit the availability of undersea cable capacity to and from India, (2) charge artificially high prices for available capacity and (3) prevent upgrades to the existing cables landing in India. As USTR noted in the 2005 1377 Report, USTR expects more "vigorous oversight by the Indian regulatory body, TRAI, and the Government of India to ensure access to and use of submarine cable capacity through facilities now dominated by VSNL." TRAI is becoming more vocal on this issue, and the U.S. government should work to further progress on the undersea cable issue to increase capacity.


Access Deficit Charge (ADC)

The Telecommunications Regulatory Authority of India (TRAI) is applauded for significant changes to the ADC regime as it phases out the universal service plan by 2009. U.S. industry supports additional consideration of a proposed revenue share plan that would:

- Help address the gray market in international calling by removing the discrepancy between domestic and international termination rates; and
- Make the system more efficient, equitable and non-discriminatory by fairly applying costs to all industry players.

Bandwidth Restrictions

India's Telecom Disputes Settlement Court's upholding the Telecommunications Regulatory Authority of India (TRAI) decision to reduce tariffs on international private leased circuits is a step in the right direction. In addition, international bandwidth capacity can be addressed by:



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- Allowing multinational corporations access to full capacity (current and upgraded) on certain submarine cables; and
- Requiring cable landing station owners to engage in competitive conduct in providing collocation, grooming service, data security monitoring and other services, and enforcing that requirement.
- The Indian market will greatly benefit from additional competition since only six carriers in India hold International Long Distance licenses.

Independent Regulator

While TIA is encouraged to see India's telecommunications regulator taking steps to become truly independent, the Indian Department of Telecommunications still holds the primary control over issues that could be resolved by better regulation. The Department of Telecommunications is encouraged to allow TRAI more leverage in policy and regulatory decisions.

Foreign Direct Investment (FDI) Initiatives

India is commended for increasing its level of FDI in the telecommunications sector to 74 per cent, which will greatly encourage competition. We also note that on March 3, 2006, the Ministry of Communications and Information Technology deferred the implementation of these restrictive regulations until July 2, 2006. We would appreciate, however, further clarification on three particular proposed conditions that will affect both Indian and U.S. multinational companies operating global networks. These proposals are restrictions on:

- Transfer of accounting, user and network information outside India;
- International transit routing of Indian domestic traffic; and
- Remote access for maintenance and repairs from outside India.

Market Access

India is to be complimented for its implementation of the WTO Information Technology Agreement to lower tariffs and excise taxes, which has fueled explosive growth in telecommunications. However, U.S. industry is troubled by the manufacturing requirement. (Preference to companies that include a domestic manufacturing component would severely decrease interest and competition in the Indian market.).

Unified Licensing

In January 2004, the TRAI set out its recommendations on Unified Licensing, which is a concept that allows a service provider to offer any service, on any technology platform, in any manner it chooses, and typically across any region(s) in the country. Currently, with service specific licensing and high entry fees, the market is only developing and competitive for wireless voice. The U.S. industry supports the implementation of the TRAI's recommendations on Unified Licensing, combined with greatly reduced entry fees, to support continued growth and introduction of real competition within India's telecom sector beyond wireless voice. Without it

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competition will remain limited and new players will have great difficulty entering the market with innovative services.

Republic of Korea

Certification

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 US companies to test and certify products directly for the Korean market means that US 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 US companies. In today’s highly competitive and challenging global economy, it is more important than ever to minimize such impediments to the efficient flow of goods, while maintaining high levels of product safety.

Technology Neutrality

On a number of occasions in recent years, TIA and its member companies have commented on standards issues in Korea; specifically, government standards policy decisions we believe are designed to inhibit non-Korean competitors in the Korean market and advantage domestic companies. We remain concerned that the Korean Ministry of Information and Communication Industry will continue to promote and require Korean technology at the expense of non-Korean competitors.


TIA supports innovation and market competition, and more important to our industry, policies that promote technology neutrality (also, “technology choice”), in which standards and products are developed by market-driven dynamics and open, transparent processes. We urge USTR to continue to press the Korean government to practice technology neutrality in the appropriate arenas, particularly in light of the ongoing US-Korea Free Trade Agreement.

Mexico

Standards, Testing, Labeling and Certification

Mexico is required under its NAFTA obligations, starting January 1, 1998, to recognize conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Mexico initially indicated that it would conform to these obligations only when the Government of Mexico determines that additional capacity is needed in conformity assessment services.

