November 03, 2009

Via Electronic Mail to www.regulations.gov

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

RE: USTR's 2010 National Trade Estimate on Foreign Trade Barriers report. Countries/regions covered in this submission include the People's Republic of China, India, Republic of Korea, Mexico, and Brazil.

Dear Ms. Blue:

In response to the Federal Register notice issued on September 24, 2009, the Telecommunications Industry Association (TIA) and its hundreds of member companies would like to thank you for the opportunity to comment on the 2010 National Trade Estimate (NTE) on Foreign Trade Barriers report. 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. Obstacles still remain for U.S. exports of goods and services around the world, and we would like to highlight the following standards-related trade barriers faced by TIA members:

People's Republic of China

U.S. exporters and investors still see China as a key destination. Between 2006 and 2007, U.S. exports of telecommunications equipment increased from $846 million to $881 million, which is a 4 percent increase. While U.S. exports of information and communications technologies to China are increasing, TIA remains concerned about lack of progress in several key areas.

Technology Neutrality
Indigenous Innovation: TIA recognizes China's desire to foster domestic innovation. However, China's policies have indicated a troubling trend to mandate standards (such as pending requirements on information security product certification and WAPI) that are developed outside of international standard setting processes. Although not yet clear how they will be implemented, China is currently developing a mobile phone browser standard and proposed mobile phone content filtering standard that could potentially create similar difficulties for mobile phone manufacturers that China's "Green Dam" software posed for personal computer manufacturers. Preferences given to domestic technology producers in government procurement also lead to the exclusion of foreign technology suppliers. TIA encourages China to give its consumers access to world-class technologies, irrespective of where they are produced.

WiMax: While China is the largest and one of the fastest growing markets, it continues to maintain significant barriers to market access. One means of doing this is through the implementation of mandating or

restricting technology standards. For instance, to date, China has declined to license WiMax (802.16e) for commercial services. TIA urges China to adopt the principle of technology neutrality, in that all technologies are given the chance to compete in the marketplace. TIA believes that the regulator should be agnostic regarding technology choice and urges China to license WiMax (802.16e), as well as all other technologies so that there is competition and choice in the marketplace.

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

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.

We applaud the work of USTR and the Department of Commerce in the to encourage China in the 2009 U.S.-China Joint Commission on Commerce and Trade to engage and a public-private dialogue to work to resolve these issues. We look forward to participating and contributing to this process.

Certification: TIA notes that China has engaged within the Worldwide System for Conformity Testing and Certification of Electrical Equipment (IECEE) Conformity Body (CB) scheme for safety test report acceptance, which is essential for market access and eliminating redundant testing of products at multiple laboratories. 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.   Additionally, China has opted out of the CB scheme for electromagnetic compatibility (EMC) testing, with the result that such testing must be done in-country. EMC requirements emerged out of a collective international effort and many countries participate in the EMC component of the CB scheme and accept CB scheme test reports generated by other participating members. TIA encourages the Chinese government to improve the application of the IECEE CB Scheme by

accepting CB Scheme reports by national laboratories and eliminating the need for additional samples and redundant testing. TIA would also welcome China's participation in the IECEE CB scheme for EMC.

Factory Inspection: 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 U.S. visa processing issues.

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 and obligations of participants. TIA recognizes that China has made significant strides to conform to its obligations under the WTO 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. TIA urges USTR to continue to reinforce the principles of the TBT Annex III 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.

India

Despite the global economic slowdown, India continues to be one of the world's fastest growing ICT markets. Between March 2006 and August 2009, India's total wireline and wireless telephone subscribers increased from approximately 142 million to almost 495 million, representing almost 250% growth in three and half years. In January 2009, India reached a new high, adding over 15 million new mobile phone subscribers in that month alone. While India has undertaken a number of policy initiatives to open the market, areas of concern remain.

Freedom to use Strong Encryption
TIA urges India to adopt policies that protect the freedom to use strong encryption online. The freedom to use strong encryption is a global standard for securing information online, such as confidential business information, financial information, online transactions and internal government communications, from intrusion by hackers, thieves, competitors and other wrongdoers. Strong encryption also enables India's rapidly growing IT and Business Processing (BP) industries, which rely on strong encryption to secure their global clients' confidential information. TIA supports the freedom of business and consumers in India to use strong encryption to protect their corporate and personal information.

Republic of Korea

The Republic of Korea continues to be a major producer and consumer of ICT. TIA urges the United States and Korea to complete and ratify the United States-Korea Free Trade Agreement; until then, the following concerns remain in the Korean market:

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 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. 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 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.

TIA supports innovation and market competition, and, more importantly for TIA members, policies that promote technology neutrality (also, "technology choice"), in which standards and products are developed by market-driven dynamics and open, transparent processes. 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.

Mexico

Standards, Testing, Labeling and Certification
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. Thus, 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.

Brazil

Testing and Certification

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. 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.

TIA has 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 TIA sees no problem with countries consulting each other on regulatory matters, it believes 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. It is TIA's understanding that there is no formal mechanism currently for the United States to weigh in on the Mercosur regulatory decision-making process.

Conclusion

TIA wishes to express its appreciation to USTR for its efforts on behalf of the U.S. ICT industry. 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. In addition to addressing the issues cited above, 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 TIA can assist you in other ways, please do not hesitate to contact Nick Fetchko at (202) 346-3246 or nketchko@tiaonline.org.

Sincerely,

Grant Seiffert
President