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December 14, 2009

Via Online Submission www.regulations.gov

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

RE: USTR's 2010 1377 Report. Countries/regions covered in this submission include Brazil, China, the European Union, India, Indonesia, Mexico, and Republic of Korea.

Dear Ms. Blue:

In response to the Federal Register notice issued on November 17, 2009, the Telecommunications Industry Association (TIA) and its hundreds of member companies would like to thank you for the opportunity to submit comments regarding compliance with U.S. telecommunications trade agreements.

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. For over 80 years, the association has facilitated the convergence of new communications networks while working for a competitive and innovative market environment.

This submission references the following agreements:

- World Trade Organization (WTO) Basic Telecommunications Agreement (BTA) and the associated reference paper
- WTO General Agreement on Trade in Services (GATS)
- WTO Information Technology Agreement (ITA)
- WTO Technical Barriers to Trade (TBT) Agreement
- North American Free Trade Agreement
- Pending United States and Republic of Korea Free Trade Agreement
- Agreement on Trade-Related Investment Measures (TRIM) and Annex
- General Agreement on Tariffs and Trade (GATT) 1994

Please see commentary about specific markets below.

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Brazil

Issue 1: Complex tax system.
Impact: The inherent complexities of the Brazilian tax system pose numerous challenges to foreign companies that seek to increase their business with Brazil. The current taxation system discourages investment and development of the ICT industry in Brazil through its high degree of complexity and by having one of the highest tax rates in the world on telecommunications services.
Recommendation: Special attention should be given to tax disputes among the various states (including unconstitutional discriminatory taxes imposed by state governments), the transfer pricing guidelines, the multiple cascading taxes, the constant changes in the interpretation of tax laws and many other tax-related difficulties. Furthermore, TIA supports and encourages Brazil to join the WTO's Information and Technology Agreement, which would reduce the price of ICT products in Brazil.

Issue 2: Spectrum policy reform.
Impact: Brazil's regulator, Anatel, continues to delay the decision of auctioning spectrum in the 3.4 - 3.6 GHz band and reform the spectrum rules for the 2.5 GHz band. The continued delays are impacting business and investment plans in broadband wireless networks. Furthermore, there are issues of concern related to the proposed frequency band plan that favors one technology, and restrictions on mobility to specific blocks of spectrum.
Recommendation: TIA urges Brazil to: 1) Conclude the regulatory proceedings for the 450 MHz, 2.5 GHZ and the 3.4-3.6 GHz bands, and follow with the award/auction process accordingly and promptly; 2) Preserve Anatel's policy of technology neutrality; 3) Preserve Anatel's policy of allocating spectrum on an internationally harmonized basis; and 4) Persuade Anatel to allow more flexibility on the above mentioned bands, refraining to impose specific restrictions for the provision of mobile services to licensees.

Issue 3: Testing and Certification.
Impact: 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.
Recommendation: 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.

China

Issue 1: Technical Barriers to Trade

Impact: 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. 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 related U.S. visa process issues.

China has engaged within the Worldwide System for Conformity Testing and certification of Electrical Equipment (IECEE) Conformity Body (CB). 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.

TIA recognizes that China has made significant strides to conform to its obligations under the 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.
Recommendation: TIA asks the Chinese government to improve the application of international conformity body scheme reports by national laboratories and eliminate the need for additional samples and redundant testing. TIA also urges China to recognize international standards beyond those developed by the Geneva-based organizations in a manner consistent with the spirit of Annex III of the WTO TBT agreement.

Issue 2: Government Procurement– Indigenous Innovation Program.
Impact: It is our understanding that China is developing an "Indigenous Innovation Products" catalogue that would prevent foreign invested enterprises (FIEs) from participating in government procurement tenders. TIA believes that implementing this policy would violate China's commitment in the July 2009 Strategic and Economic Dialogue (S&ED) and the October 2009 Joint Commission on Commerce and Trade (JCCT) meetings in which they pledged that products produced in China by FIEs would be treated as domestic products.
Recommendation: TIA joins other global associations in urging China to stay true to its S&ED and JCCT commitments and halt implementation of its Indigenous Innovation Product Catalogue.

Issue 3: Technical Barriers to Trade – Indigenous Innovation Program.

Impact: 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, WAPI requirements for mobile handsets, and earlier efforts to establish standards for mobile phone batteries) 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.
Recommendation: TIA encourages China to give its consumers access to world-class technologies, irrespective of where they are produced.

Issue 4: Type Approval, Certification and Standards (Technical Barriers to Trade Agreement).
Impact: 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 ensure network integrity, and avoid radio frequency interference. 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). 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.
Recommendation: In order to increase business certainty, reduce redundant testing requirements and bring China into compliance with its WTO commitments, TIA and its members recommend the following: 1) China streamline its type approval process for telecommunications equipment to one certification process, combining the NAL, RTA and CCC testing processes. 2) China publish and maintain an easily available web-based list of testing requirements and specifications. Changes to the list should be notified via a public announcement and in accordance with WTO notification procedures. Such notifications should be accompanied with an appropriate comment period to enable companies to provide feedback on proposed changes to testing requirements. 3) The United States and China negotiate and conclude a Mutual Recognition Agreement

(MRA) for testing and conformity assessment. An MRA between China and the U.S. would benefit both countries by reducing technical barriers to trade for both Chinese and U.S. companies.

Issue 5: Technology Neutrality
Impact: While China is the largest and one of the world's fastest growing markets, it continues to create 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 mobile WiMax (802.16e) for commercial services. TIA believes that China should be agnostic regarding technology choice and urges it to license any and all technologies so that service providers have the freedom to choose technology solutions that are most appropriate for their business.