Mexico now acknowledges that its NAFTA obligations require national treatment and acceptance of applications from U.S. and Canadian certification organizations. Yet no U.S. or Canadian conformity assessment bodies have



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been recognized by Mexico to offer Norma Oficial Mexicana (NOM)¹ certification in any key U.S. export product category. The Mexican government's delay in issuing the "call for certifiers" notice, the lack of transparency in the application submission process, and the continuous administrative burdens suggest that Mexico indeed is delaying the process in order to protect domestic interests. Additionally, we know that Mexico is working on a conformity assessment procedure for telecom 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. Thus, we urge the government of Mexico to implement their NAFTA obligations to recognize conformity assessment bodies in the U.S. 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.

European Union

Certification and Testing

The European Union (EU) Commission adopted a "Global Approach to Certification and Testing" in 1989, which inherently lacks the national treatment principle for conformity assessment organizations in the area of regulated products. Member States are responsible for designating an authority for the notification of Notified Bodies that can test, certify and inspect products to result in the CE Marking for use in the EU. These organizations may notify only bodies within their territories. Therefore, U.S. conformity assessment organizations cannot provide cross-border conformity assessment services in the European system. A soil-based presence is required.

In some cases, governments have turned to government-to-government Mutual Recognition Agreements (MRAs) to address the issue of market access for U.S. testing and certification organizations. One example is the U.S.-EU MRA. Negotiations for this agreement lasted more than six years, with only two of six sectoral annexes operational, and at least one annex suspended. For all this effort, only a handful of products have utilized the MRA. TIA strongly supports the U.S.-EU MRA and hopes for a more effective negotiations to move the MRA forward.

WTO Information Technology Agreement

TIA and its member companies are concerned about the European Commission's (EC) steps that could violate the EU's obligations under the WTO Information Technology Agreement (ITA). The EU Nomenclature Committee (NC), under DG TAXUD (Commission Directorate-General dealing with Taxation and the Customs Union), is currently considering an amendment to the Explanatory Note (EN) on set-top boxes (STBs) that would reclassify most STBs out of the ITA duty-free classification and into higher duty-rate categories. According to the ITA's Attachment B, STBs are included in the scope of the ITA, qualifying them for duty-free treatment, regardless of where they are classified in the tariff. There are three technical aspects to the evolution of STB technology that unpin DG TAXUD's rationale for reclassifying STBs under the current ITA:

¹ Obligatory government quality/efficiency/safety standards and label regulations.

- The presence of a hard drive to pause and rewind live TV
 - DG TAXUD asserts that a hard drive means the product should be classified as a recording device under 8528.12.20 with a 14 percent duty.
 - Industry believes that a hard drive performs an ancillary function and does not change the basic function of the device as a STB.
- The presence of a modem using Ethernet technology
 - Industry has pointed out that an Ethernet connection performs the same function as a “traditional” telephony modem, and that it is technically irrelevant how access to the Internet is attained.
- “Unlimited” access to the Internet
 - DG TAXUD claims that access to the Internet must be “unlimited,” which is commercially and technologically nonsensical. Most technology devices limit access to the Internet, as customers typically purchase a service provider plan to enable the device to access the Internet.

The Commission is also considering issuing a Duty Suspension (DS) after a vote on the draft EN in an effort to avoid potential trade concerns from the U.S. and other WTO ITA members. However, industry believes that a DS is not a viable long-term solution, as at least one Member State is expected to oppose DS. Moreover, as a trade policy matter, the EU is obliged under the ITA to provide bound duty-free treatment for ITA items. Re-classification and imposition of the 14 percent duty would violate WTO law, as well as EU and World Customs Organization (“WCO”) classification rules. Imposition of duties would violate the EC’s ITA commitment to eliminate duties on STBs with communications function; each of the categories of STBs that the EC proposes to re-classify is covered by terms of that commitment. The imposition of duties would also violate Article II: 1 GATT by leading to “treatment less favorable” and duties “in excess of” what is provided for in that Schedule. Any duty suspension the EC may be considering and that would reduce the duty back to 0 percent on a less than permanent basis would not cure the underlying WTO inconsistency. Under WCO and EU customs law, the re-classification itself would be impermissible; the STBs in question are properly covered by HS8528.12/CN8528.12.91; re-classification would disregard the principal function of the STBs. Re-classification would risk leading to erosion of the ITA and spillover to other products as a result of actions of the sort now proposed by the EC.

