Coalition of Service Industries

December 15, 2006

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

Re: USTR Section 1377 Request for Comments Concerning Compliance with Telecommunications Trade Agreements.

Dear Ms. Blue:

The Coalition of Service Industries ("CSI") appreciates the opportunity to submit these comments in response to the request of the United States Trade Representative ("USTR") for comments pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. Section 3106, concerning the operation, effectiveness, implementation of, and compliance with the World Trade Organization ("WTO") Agreement and other agreements regarding telecommunications products and services of the United States.

CSI strongly supports USTR's efforts to ensure compliance with telecommunications trade agreements to improve foreign market opportunities that provide broad economic benefits to all consumers and businesses throughout the world. Telecommunications networks and services are the building blocks enabling the knowledge based economy of the 21st century to function and are the backbone of the Internet and electronic commerce. Telecommunications is both a major economic sector in its own right and a critical driver in developing an information economy that stimulates much broader economic growth in both developed and developing economies. The development of competitive foreign telecommunications markets brings lower prices and fosters new and innovative services that not only benefit U.S. consumers and all U.S. industries competing in the global marketplace, but also encourage greater growth in the global economy.

CSI also wishes to emphasize the importance of the continued negotiation of new telecommunications trade commitments by U.S. trading partners to provide further market liberalization, and the removal of remaining market access barriers in this critical sector that are not addressed by existing trade commitments. CSI is particularly concerned that the stalled Doha Round, which has foundered primarily because of agricultural issues, should be quickly revived and concluded. As CSI has shown in a recent study, the major potential benefits of the Doha Round lie in multilateral liberalization of international trade and investment in key service sectors, including telecommunications.[1] Although considerable progress has been made in opening formerly closed foreign telecommunications markets as the result of the WTO Agreement and U.S. Free Trade Agreements, significant barriers to telecommunications trade and investment remain in both developed and developing countries that impede competition and

[1] *Coalition of Service Industries, Making the Most of the Doha Opportunity: Benefits from Services Liberalization*, Jul. 2006.

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global economic growth. As described in the comments below, CSI is greatly concerned by the need to expand trade commitments to address continuing constraints on foreign investment in telecommunications and encourages USTR to use all potential opportunities to address these concerns. CSI also strongly supports USTR's efforts to break the deadlock on the Doha Round, to encourage WTO members to come forward with improved offers addressing these and other continuing market access barriers to services trade liberalization, and to bring these negotiations rapidly to a successful conclusion.

CSI's comments for USTR's 2007 Section 1377 Review set forth below highlight market access barriers in China and discriminatory universal service programs in India and Jamaica.

China

Since its WTO accession in 2001, China has undertaken a comprehensive reform of its services trade policy, which has opened key services sectors to foreign participation, improved its policy predictability, and made China subject to the global WTO trade regime. Important progress has been made in revising existing laws and passing new laws and regulations to open service sectors to foreign competition. China also has greatly benefited from more open services markets resulting from its WTO membership. According to the World Bank, Chinese global cross-border services exports grew from $5.7 billion in 1990 to $62 billion in 2004. U.S. cross-border services exports to China also increased by 30 percent from $5.6 billion in 2001 to $9.1 billion in 2005. The U.S. services trade surplus with China is $2.5 billion, based on strong U.S. exports in business, professional, educational, financial, and telecommunications services. The level of foreign direct investment in China has also been growing steadily, from $46.9 billion in 2001 to $60.6 billion in 2004. These developments demonstrate that China's bold decision to open its economy to foreign capital has benefited both China and its trading partners. Nevertheless, China's WTO compliance record in services is hurt by incomplete implementation of its accession commitments and by remaining services trade barriers, including those in telecommunications, where China's narrow interpretation of value added services, high capitalization requirements for basic telecommunications services and a lack of an independent regulator remain key outstanding issues.

