BUILDING GLOBAL COMMUNICATIONS

February 1, 2002

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the US Trade Representative
600 17th Street, NW
Washington, D.C. 20508

RE: TIA Submission for Annual Section 1377 Review

Dear Ms. Blue:

On behalf of the Telecommunications Industry Association (TIA), I appreciate the opportunity to express to you our views on the effectiveness of trade agreements that impact the provision of telecommunications products and services. As you are well aware, obtaining greater access in foreign telecommunications equipment markets is one of TIA's priorities.

TIA is the leading trade association in the communications and information technology industry with proven strengths in market development, trade promotion, trade shows, domestic and international advocacy, standards development and enabling e-business. Through its worldwide activities, the association facilitates business development opportunities and a competitive market environment. TIA provides a market-focused forum for its more than 1,100 member companies that manufacture or supply the products and services used in global communications. The following are our comments about specific markets:

Brazil

TIA has long argued that government practices that specify local content requirements, induce technology transfer, or force local investment in research and development distort trade and frequently act as a deterrent to companies wishing to enter the market. Unfortunately, Brazilian law continues to restrict the importation of high technology products through a variety of practices such as tax incentives and exemptions that subsidize locally made products, mandates that service providers must give preference to Brazilian equipment when it is "equivalent" to imported products, and the Informatics Decree which gives preference to local suppliers in public bids. TIA recognizes that while such rules remain in place, they are actually enforced only selectively and sometimes not at all. However, the existence of these laws and programs are contrary to the spirit of the World Trade Organizations (WTO).

China

The U.S. business community applauds and welcomes China's WTO accession. China committed to the Basic Telecom Agreement and adopted its accompanying Reference Paper and Chairman's Note upon WTO accession on December 11, 2001, which includes such pro-competitive principles as cost-based pricing, interconnection rights and the creation of an independent regulatory authority. TIA recognizes that China now faces the difficult task of implementing its WTO commitments. The following are areas we will monitor during the implementation process:

- *Information Technology Agreement (ITA).* The U.S. business community welcomes China's commitment to sign the ITA as part of China's entry into the WTO. TIA hopes that the United States government will work with industry in monitoring China as it implements its commitments as scheduled.
- *Independent Telecom Regulator*. In August 2000, China's Ministry of Information Industry (MII) established provincial-level independent telecom regulators, under the direct administration of MII in Beijing and with a "dotted-line" relationship to the local provincial government. While specific functions, responsibilities, staffing, and budgets still need to be worked out, these provincial regulators will face an enormous challenge in remaining neutral toward all carriers, both domestic and foreign, now that China has entered the WTO.
- *Convergence* is also a major issue related to telecom, as the WTO agreement "Note from the Chair" clearly states that telecom service "may be provided through any means of technology (e.g., cable, wireless, satellites)." In addition to highlighting "cable," there is also a footnote clarifying "any type of cable." However, in China, the State Council has barred convergence by executive fiat, not allowing the cable TV and telecom networks to offer each other's services. There is a need to recognize the importance of convergent technologies. Chinese policies and regulations should recognize that cable TV systems are a viable technical platform to deliver multi-media services, in addition to fixed/mobile telephony networks and satellites. Policies/regulations should permit communications service operators to use any of these platforms based on commercial considerations.

The following are problems faced by U.S. companies that have been working in the Chinese market prior to WTO accession. Industry hopes that China's WTO commitments will address these problems in the near future. Until then, TIA encourages the U.S. Government to continue monitoring the following:

- Chinese regulatory officials have on occasion advised foreign equipment suppliers that they need to transfer technology, establish a joint venture with a local partner, and/or establish manufacturing facilities if they wish to supply equipment to China for certain new telecommunications services. These informal requirements serve as administrative barriers to trade and are (outside the legal standing of these agencies

- China's standards and certification processes are problematic for U.S. companies in the telecommunications industry. While regulators have a legitimate interest in ensuring product quality, safety and compliance to technical requirements, foreign companies need to clearly understand how these requirements are set, what they are and which government entity has final certification authority.

- Standards work in China currently lacks in transparency. TIA would like to see foreign companies eligible to participate as full, and not just correspondence, members in national standards bodies. Some standards bodies in China do not allow foreign companies as full members, but rather charge them fees for the right to be “correspondence” members, which allows a company to receive all written materials but does not give it the right to speak during meetings. TIA supports standards development processes that are open, transparent, fair, and nondiscriminatory, and those that are driven by commercial interests. TIA urges China to allow foreign and domestic industry to participate in the development of China’s standards regimes and to permit foreigners to sit on Chinese standards bodies.