Brazil

Independence of Regulatory Agencies

Regulatory agencies play a key role in monitoring the business environment and ensuring that the rules of engagement are followed in critical sectors of the economy such as, telecommunications, electrical power, water and sanitation, and oil and gas, among others. These sectors invite sizeable foreign direct investments and are responsible for technological developments and major improvements in the country’s intellectual capital and export potential. As such, staffing the regulatory agencies with strong and highly qualified experts that are relatively immune to political pressures is highly recommended.

Complexity of Tax System

The inherent complexities of the Brazilian tax system pose numerous

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challenges to foreign companies that seek to increase their business with Brazil. Special attention should be given to tax disputes among the various states, the transfer pricing guidelines, the multiple cascading taxes, the constant changes in the interpretation of the tax laws and many other tax-related difficulties. As a concrete example of these difficulties, we can point to the series of restrictions imposed on the export and re-importation of imported equipment that is being sent abroad for repairs. The requirements are so laborious and complex that companies face many restrictions in providing quality services to customers in Brazil due to significant delays in the export and re-importation process.

Protection of Intellectual Property (IP)

Although Brazil has greatly improved its efforts to curtail counterfeiting, piracy and other illegal activities related to IP, we still believe that attention should be given to the monitoring and protection of international intellectual capital in the legal disputes that take place within the Brazilian court system.

Incentives to Local Manufacturing and R&D

As part of several initiatives to provide incentives to local manufacturing and local R&D activities, the "Lei de Informática" has produced some favorable results for the country, when it comes to an increase in investments and the development of a competitive base of local infrastructure, intellectual capital and human resources. However, there is still some room for improvements. One specific item that deserves attention is the import and VAT tax incentives on lab and R&D equipment. Currently, setting up R&D operations in Brazil can be considerably more expensive than conducting R&D in other developing countries, such as India and China, due to the heavy tax on imported equipment. We believe a specific tax exemption for R&D related equipment would make investments decisions easier and lead to increased investment.

Clearer Emphasis on Setting and Managing Public Policies on ICT


Information and Communication Technologies (ICT), which include both the IT and the telecommunications sectors, are responsible for a fairly large portion of Brazil's GDP, with a share that reaches almost 5 percent. Despite this important economic representation, we believe the government should place more emphasis on maintaining a clear ICT policy, which would enhance visibility and predictability to current investors, as well as attract new investment to Brazil.

Consistency of Government Investments in ICT

Being an important driver for strategic investment initiatives, the Brazilian Government could improve its track record in terms of consistency of investments in ICT projects, by focusing on two very important areas:

- the use of IT for its own consumption and
- the development of digital inclusion and education projects.

This consistency would attract sustainable investment to Brazil, especially when one of the most important negative factors for companies investing in Brazil is the "stop and go" mode of operation from the government when ICT investments and projects are considered. For example, we would point to the



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six-year debate over the use of FUST (Fundo para a Universalização dos Serviços de Telecomunicações). Today, the FUST funds amount to over R\$4 billion, but as past experience shows, despite many attempts to propose projects for the use of these funds, initiatives were blocked by lengthy and complex political and legal disputes. A firm resolution by the government on the use of the proceeds of FUST for the purposes they were initially collected would signal a strong commitment to the ICT sector and the Brazilian society. Another example is the discussion around the One Laptop per Child (OLPC) program. While a large number of senior government officials agree that it is important for the project to move forward, a more firm commitment is needed to push it forward to make it become a reality. We are convinced that a successful outcome would have a positive impact on education and Brazil's future human capital that would in turn attract future investments to Brazil.

Testing and Certification

TIA is concerned about 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 our members' ability to service customers based on a "business case," in the interest of minimizing certification time and cost. We have also observed that it is becoming a common practice for Brazil to align with other Mercosur countries in harmonizing standards and creating regulations that affect product certification requirements and accreditation processes for certification organizations. While we see no problem with countries consulting each other on regulatory matters, we believe that if Mercosur partners are creating regulations en bloc, there should be a mechanism for organizations from the United States to comment on the regulatory decisions being made. Right now, we understand that there is no formal mechanism for the US to weigh in on the Mercosur regulatory decision-making process.


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 telecommunications 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 Michael Nunes at (703) 907-7700 or mnunes@tiaonline.org.

Sincerely,

Grant Seiffert
President



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