Market entry opportunities for U.S. telecommunications providers in China are limited by several factors, including China's overly narrow definition of value-added services (VAS) for value added network service licensing. China's regulator, the Ministry of Information Industry ("MII") defines the meaning of VAS in China's WTO commitments narrowly to exclude commercially important services, such as international IP-virtual private networks (IP-VPN) services demanded by global enterprises, by limiting VAS virtual private networks to "domestic" services. The narrowing of value added services is a backward step from China's pre-WTO service classifications and that is inconsistent with China's WTO commitments. China should expand the list of VAS to include such value-added services as international IP-VPN services. China also should be encouraged to lift its prohibition on resale.

China's unreasonably high capitalization requirement for basic telecommunications services has further greatly limited market access. Basic services licenses are subject to a 2 billion RMB (US$250 million) capitalization requirement, which is 100 times larger than the capital requirement for China's value added service licensees, and comprises an excessively burdensome restriction that violates Article VI of the GATS. A foreign service provider otherwise meeting the licensing qualifications is unlikely to allocate such capital to a new and risky enterprise, and a Chinese joint venture partner is unlikely to divert this capital from its core business. A further problematic restriction is the requirement that foreign telecom service providers may only enter into a joint venture with one of the existing state-owned enterprise telecom providers. At this year's JCCT Plenary meeting, the U.S. government obtained China's specific commitment to address the capitalization requirement, and CSI looks forward to China's early elimination of this trade restriction. China has already established a precedent for lowering its foreign joint venture capitalization thresholds in other sectors, including insurance and trading companies, and it should now remove this barrier to market access in the telecom sector.

China also has not implemented its WTO Reference Paper commitment to establish an independent regulator. The Chinese Government still owns and controls all major operators in the telecommunications industry, and the Ministry of Information Industry still regulates the sector. CSI encourages USTR to place a high priority on working with China to establish a regulatory body that is separate from, and not accountable to, any basic telecoms supplier, and that is capable of issuing impartial telecom decisions and rules. Specifically, it is important that the regulatory body adopts the following: transparent procedures for drafting, finalizing, implementing and applying regulations and decisions; appropriate measures, consistent with the WTO Reference Paper to prevent dominant suppliers from engaging in, or continuing, anti-competitive practices; a defined procedure – as it has done for interconnection – to resolve efficiently and fairly public telecom suppliers' commercial disputes over their agreements; an independent and objective process for administrative reconsideration of its decisions; and appropriate procedures and authority to enforce China's WTO telecom commitments, such as the ability to impose fines, order injunctive relief, and modify, suspend, or revoke a license.

India

India is a critical market for U.S. service industries and is taking important steps to encourage telecommunications competition that will benefit consumers, suppliers and the broad economies in both countries. India has increased the permissible level of foreign direct investment in telecom licensees to 74 percent and has lowered entry barriers for International and Domestic Long Distance licenses to encourage new entrant competition and investment. CSI commends India for these pro-competitive reforms and urges India to ensure that the detailed guidelines that implement the new investment and licensing rules provide foreign-invested companies with an optimal ability to innovate and compete in the India market. India also should improve its WTO market access and national treatment commitments to reflect its current pro-liberalization telecom initiatives, thereby providing investors with the necessary confidence that the changes are permanent and enforceable.

India's Access Deficit Charge ("ADC") regime, which disproportionately impacts consumers making international calls to India, continues to require ongoing effort from USTR to ensure that India complies with its WTO commitments. India's telecommunications regulator, the TRAI, implemented the ADC in 2003 in relation with its Telecommunications Interconnection Usage Charge ("IUC") Regulation. The TRAI has stated explicitly that although implemented as part of the IUC Order, the ADC is not an "interconnection charge," which is defined separately in the order as comprising termination or origination charges and carriage charges. Rather, the ADC is a supplemental collection to subsidize socially desirable services and a component of India's overall universal service regime.

There have been longstanding concerns with the ADC, and in particular with the high ADC applied to inbound international long distance traffic, which is currently 1.60 Rupees ($0.035), which is twice the level of the ADC for outbound international calls of 0.80 Rupees ($0.017), while the ADC paid on domestic calling in India is a mere fraction of these amounts. Although modifications in the ADC rules in February 2006 brought significant reductions in the ADC rates for international calls, India continues to place an unreasonable and discriminatory ADC burden on foreign international service providers and their customers making calls to India that fails to comply with India's WTO Reference Paper commitment to administer universal service obligations in a transparent and non-discriminatory manner.[2] As described above, inbound international calling is subject to more onerous treatment than outbound international calling, and all international calling is treated more onerously than domestic long distance calling. The TRAI is currently considering additional modifications to the ADC regime through a proceeding that will commence in 2007, and should be encouraged to move as rapidly as possible to achieve its announced goal of reducing the ADC to zero.