- MII has made great strides in introducing greater transparency into its regulatory proceedings. However, many foreign telecom companies remain confused as to current regulations on many issues, a situation compounded by the fact that the telecom industry is evolving so quickly.

TIA encourages the U.S. Government to monitor these areas, which are inconsistent with WTO rules on national treatment and China’s commitments. In addition, the U.S. government should monitor China’s government procurement practices and encourage China to sign the WTO Government Procurement Agreement.

European Union (EU)

U.S.-EU MRA Implementation

In January 2001, the U.S. and the EU implemented the Mutual Recognition Agreement (MRA) telecommunications and electronic sectoral annexes that greatly reduced trade barriers between the United States and the EU. European Union regulators now recognize certificates issued by designated labs operating in the United States and vice versa. The Telecommunications Equipment Annex covers telecommunications terminal equipment (including radio-transmitters) and information technology equipment. The Electromagnetic Compatibility (EMC) annex covers equipment subject to EU and U.S. radio interference and compatibility requirements, including most electrical and electronic equipment exported to the EU. A list of Conformity Assessment Bodies (CABs) has been recognized to be competent by U.S. and EU government regulatory authorities to test and certify equipment under these two annexes. While significant progress has been made, we urge the U.S. Government to continue monitoring the implementation of the agreement closely.

Low Frequency Emissions
Under the European EMC Directive, the European Union adopted limits on Low Frequency Emissions for electrical and electronic equipments. Despite the fact that no scientific analysis has provided justification to these limits, the restrictions will require U.S. companies to redesign their products before they can be distributed in the European Union. This will have a significant impact on research and development costs. TIA believes that this is an issue that merits continued dialogue with the European Union.

Other Issues in EU Markets

- Local Loop Unbundling: Despite the fact that the unbundling regulation went into effect on 1 January 2001, significant problems remain in terms of provisioning delays, pricing in the local loop, collocation space and line sharing. This strongly affects the ability of new entrants to compete effectively with national incumbents.

- Continued strong ties between incumbent service providers and national regulatory authorities, which disadvantages new entrants; and

- Delays and high prices for leased lines.

India

India is a signatory of the ITA, yet maintains a variety of additional charges on imports, described as the equivalent of domestic taxes on local goods (the so-called countervailing duties), further raising the cost of imports as they enter the stream of domestic commerce.

India's Budget 2000 reduced the import duty on mobile handsets from 25% to 5% but left the countervailing duty (CVD) unchanged at 16%. At present total customs duty rate on mobile phones is 26.67% (including basic import duty of 5%, CVD of 16% and special additional duty of 4%). This high duty has encouraged smuggling of handsets in India. It is estimated that more than 80% of handsets are bought from the gray market. Duties on other basic telecom infrastructure equipment remain extremely high -- 53.82% (basic duty 25% plus CVD, surcharge and special duty).

TIA would like to see both the CVD and special duty removed or significantly reduced in order to lower the cost of imports. Import duties for telecommunications equipment overall remain extremely high and act as a barrier to trade.

Indonesia

Indonesia is a signatory to the ITA and already is in the process of implementing its commitments. While tariff rates are being reduced in accordance with Indonesia's schedule, import duties are often exacerbated by additional taxes or charges.

Value Added Tax on Luxury Goods

The government of Indonesia had imposed a luxury tax ranging between 10 and 75 percent on 41 groups of items as part of the government's effort to meet the state income target this year and to cover its budget deficit. Within this, a 20 percent luxury tax was imposed on mobile communications equipment and other IT-related equipment. This tax significantly impacted companies that are operating in the Indonesian market by decreasing sales of these affected products and services. This luxury tax was removed mid-year 2001, but reports indicate that a number of importers are still being charged the extra levy at some Indonesian ports.

Japan

Japan has been committed to all of the WTO Telecom Reference Paper as well as market access and national treatment obligations since 1998. Problems surrounding Japan's implementation of these commitments include:

- Japan's Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) does not function as an impartial independent regulatory authority – NTT exerts undue influence over policy. MPHPT's actions favor NTT's well-being instead of promoting effective competition.

- Lack of transparency with regard to conditions, tariffs, and cost basis for interconnection. High interconnection charges place foreign carriers at a competitive disadvantage.

- Insufficient competitive safeguards as required under the WTO Telecom Reference Paper to prevent NTT from engaging in anti-competitive practices, including cross-subsidization between NTT and any affiliates.

- Lack of non-discriminatory procedures, to allocate on a timely basis, poles, ducts, conduits, and rights-of-way owned or controlled by NTT and utility companies.

