



ADVANCING GLOBAL COMMUNICATIONS

December 16, 2005

Via Electronic Mail to FR0502@ustr.eop.gov

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

Dear Ms. Blue:

On behalf of the Telecommunications Industry Association (TIA), I appreciate the opportunity to express TIA member company views of 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.

This submission references the following agreements:

- World Trade Organization (WTO) Agreement on Basic Telecommunications (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 (NAFTA)

Please see commentary about specific markets below.

2500 Wilson Boulevard
Suite 300
Arlington, VA 22201-3834
USA

+1.703.907.7700
FAX +1.703.907.7727

People's Republic of China

“Improvement” has characterized the U.S.-China trade and investment relationship in 2005. U.S. investors in China are seeing their profits grow, U.S. exports of information technologies are increasing and several trade issues have been resolved due to positive actions taken by the Chinese government.

However, 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 has effectively 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 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 is 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



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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 representation on the board of directors 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 limits opportunities to provide basic telecommunications services, just as it does in the value-added area.

The experience of the two or three 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.
- 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.



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- 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 WTO 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.


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 advanced wireless services, slated for 2006, 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 was imposed via the Ministry of Health to ensure low Specific Absorption Rates (SAR) in mobile phones.



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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 criteria 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 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 is extended. MCPs simply are a more advanced form of integrated circuits, which already have received zero-tariff treatment. TIA applauds USTR for recently reaching an agreement with the European Union, Japan, Korea, and Taiwan to zero-out tariffs on MCPs, so we encourage USTR to negotiate with China to achieve a similar result.

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.

India

TIA is encouraged by the participation of both the U.S. and Indian governments in the inaugural discussions of the bilateral Information and Communications Technology (ICT) working group this December in Washington, D.C. The ICT working group was announced in July of this year during Indian Prime Minister Dr. Manmohan Singh's visit to the United States. TIA will continue to support that forum. The following issues are several of key concern.



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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.

Steps by the government to address this issue are moving in the right direction, such as India's Telecom Disputes Settlement Court upholding the Telecommunications Regulatory Authority of India (TRAI) decision to reduce tariffs on international private leased circuits beginning January 1, 2006. We ask that the U.S. government continue to ensure the enforcement of access and competitive conduct by VSNL.

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.

Manufacturing Requirement


It is our understanding that there a manufacturing requirement policy in which telecom equipment vendors would need to have local manufacturing facilities to be able to bid for tenders of state controlled enterprises, including Indian (provider) MTNL. TIA requests U.S. government assistance in raising the issue with the Indians and urging removal of this requirement. Even if the policy is specific to one tender and not a universal policy, this is anti-competitive behavior that goes against national treatment and the successes India has made with implementing the WTO Information Technology Agreement.

Republic of Korea

In light of a possible free trade agreement with the Republic of Korea, TIA supports ongoing discussions with Korea that encourage competition, innovation and the principle of technology neutrality.

Technology Neutrality

On a number of occasions in recent years, TIA and its member companies have commented on standards issues in Korea; specifically, we have comments on government standards policy decisions that 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



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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 (known as “technology choice”), in which standards and products are developed by market-driven dynamics and in 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 a potential Free Trade Agreement with Korea.

Indonesia

TIA understands that there is pending regulation requiring telecommunications companies to set aside 20 percent of their capital expenditure to purchase domestic products. While the government's proposed law is intended to both reduce telecom companies' spending on imported communications equipment and also encourage a domestic equipment manufacturing segment, TIA believes that this goes against the principle of national treatment. TIA also believes that the domestic manufacturing of network equipment is extremely limited and would actually reverse or slow the pace of growth of the Indonesian communications market. We are unclear about the language of the regulation and would like assistance in receiving a copy of the text and work towards further clarification of the regulation.

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 submission, or if there are other ways we can assist you, please do not hesitate to contact Jason Leuck, TIA's Director of International Affairs, at jleuck@tiaonline.org or (703) 907-7725.

Sincerely,



Matthew J. Flanigan
President



2500 Wilson Boulevard
Suite 300
Arlington, VA 22201-3834
USA

+1.703.907.7700
FAX +1.703.907.7727

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