



January 10, 2003

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

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 1,000 [member companies](#) that manufacture or supply the products and services used in global communications.

This submission references the following agreements:

- World Trade Organization (WTO) Agreement on Basic Telecommunications and the associated Reference Paper
- WTO Government Procurement (GPA) Agreement
- WTO Information Technology Agreement (ITA)
- WTO Technical Barriers to Trade (TBT) Agreement
- North American Free Trade Agreement (NAFTA)
- Andean Trade Promotion and Drug Eradication Act (ATPDEA)

Please see commentary about specific markets below.

Colombia

In February 1997, Colombia signed the Basic Telecommunications Services Agreement. The results of this WTO negotiation on market access for basic telecommunications

services became effective on February 5, 1998. However, Colombia has not met its obligations as a signatory to the Basic Telecommunications Agreement, particularly the requirements regarding the establishment of a transparent and non-discriminatory regulatory process and an independent regulator.

The Andean Trade Preferences Act (ATPA) expired in December of 2001, but was renewed as the Andean Trade Promotion and Drug Eradication Act (ATPDEA) as part of the Trade Act of 2002. On September 25, 2002, President George W. Bush announced that Colombia, along with Bolivia and Peru, would receive new Andean trade benefits under the ATPDEA. (The Administration subsequently announced that Ecuador had met the certification criteria to receive benefits under the ATPDEA.) These benefits comprise a trade preference program that provides four Andean countries with duty-free access to U.S. markets for approximately 5,600 products. All existing provisions of the ATPA were renewed, each country enjoys the same benefits as under the original program, and the program was extended by 700 additional products. However, the law requires a country certification process for the new, expanded portion of the program, which includes receiving public input on each country's eligibility.

TIA believes that it is essential for ATPDEA beneficiary countries to follow established WTO rules and adopt, implement and apply transparent, nondiscriminatory regulatory procedures and to enforce their arbitration and court awards. These actions are a condition of Colombia's benefits under ATPDEA. Nonetheless, in 2001 and 2002, Colombia's state-owned telecommunications operator, Telecom, repeatedly failed to honor a specifically binding arbitration decision involving the telecom network installed by a U.S. supplier as required under the previous ATPA guidelines; these guidelines have since been incorporated into and expanded the ATPDEA.

Although the Colombian government eventually made an award to the U.S. supplier in the arbitration case, this action was only taken after prolonged pressure from the U.S. government and the threat that Colombia would not receive the new, expanded benefits under ATPDEA. There are still several contracts pending with suppliers and further arbitration is possible. It is clear from their actions that the Colombian government and Telecom have no intention of honoring these contracts. Telecom continues to delay dispute resolution mechanisms and arbitration, and avoids serious joint negotiations with seven global suppliers that desire a settlement for all outstanding contracts. Furthermore, proposals for legislative changes have surfaced that would exempt public entities from the arbitration process or at least from paying for it. It is TIA's understanding that the proposed legislation is backed by the Colombian government in an effort to avoid the dispute mechanisms contained in the each of the contracts.

The apparent failure of the Colombian government to honor the terms of its agreements puts at risk future foreign investment in Colombia at a particularly important moment in its history, and further erodes confidence in the overall investment climate as well as the broader international business community. TIA urges USTR to continue to pressure the Colombian government to fulfill contractual commitments with U.S. suppliers or risk losing its trade benefits under the ATPDEA.

People's Republic of China

(NOTE: Information compiled via USITO, TIA's affiliate office in Beijing. USITO represents AeA, CSPP, ITI, SIA, SIIA and TIA.)

Import Tariffs – China's commitment to join the WTO Information Technology Agreement (ITA) has resulted in the lowering of a vast majority of IT product tariffs to zero, most this past January and most of the remaining others by 2004/2005.

Thus far, China has implemented its tariff schedule commitments with a few notable exceptions. The most notable deals with the Chinese government's requirement that companies submit an end-user certificate on the import of 15 IT product areas. On January 11, 2002, the Ministry of Information Industry (MII) and Ministry of Finance issued a jointly promulgated "*Some Information Technology Products' Certification Temporary Methods*" which requires end-user certificates on 15 different IT products in order for the product to receive the lower tariff level stipulated in the ITA. The certification, issued after examination by MII, was to guarantee that the imported products were being used for the production of other Chinese IT products. The 15 products all contained "exceptions" written into the Goods Annex of China's WTO accession package, which lists the separate tariff rates. This list was also published in the General Administration of Customs 2002 "Customs Import and Export Tariff of the PRC" under Annex 5: Duty Rate on Imported IT Goods (Incomplete), 2002 (p. 645).

