



December 21, 2004

NTE Comments
U.S. Department of Commerce
USA Trade Center Room
14th & Constitution Ave., NW
Ronald Reagan Building
Washington, D.C. 20230

To Whom It May Concern:

Thank you for providing the Telecommunications Industry Association (TIA) with an opportunity to participate in the development of the National Trade Estimate (NTE) report by highlighting the trade concerns which affect our industry. Obtaining greater access in foreign telecommunications equipment markets is a key priority of TIA. On behalf of our 700 member companies throughout the United States, we welcome this opportunity to identify significant barriers to U.S. exports of goods, services and overseas direct investment that skew the market and hinder the free flow of products globally.

Argentina

“Buy National” Law

U.S. telecommunications and IT equipment companies are facing the possibility of exclusion from the Argentine market as a result of a 2001 “Buy National” law and the recent implementing regulations drafted by the national telecommunications regulator, the Comision Nacional de Comunicaciones (CNC).

In 2001, a "Buy National" law was drafted that requires that in a situation where comparable local and imported equipment are available for procurement, companies must opt for the locally-produced equipment if this option is no more than 5 percent more expensive than imported equipment. This law also applies to services and materials that go into finished goods.

While the law is applicable to all sectors, a recent resolution from the CNC is paving the way for implementation of the law as applied specifically to telecom equipment purchased by licensed operators.

Given that CNC regulations likely will disadvantage many U.S. companies competing Argentina, TIA urges the U.S. government to gather information on this matter and provide U.S. companies with the latest information about CNC’s application of the law/CNC implementing regulations. Also, we hope that the U.S. government will register our concern about this matter.

People's Republic of China

Progress has characterized the U.S.-China trade and investment relationship in 2004. U.S. investors in China are seeing their profits grow, U.S. exports in information technologies are increasing and several trade issues have been resolved due to actions taken by the Chinese government.

In telecommunications, the formal break-up of the China Telecom monopoly in 1994 helped create tremendous growth in capacity and lower prices. Based on these successes, Chinese regulators seem to believe that foreign involvement will not benefit Chinese telecom companies and therefore should be excluded to the extent possible under existing trade agreements. TIA members, therefore, are concerned about lack of progress in several areas:

Telecommunications Services

Although China entered the World Trade Organization in 2001, in reality, now is the early edge of market opening. Using its administrative discretion over licensing, China's Ministry of Information Industry (MII) has made it difficult for foreign players to participate substantially in China's telecom services market.

Technically, a number of value-added telecom services are open to foreign and private investors, who may form joint ventures with one of the existing state-owned enterprise telecom carriers. They include:

- Online data management and transaction management services (i.e. EDI and payment services)
- Storage re-transmission services (voicemail, e-mail, fax retransmission)
- Transaction management services (i.e. EDI, payment services)
- Internet information services (i.e. Internet content providers, WASPs)
- Internet access services (domestic)
- Internet VPN services (domestic)
- Domestic multi-direction communications services (i.e. teleconferencing)
- Internet Data Center-based services (i.e. application service provision)
- Fixed and mobile internet information services (i.e. content provision) – "ICP"
- Call center services

To date, MII effectively has blocked actual participation by foreign companies in these areas by implementing high entry barriers, both through its licensing authority and its ability to narrowly define the scope of services included in each value-added category. When asked recently about the openness to foreign investment of some of the above-listed categories, MII officials responded that interested companies should submit applications to determine if their service falls within one of the categories. However, the process for reviewing and approving such 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. Furthermore, those foreign-invested ventures in telecom services that do receive approval are subject to onerous restrictions. Geographic restrictions, for example, keep ventures from selling their services outside one city or even a single district of one city. Joint venture companies may not bill customers directly for telecom services, control the billing process or collect payment. They cannot provide assurances of service quality, and their ability to manage network security is severely constrained by an antiquated and confusing legal regime around encryption technologies.

Periodically, MII issues a “Catalogue” of value-added services that describes those technologies and services that may be viewed as value-added and therefore open to foreign participation. However, the scope of permissible services is vaguely defined and limited to small-scale applications. For example, international connectivity is not permitted, nor is international IP-VPN, though from a technical standpoint, domestic IP-VPN is considered a value-added service. Finally, the licensing process is both lengthy and opaque.

Regarding foreign investment in basic telecommunications services, now technically open to minority investors in certain localities, a capitalization requirement of \$250 million makes investment unrealistic for most companies. In addition, investors are not given any assurance of interconnection, nor are they permitted board of directors representation in their invested companies. Moreover, it is not clear whether specific permits for discrete services still are required once the basic telecommunications services license has been issued. The licensing authority retained by Chinese government agencies effectively makes basic services opportunities just as limiting as those in the value-added area.