- Burdensome licensing requirements and extensive involvement of MPHPT in application preparation.

Mexico

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 has indicated that it is willing to conform to these obligations only when the Government of Mexico determines that there is additional capacity needed in conformity assessment services. So far, no U.S. or Canadian conformity assessment bodies have been recognized by Mexico for most products that are exported from the U.S. and Canada to Mexico which need conformity assessment.

Both the U.S. and Canada have been openly recognizing each other's conformity assessment bodies under the same NAFTA provisions for many years. This has promoted U.S. – Canadian trade by reducing the burden on exports from each other's markets. At the same time, the practice has met the needs of the regulators and the market by allowing manufacturers to attain needed conformity assessments locally that provide market access for both the U.S. and Canada.

TIA urges USTR to continue to encourage Mexico to meet the spirit of the NAFTA agreement.

Russia

The Russian telecommunications environment has evolved very slowly over the last decade, though signs of more significant change are appearing. Nevertheless, serious challenges remain for U.S. investors wishing to sell equipment and gain access to this growing market, including high import duties, certification and licensing problems, restrictions on foreign ownership and lack of technology neutrality with mobile/wireless technologies.

Import Duties

A key area of concern for TIA is the reduction of high tariffs for imported equipment into Russia. Import duties, like other market access barriers, distort trade flows and increase the costs to the economy at large. Because telecommunications products enable the establishment of an infrastructure for overall economic growth, the cost of high tariffs to society is even greater. We advocate that as discussions ensue with Russia over WTO accession, Russia commit to sign onto the Information Technology Agreement and adhere to WTO Basic Telecom Agreement and the Reference Paper.

Certification of Telecommunications Equipment

U.S. firms in Russia point to complicated and non-transparent certification procedures as an important area of concern. Foreign companies note obscure standards and compliance processes, unreasonably high demands, and excessive costs for certification and testing. Companies are frustrated by delays, which cost millions of dollars in time spent obtaining certificates, hiring additional human resources to complete the certification process, and paying fees to commercial entities licensed by the Ministry to conduct certification. We advocate that Russia harmonize existing Russian standards with international standards and streamline and clarify conformity assessment.

Lack of Transparency in Licensing
The lack of transparency and high level of bureaucracy in Russia's telecommunications equipment licensing practices are areas of serious concern to TIA member companies. Licensing procedures should be streamlined and made more transparent, steps that will attract foreign and domestic investment to the Russian market. TIA also supports the timely distribution of equipment licenses in Russia to encourage market competition and equal treatment among domestic and foreign manufacturers.

Restrictions on Foreign Ownership
According to the Russian Ministry of Communications and Informatization's "Concept of the Development of Russian Telecommunications," which outlines a ten-year blueprint for the development of Russia's telecommunications industry, the Ministry can "impose restrictions on direct access by foreign entities to the Russian telecommunications services market and restrict (foreign entities') direct and indirect majority ownership in Russian telecommunications companies." While Ministry officials have softened their public remarks on the restrictions since the document was released in December 2000, this statement is troubling to companies that wish to enter Russia's telecommunications services market in the future. It is also questionable as to whether or not such a restriction is compliant with the WTO Basic Telecommunications Services Agreement.

Moreover, in some cases, there appears to be increasing pressure from both government-controlled and private Russian telecommunications firms on some U.S. companies to relinquish their management control and/or pull out of telecommunications ventures altogether. In addition, in some cases, the Ministry and Russia's judicial system do not treat U.S. investors equally with domestic competitors in the case of disputes.

TIA urges the Russian government to practice national treatment as defined by the WTO. We also urge the U.S. government to oppose limits on foreign participation in the Russian telecommunications services market.

Lack of Technology Neutrality with Mobile/Wireless Technologies
TIA supports standards development and deployment processes that are open, transparent, non-discriminatory and driven by commercial interests. We urge the Russian government to adopt a technology-neutral approach toward wireless and other technologies and allow industry to determine which technologies to employ in their networks.

Taiwan

The government procurement system has improved, but problems remain. Government agencies remain easily influenced by local commercial interests and further effort is required to ensure transparent and fair treatment for foreign companies.

Taiwan's accession to the WTO is significant. TIA hopes to see Taiwan follow through with its promise to join the Agreement on Government Procurement, improving transparency and issues of national treatment for foreign companies.

Conclusions

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 related to 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 (202) 383-1493. Thank you for your attention to this matter.

Sincerely,

Grant Seiffert
Vice President
External Affairs and Global Policy