This requirement for end-user certificates runs counter to both the spirit and letter of China's ITA commitments. We support the position of the U.S. government to postpone China's accession to the WTO Committee of Participants on the Expansion of Trade in Information Technology Products (ITA Committee) until this issue is resolved.

Standards, Testing, Labeling and Certification – The Chinese government has made great progress in the standards arena the past few years and WTO accession is providing additional impetus. The State Administration Commission of Standardization (SACS) was established to manage all standardization processes, and coordinate with the various ministries for (theoretically) a harmonized standard-setting process in China. Last December, China published its "Regulations on Adopting International Standards," which embraced the principle that China will adopt existing international standards developed by an international standards development organization (SDO) accredited by the International Organization for Standardization (ISO). China sent its Notification of Acceptance to the WTO related to the Code of Good Practice for the Preparation, Adoption and Application of Standards (Notification under Paragraph C of the WTO TBT Code of Good Practice) on April 11, 2002. TIA and USITO are encouraged by this recent progress especially movement towards adopting more international standards and for increased Chinese participation in international standards development organizations.

The Chinese regulatory authorities have been more willing to meet with foreign industry on draft standards and regulations and receive industry inputs. Safety and

electromagnetic compatibility (EMC) regulatory and certification are now harmonized under the CNCA (Certification and Accreditation Administration) management.

However, redundant testing continues to be a problem. In addition to China Compulsory Certificate (CCC) testing for all products, electronics products must also be tested for electromagnetic emissions (EME). Some telecommunications equipment faces two additional tests, from two different sections of MII. The Telecommunications Administration Bureau (TAB) tests for network access and the Wireless Radio Regulatory Bureau (WRRB) tests for spectrum interference. Quite often, the CCC, EME, TAB and WRRB tests have significant and duplicative overlap with each other. Some of this redundant testing is a result of China's governmental reorganization, as each agency maintains independent testing requirements and testing centers, even after being merged with other agencies. This is a particular problem for the IT industry where product lifecycles are exceptionally short. CNCA has been willing to meet with foreign industry and discuss our difficulties; however, reform in the conformity assessment area has been slow. TIA and USITO believe the Chinese government needs to give greater attention to addressing these problems.

In addition, China's type approval (equipment authorization) for many telecom products, including handsets, is about 13 weeks, compared to 2-3 weeks in Japan and a month in the United States for most products. We the industry would like to work with the China Government (MII, CNCA and others) to shorten the time required for such approvals at least by half.

On the standards development side, over the past three years the government has begun inviting "qualified" foreign companies to participate in standards bodies, as observers. Also, some foreign firms are limited to "Correspondence" status, receiving all written materials but not having the right to attend, speak or vote at meetings. TIA and USITO support a standards development process that is open, transparent, fair, nondiscriminatory, and driven by market needs and developments. We urge China to allow foreign and domestic industry to participate in the development of China's standards regimes and to permit foreigners to join Chinese standards bodies as full members. Chinese State Councilor Wu Yi (as well as CNCA and SACS) has repeatedly stated that China would adopt international standards as much as possible. However, concern remains over China's use and recognition of *de facto* and other international standards (such as those developed by industry or *ad hoc* groups).

Independent Regulator – Over recent years, even prior to the WTO agreement, the Ministry of Information Industry has moved increasingly towards becoming an independent regulator. However, linkages between the telecommunications enterprises and the regulator remain quite strong.

Geographic Restrictions – China's WTO accession commitments on Telecommunications Services, and in particular, Value Added Services, imposed the following limitations with respect to geographical coverage for suppliers providing service through commercial presence: "foreign service suppliers will be permitted to

establish joint venture value added telecommunications enterprises, without quantitative restrictions, and provide services in the cities of Guangzhou, Shanghai and Beijing...within one year after China's accession, the areas will be expanded to include Chengdu, Chongqing, Dalian, Fuzhou, Hangzhou, Nanjing, Ningbo, Qingdao, Shenyang, Xiamen, Xi'an, Taiyuan and Wuhan."

Value Added Services are defined as electronic mail, voice mail, on-line information and database retrieval, electronic data interchange, enhanced/value added facsimile services, code and protocol conversion, and on-line information and/or data processing.