The experience of the two foreign-invested enterprises licensed to engage in particular value-added services shows that ventures designed to validate novel service offerings--once established successfully by foreign investors in a certain geography or for a certain service--are not working in telecom. This is because regulators then have prevented them from expanding either along service or geographic dimensions. Tight restrictions on expansion prevent the businesses from becoming commercially viable, and they are not attractive to major foreign players. As a result of these requirements, we know of no foreign investor who has applied to form a joint venture in basic telecom operations.

TIA urges the Chinese government to implement the following policy changes in order to realize fully the promise of opening to foreign investment in telecommunications services.

- Lower the capital requirement for investment in basic services.
- Eliminate the MII “Catalogue of Telecommunication Service Categories.” Or, if retained, use the Catalogue to list those services that are *not* open to foreign investment (i.e. the negative list approach) rather than providing an affirmative list. Telecommunication services, being driven by technological innovation, change quickly, and MII should not be involved in approving every new business initiative of incumbents. Instead, TIA urges China’s government to adopt a Tier 1/Tier 2 licensing system, whereby Tier 1, or “basic” operators, would be defined by ownership of transmission facilities. Tier 2 operators would be licensed to engage in the provision of all telecommunications services other than those prohibited in the Catalogue or other regulation.
- Permit joint ventures to be established as “inter-provincial” value-added service enterprises.
- Permit joint ventures to manage the end-to-end customer experience, including billing.
- Permit joint ventures to hire qualified staff using clear qualification criteria, as opposed to using quotas from the two principals.
- Permit joint ventures to partner with Chinese investors other than the existing state-owned enterprise carriers.

Independent Regulator

By committing to the terms of the Reference Paper on Telecommunications Services, China has endorsed the principle of regulation by an agency that is independent of industry. This commitment has not been met. Over the past year, shareholdings in all the telecom operators were moved to the State-owned Assets Supervision and Administration Commission (SASAC) in an attempt to increase independence. SASAC, in consultation with MII, then swapped the top executives around among the four major telecommunications operators. SASAC reportedly has been deeply involved in deliberations over the upcoming Telecom Law and the decision on when to launch 3G licenses.

Technology Neutrality

We urge the Chinese government to subscribe to the principle of technology neutrality on the part of the regulator. In virtually all discussions of the launch of third-generation mobile services, slated for late 2005, MII has linked the issuance of 3G licenses to the “maturity” of the government’s preferred standard, TD-SCDMA. TIA believes that the decision to provide 3G services should be a commercial one and that the regulator should be agnostic regarding technology choice.

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

Certification: China formally has eliminated the licensing requirement for manufacturers of mobile terminal equipment, and yet the licensing requirement has been replaced with a registration process that appears very similar. To qualify for registration as a manufacturer of mobile phones, companies must meet standards (not, as yet, published) for size and competence of the foreign investor and must submit a business plan, which will be judged as a basis for issuing the registration.

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 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). Recently, yet another testing requirement has been imposed via the Ministry of Health to ensure low Specific Absorption Rates (SAR) in mobile phones.

These tests and requirements are duplicative, costly and time-consuming. TIA urges the Chinese government to ensure that testing and certification requirements are the least trade-restrictive possible.

Standards: China has uneven and unclear standards 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.

Import Tariffs

China has met its commitments to the 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 simply are a more advanced form of integrated circuits, which already have received zero-tariff treatment.

India

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.

It is our understanding that VSNL has not complied completely with its agreement from earlier this year to provide additional capacity, and the company continues to charge exorbitant prices to the detriment of U.S. customers and U.S. companies in India that need capacity. At the same time, demand for bandwidth into and out of India has grown steadily, with the result that the bandwidth shortage is acute.

As USTR noted in the 2004 1377 Report, "VSNL has no incentive to allow competitors (whose cable terminates at VSNL's landing station) to freely activate and market that capacity in India when it could keep prices (and market share) for its own services higher by limiting competitors' access to additional capacity." Furthermore, the report indicated concern that the Government of India has not fulfilled its obligations under World Trade Organization rules to control VSNL's anticompetitive conduct.

VSNL's conduct has serious adverse effects for U.S. telecommunications and information technology (IT) companies that desire access to the Indian market. For U.S. equipment manufacturers, VSNL's conduct reduces opportunities for sales to companies that provide telecommunications and IT services in India and/or compete with VSNL. For U.S. service providers, VSNL's conduct denies market access, inflates prices for bandwidth and results in increased charges for calls to and from India.

We urge the U.S. government to continue to closely monitor this situation and to urge that VSNL stop inhibiting access points into India.

Republic of Korea

Unfair Standards Development Practices: 2.3 GHz

While 2004 saw a satisfactory conclusion of the Wireless Internet Platform for Interoperability (WIPI) standards issue, the 2.3GHz issue proved to be completely intractable. The TTA's (the Korean telecommunications standardization body) PG302 (formerly PG05) committee adopted a series of technology decisions that systematically eliminated all competition for the WiBro¹ standard from systems that had been tested in trials in Korea and are commercially available. Throughout, the TTA process demonstrated a lack of transparency, in that numerous decisions were pre-announced in the Korean press prior to official adoption within the TTA. The process for the development of this standard seems to be contrary to Annex 3 of the TBT. Specifically, Article D of Annex 3 states, "... the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favorable than that accorded to like products of national origin..." Article E of Annex 3 states, "The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade."

