



June 1, 2016

Chairman Xiang Junbo
China Insurance Regulatory Commission
15 Jinrong Dajie, Xicheng Qu
Beijing 100140
People's Republic of China

Re: G/TBT/N/CHN/1172

Via WTO TBT Entry Point system

Dear Chairman Xiang:

The Global Services Coalition is writing to express its concerns regarding China's April 19, 2016 notification G/TBT/N/CHN/1172 to the Committee on Technical Barriers to Trade of the World Trade Organization on the Provisions on Insurance System Informatization (the "Provisions"). We appreciate China's recognition, in accordance with its WTO commitments, that the potential technical barriers to trade present in the Provisions warrant notification to the TBT Committee for comment. We acknowledge that the China Insurance Regulatory Commission (CIRC) has made some changes from the original version released for comment domestically in October 2015. However the current draft still does not address the primary concerns of our members.

While we recognize that China, like other WTO members, has the right to implement measures necessary for the protection of its essential security interests, we believe that the Provisions go far beyond what is necessary. In addition, we are concerned that the proposed date of adoption for the Provisions has been set for the day after the comment period ends which would make it impossible for the Chinese authorities to make any modifications to the Provisions based on the comments that are submitted.

If adopted as currently drafted, the Provisions would create unnecessary obstacles to international services trade and be likely to constitute a means of arbitrary or unjustifiable discrimination against producers and service providers in countries where the same conditions prevail. As a consequence, we are concerned that the Provisions could constitute a disguised restriction on international trade.

Based on these concerns, and those detailed below, we believe that the Provisions need significant revision before adoption. We ask that the adoption date be pushed back to allow further stakeholder input.

Of particular concern are the following provisions:

Data residency

Article 31, paragraph 2 of the Provisions requires that data originating within China be stored within China. This provision is unnecessary because insurance institutions already bear responsibility for data security in China and can be held liable for any material breach. This requirement also does not decrease the risk of data breaches from outside of China, as modern data storage and retrieval technology render the location of data centers immaterial.

Requiring China-specific solutions that deny use of global platforms is out of sync with global security networks, may create security vulnerabilities specifically for data that has been mined in China, and would work against the information security goals of the Provisions.

The data residency requirement would also expand the adverse impact of the regulation beyond insurance and information technology firms to insurance institutions' service providers, including accounting, advertising and law firms which of necessity require access to such data.

Because of these concerns, we ask that Article 31 be removed.

Cross-Border Data Transfer

Article 58 of the Provisions requires that all international data transfers be conducted in accordance with relevant Chinese regulations, without specifying the content or identity of such regulations. Such vagueness would make compliance an impossibility and discourage cross-border data transfers, even though such transfers yield substantial efficiencies, particularly for foreign insurance institutions which have need for centralized data analysis.

To ensure that these business functions operations remain uninterrupted, we ask that these provisions explicitly allow for copies of financial data to leave China's shores for business and analytical purposes.

In addition, the regulations defining cross-border data transfer and the data transfer rules should be clearly defined *before* this regulation is adopted. As a consequence, we ask that Chinese regulators delay the adoption of this regulation until those definitions and transfer rules are determined taking into account public comments. In addition, for the benefit of China's finance and insurance industries, any new or pending data transfer regulations should take into account the practical business effects of such regulation, and should take into account international stakeholder comments during the drafting process.

Information and Communications Technology (ICT)

Article 53 of the Provisions requires that insurance institutions give preference in the procurement of informatization products to those that are "secure and controllable." Our understanding is that the criteria for the determination of what constitutes "secure and controllable" have yet to be specified.

We are concerned, however, that as the definition of “secure and controllable” has previously been defined in other draft measures as ownership of domestically-owned and registered IP, this article will be interpreted to mean domestic production by domestically-invested and/or controlled producers. This would have a particularly adverse impact on foreign-invested insurance institutions which would be required to procure hardware, software and services potentially duplicating or incompatible with those that their global networks currently use, thereby reducing their competitiveness. This issue is exacerbated by the fact that it would affect both commercial and public procurement in a sector that is not commonly considered “critical infrastructure” in other markets.

If companies operating globally are forced to create separate IT solutions for products that are specific to China, then they will be prevented from applying their global information security practices in the market. This will decrease rather than increase IT security.

We recommend that any requirement to use secure and controllable technology be removed from the provisions until the definition of the term includes technical specifications or minimum security standards based on international standards. All companies – in insurance and other sectors – should be allowed to determine the types of information products that best fit their own security needs.

Cryptography

Article 54 of the Provisions requires that cryptography in insurance institutions meet Chinese national requirements. While this is a change from previous versions of the regulation, this article would presumably require cryptography to comply with the January 2014 National Work Plan for Promoting Application of Cryptography in the Financial Sector, which called for the complete adoption of Chinese domestic cryptographic standards and related specifications by 2020 for any and all products such as internet browsers, PCs, laptops, mobile phones, and servers.

This mandate would impose a disproportionate burden on foreign-invested insurers, which would have to implement Chinese algorithms that may differ from those used by their parent companies. Implementing unique cryptography for a single country in a global network will increase the risks that an insurance company’s systems could be illegally infiltrated – a circumstance that international insurers and regulators constantly seek to minimize.

We recommend the Provisions remove the requirement for cryptography to meet Chinese national requirements and instead allow the use of international encryption standards.

Multi-Level Protection Scheme

Article 56 of the Provisions sets information system security requirements in accordance with the Multi-Level Protection Scheme (MLPS) without specifying the linkage between specific insurance industry information systems and national security.

We recommend that Article 56 be removed from the Provisions.

Information System Security Certification

Article 57 of the Provisions requires that businesses needing certification of their information security management systems engage an institution approved by the State certification and accreditation supervision and administration authority. We are concerned that such a

restriction on the choice of certification institutions would bar insurers from engaging foreign certification institutions.

We recommend that Article 57 be revised to reference international standards as the most effective and appropriate way to ensure data security and to allow use of foreign certification institutions.

Conclusion

We appreciate your consideration of our concerns. We ask that adoption of the Provisions be postponed to allow further stakeholder input and to ensure that appropriate security regulations can be instituted in such a way as to advance China's legitimate security interests, while avoiding commercial interruptions or international disputes.

We look forward to further discussion regarding these issues.



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