Interactive services, Internet services and Internet content services clearly fall within this category. The business model of value added interactive, Internet and Internet content services is that they lease capacity from basic service providers to reach customers wherever the value-added service can be accessed. A facilities-based commercial presence is not required to provide service to customers that access value-added Internet services through their basic telecommunications provider.

Notwithstanding the business model of the Internet, MII has taken the position that the WTO accession agreement limits the customers that can be served by a value-added telecommunications provider to, initially, three cities and subsequently 17 cities. At times they have also suggested that a commercial presence must be established in each city where customers will be located, and that an inter-regional service, based in one city but serving customers in another, is not permitted.

Such an interpretation is inconsistent with the global model of how value-added, non-facilities based Internet service providers are structured, and imposes geographical restrictions that make an interregional, or national scaled business model non-viable. The impact of this interpretation is to negate the benefits accorded to foreign value-added telecommunications providers under the WTO agreement.

Republic of Korea

Government Procurement – Korea joined the WTO Agreement on Government Procurement (GPA) on January 1, 1997. The scope of the Korean commitment included the procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments, and some two-dozen government-invested companies. However, Korea's GPA commitment currently does not include Korea Telecom's purchases of telecommunications commodity products and network equipment and in 2002 the Korean government strongly influenced Korea Telecom's procurement decisions. This influence on Korea Telecom and its subsidiary, KT-ICOM, has resulted in a procurement process that is not transparent or fair, and discriminates against non-Korean suppliers. For example, for a recent project KT-ICOM added a second benchmark test for bidders with criteria that favored Korean suppliers. USTR should urge the Korean government not to influence the procurement decisions of privately held companies, such as Korea Telecom and KT-ICOM. In addition, any

procurement decisions by the Korean government should be made in the spirit of the GPA.

Wireless Internet Platform Standards – On December 20, 2002, the Korean Government notified the WTO of its intention to adopt a standard called "Wireless Internet Platform for Interoperability" (WIPI). Media reports indicate that the Ministry of Information and Communications will mandate WIPI as the single wireless Internet access platform for Korea. TIA supports an open market policy with respect to the standards and technology decisions made for the deployment of commercial wireless systems. We firmly believe that governments or other non-commercial factors should not influence an operator's choice regarding which technology would best suit the needs of its customers. We urge USTR to encourage the Korean government allow market forces rather than government intervention to determine technology deployment in Korea.

Mexico

Standards, Testing, Labeling and Certification – 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. This procedure does not meet the intent of Mexico's NAFTA obligations, continuing to protect their conformity assessment bodies and Mexican manufacturers from fair competition from U.S. and Canadian exports into Mexico.

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 while meeting the confidence 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.

Taiwan

Government Procurement –U.S. companies have encountered significant trade barriers in terms of transparency with respect to procurement decisions taken by the state-owned telecommunications operator, Chunghwa Telecommunications (CHT). The Minister of Transportation and Communications oversees the purchases and operations of CHT. U.S. companies have been hindered in bidding on major telecommunications projects by the use of non-transparent procurement procedures. At least one award for a recent third generation wireless telecommunications project appears to have been made in an arbitrary and non-transparent fashion. Because CHT did not clearly state scoring criteria and weighting for pricing, unexplained pricing discrepancies among the bidders resulted.

It remains unclear how this “price per score point” evaluation was made by CHT and CHT has failed to explain the process to the bidders involved. However, the Public Construction Commission is reviewing the process as a result of protests by several bidders.

In its accession to the WTO, Taiwan agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA’s procedures should improve the transparency of the bidding process for major government procurement contracts, but actions by the government in the past year with respect to telecommunications procurements show that Taiwan is not acting in the spirit of the GPA. In addition, this lack of transparency and fairness in the procurement process may contravene Taiwan’s own government procurement law which became effective in mid-1999. The new law is being implemented and enforced by a centralized body, the Public Construction Commission. TIA urges USTR to continue to engage Taiwan in negotiations to resolve inequities and transparency concerns in Taiwan’s government procurement regime, especially in clearly stating evaluation criteria and weighting information in tender documents.

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 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,

A handwritten signature in black ink, appearing to read "Matthew J. Flanigan", is written over a light blue horizontal line. A vertical line is positioned to the right of the signature.

Matthew J. Flanigan
President