In July 2004, the Ministry of Information and Communications (MIC) in Korea announced its decision to mandate the use of the IEEE 802.16e standard for use in the 2.3 GHz band. While this decision appears to support the use of international standards, the 802.16e standard is sufficiently flexible that it will allow the TTA to adopt a WiBro standard that is unique to the Korean market while maintaining compliance to one version of the 802.16e standard. In adopting this decision, the MIC explicitly rejected proposals made to them by the U.S. government for a technology-neutral licensing regime for the 2.3 GHz band. It is also widely believed that the MIC was influencing the TTA process, particularly encouraging potential 2.3 GHz licensees to support the technology developed domestically as the basis for the WiBro variant of the 802.16e standard.

Mexico

Standards, Testing, Labeling and Certification

Mexico was 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 been recognized by Mexico to offer Norma Oficial Mexicana (NOM)² certification in any key U.S. export product category. The Mexican government's continued delay in issuing the "call for certifiers" notice and the lack of transparency in the application submission process 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

¹ Korea's planned mobile broadband access system.

² Obligatory government quality/efficiency/safety standards and label regulations.

only by recognized labs; this reinforces the need that Mexico recognizes U.S. and Canadian accreditation and certification bodies to avoid duplicate testing.

Both the United States and Canada openly have recognized each other's conformity assessment bodies under the same NAFTA provisions for many years. This has promoted U.S.–Canadian trade by reducing the compliance burden on exports from each other's markets, while meeting the confidence needs of the regulators and the market by allowing manufacturers to obtain needed conformity assessments locally that provide market access for both the U.S. and Canada.

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.

Russia

Product Certification Procedures

The process for certifying telecommunications equipment in Russia remains burdensome, costly and out of step with the nature of technological advancement. Additionally, there is a clear lack of predictability in the Russian certification system; certification requirements should be stable, clear and transparent. Today, telecom equipment manufacturers do not have a clear understanding of how product certification is organized in Russia. Certification procedures take too long, and there is no clear sense of which Russian organization or body is responsible for completing telecom equipment certification, as there are no bodies that are authorized to issue certificates.

Import of Radio Equipment

The new Russian Frequency Allocation Authority is operating under the Russian Ministry of Telecommunications ("Ministry"), but it is still not clear if the procedure, which does not require special import licenses, allowing telecom equipment manufacturers to import radio equipment using the frequency allocation from this authority is in compliance with Russian customs procedures. Russian Customs still is requiring such import licenses, while the Ministry is referring to the new Telecom Law, which states that such import licenses are no longer required. On this issue specifically, further clarification is necessary regarding a concrete time line for implementation of the no-import-license procedure and exactly what is required from both the Ministry and Russian Customs regarding radio equipment imports.

Type Approvals

TIA members are experiencing problems obtaining type approvals for their equipment because there is no functioning type approval system in Russia. By way of background, telecom equipment in Russia is subject to type approval. The Telecom Law, which went into effect on January 1, 2004, offers 2 options – mandatory certification and declaration of compliance. The Ministry started developing new regulations, but then the regulatory development process was delayed because of the Ministry's administrative reorganization, which was launched by President Putin in March 2004.

Thus, the Ministry stopped accepting new type approval applications in March 2004. The newly established Federal Communications Agency, which was deemed responsible for organizing the type approval system and is controlled by the Ministry, does not accept applications for new equipment, issue certificates or register declaration of compliance on the grounds that the

regulatory framework has not yet been developed. This is a major impediment to our companies' ability to serve customers in Russia. In essence, many companies cannot import or sell new equipment in Russia. Moreover, they cannot sell equipment, which was type approved, but for which the certificate expired after March 11, 2004.

Investment Restrictions

Despite the implementation of Russia's Telecom Law this year, foreign telecom operators continue to face a number of investment barriers. Russian telecommunications services continue to suffer from underdevelopment due to a lack of investment, both foreign and domestic, which is also the direct result of high foreign investment stipulations, the lack of an independent regulator and the absence of transparency of the rules and regulations that are imposed on foreign operators. Specifically, Russia's "Conceptual Plan of Development for Russian Telecommunications Services" reserves the right of the government to increase restrictions on foreign equity capital and personnel. Moreover, significant legal restrictions exist on the commercial presence of foreign firms, including the imposition of limits on the form of establishment and percentage of ownership allowed.

Conclusion

Thank you again for the opportunity to comment on trade barriers that our members face throughout the world. If you have any questions about this document or if we can assist you in other ways, please do not hesitate to contact Jason Leuck, TIA's Director of International Affairs, at 703-907-7725 or jleuck@tiaonline.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Matthew J. Flanigan".

Matthew J. Flanigan
President