Furthermore, China's policies restrict the use of Voice over Internet Protocol (VoIP) to closed user groups that do not allow for origination or termination of IP phone calls on the Public Switched Telephone Network (PSTN). TIA encourages China to allow all VoIP providers to offer services that connect to the PSTN on an unlicensed basis, and eliminate joint venture requirements that apply to non-Chinese companies who wish to offer VoIP services in China.
Recommendation: TIA urges China to adopt the principle of technology neutrality, in that all technologies are given the chance to compete in the marketplace.

Issue 6: Independent Regulator
Impact: Applying laws and regulations from multiple regulatory authorities can lead to overlapping and sometimes contradicting regulation over the same service, potentially creating market uncertainty and confusion that deter investment and market development.
Recommendation: TIA urges China to comply with its WTO Reference Paper Section 5 commitments establishing an independent regulator. Preferably, such a regulator would be the central authority governing the converging telecom, Internet media, and broadcast industries.

European Commission

Issue 1: European Union-Information Technology Agreement (ITA) Violation.
Impact: TIA and its member companies remain concerned about the European Commission's (EC) imposition of duties on a variety of products that should be free from tariffs, as they are covered by the Information Technology Agreement (ITA). TIA applauded USTR's May 28, 2008 formal complaint against the European Union in the WTO over its imposition of up to a 14 percent tariff on three ITA covered products – set-top boxes, flat computer screen monitors, and multi-function printers. TIA is disappointed that the EU did not choose to resolve the dispute through consultations, but fully supports the U.S. government's request the WTO establish a dispute resolution panel. In July of this year the WTO Dispute Resolution Panel estimated that it will issue its interim report to the parties in March 2010.

Recommendation: TIA encourages USTR to continue pursuit of its dispute with the EC within the WTO and warn the EC of potential future action should it expand tariffs to other ITA-covered products.

India

Issue 1: Internet Protocol (IP) Enabled Services.
Impact: Although the Telecommunications Regulatory Authority of India (TRAI) has recommended to the Department of Telecommunications (DoT) to allow VoIP to connect to the PSTN, the current policy only allows VoIP to be used in closed user groups (CUGs), or just among sites. For example, if a company has two offices, they are allowed to link using an IP trunk and VoIP, but not out to the PSTN. This causes companies to maintain separate systems for internal and external communications, increasing establishment costs. If India permits VoIP to connect to the PSTN, the requirement of users to have a dual-investment in infrastructure would be eliminated.
Recommendation: TIA recommends that the Indian government follow TRAI's August 2008 recommendations on Internet telephony and establish a time-frame for addressing this issue.

Issue 2: Satellite Service Access.
Impact: To sustain communications services and applications, companies and end-users rely on robust infrastructure and the ability to select the technology and provider based on cost, effectiveness and availability. This ability to source the best-suited infrastructure for a given application or service enhances the resulting service and may advance its service launch or reduce consumer costs. For satellite infrastructure, the U.S. and many WTO members have adopted policies that permit users of satellite services the flexibility to work directly with any satellite operator that has the ability to serve them, without constraint by government preferences.
Recommendation: TIA encourages India to adopt such an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider and technology that best suits their business requirements.

Indonesia

Issue 1: Barrier to Trade and Non-discrimination.
Impact: The Indonesian Ministry for Communications and Information Technology issued two decrees, a wireless broadband decree and a telecommunications decree, that place restrictive local content requirements and sourcing requirements on service providers. The "wireless broadband decree" requires local content of 30 to 50 percent in the wireless broadband sector. The "telecommunications decree" requires all service operators to spend 35 percent of their capital expenditures on domestically manufactured equipment. Currently, at least 40 percent of the equipment must be locally sourced, but within the next five years it is expected to increase to 50 percent.
Recommendation: TIA urges the government of Indonesia to remove the capital expenditure requirements and give service operators the freedom to choose the

technology solutions that are most appropriate for their business. These types of restrictions ignore the global nature of technology development and production and will hinder Indonesia's ability to efficiently and effectively build out its telecommunications network.

Issue 2: Technology Neutrality.
Impact: Indonesian regulators have allocated spectrum in a non-internationally harmonized manner to benefit domestic manufacturers. This calls into question Indonesia's commitment to technology neutrality under the TBT Agreement.
Recommendation: Indonesia should follow international best practices and allocate spectrum on a technology neutral and an internationally harmonized basis to ensure economies of scale that will benefit consumers.

Mexico

Issue 1: Standards, Testing, Labeling and Certification.
Impact: 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.
Recommendation: TIA urges the government of Mexico to implement its Chapter 9 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. Also, the transparency of the application process structure and timeframe for application submissions need to be improved.

Republic of Korea

Issue 1: Technology Neutrality.
Impact: TIA and its member companies have commented on standards issues in Korea; specifically, government standards policy decisions that are designed to inhibit non-Korean competitors in the Korean market and advantage domestic companies. TIA remains concerned that the Korean Communications Commission (KCC) will continue to promote and require Korean technology at the expense of non-Korean competitors.
Recommendation: 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.

Issue 2: Certification.
Impact: In Korea, all products must be certified by a "national" (read domestic) certifier [*e.g.*, Korea Testing Laboratory (KTL), Korea Electric Testing Institute (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

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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.
Recommendation: TIA urges Korea to follow through on its commitment to signing phase 2 of the APEC Mutual Recognition Agreement (MRA), which allows for mutual recognition of certification for telecom equipment.

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 ICT 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 Nick Fetchko at 202-346-3246 or at nfetchko@tiaonline.org.

Sincerely,

Grant E. Seiffert

Grant Seiffert
President