Jamaica

Jamaica maintains a discriminatory and unreasonably burdensome "universal service" levy introduced in June 2005 to fund broadband Internet access for schools and libraries in Jamaica. The levy of 3 cents per minute for fixed-terminated calls and 2 cents per minute for mobile-terminated calls applies only to international-inbound traffic terminating in Jamaica. Because this levy does not apply to international-outbound calling from Jamaica or to domestic calling within Jamaica, it imposes the entire burden of subsidizing this Jamaican universal service program on U.S. and other non-Jamaican carriers and their customers. In announcing this levy, Jamaica's Minister of Commerce, Science and Technology "emphasized that the levy would not be a charge on the Jamaican consumer, as it would only be applied to incoming international calls."[3] The WTO Reference Paper states that universal service "obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively-neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member."[4] The FCC has noted that "universal service obligations that are levied disproportionately on foreign-originated calls clearly violate these principles."[5]

USTR expressed its concerns in the 2006 Section 1377 Review that Jamaica is funding this program on the basis of fees on foreign operators and regarding the lack of transparency in the program to determine the need for this large surcharge and the absence of information concerning the use of these funds. As USTR made clear in the 2006 Review, Jamaica should

[2] WTO, Fourth Protocol to the General Agreement on Trade in Services, *India – Schedule of Specific Commitments Supplement 3, Reference Paper,* Apr. 11, 1997, ¶ 3.

[3] Government of Jamaica, Ministry of Commerce, Science and Technology, News Stories, *Government Imposes Levy on Incoming International Calls,* http://www.mct.gov.jm/call_levy.htm.

[4] WTO, *Jamaica – Schedule of Specific Commitments Supplement 1*, at 10.

[5] *International Settlement Rates*, 12 FCC Rcd. 19,806, ¶ 87 (1997). *See also, id*., ¶ 148 ("We disagree with commenters who argue that foreign carriers are entitled to require that universal service requirements be financed disproportionately through settlements revenues. . . . [W]e believe that universal subsidies must be nondiscriminatory and transparent").

adopt a more equitable and transparent approach to funding its universal service programs that does not require foreign operators to bear an inappropriate share of these costs.

Foreign investment restrictions

CSI also wishes to emphasize the need for additional and expanded trade commitments to remove remaining foreign market access barriers in telecommunications._Among the significant market access barriers that require urgent attention by U.S. trade negotiators are the constraints on foreign investment that restrict competition and economic growth in this critical sector among both developed and developing countries. A prominent example is provided by Canada, which has taken many steps to open its telecom market to some forms of competition, but maintains foreign ownership restrictions in telecommunications, prohibiting U.S. and other foreign investors from controlling facilities-based telecommunications carriers and thus preventing open competition. Canada continues to limit foreign investment in a facilities-based carrier to a maximum of 46.6% for all services except fixed satellite and submarine cable service.

A recent Canadian government policy review panel acknowledged that Canada, a leading U.S. trading partner, retains one of the most restrictive and inflexible set of rules limiting foreign investment in the telecom sector among *all* OECD member countries and recognized the drawbacks of this policy. In June 2006, Canada's Telecom Policy Review Panel issued a proposed policy directive to the Canadian Radio-television and Telecommunications Commission (CRTC) that included a recommendation that foreign ownership restrictions be phased out over time. However, although Canada's Minister of Industry formally called for changes in telecom regulation, it did so without also calling for removal of foreign ownership restrictions.

As a consequence of these foreign ownership restrictions, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. These restrictions limit global telecommunications service providers' options for providing high-quality, end-to-end telecommunications services as they cannot own or operate their own telecommunications transmission facilities. The removal of these foreign investment restrictions would increase telecommunications market entry and investment in Canada, open broad access for Canadian carriers to international capital markets, and encourage sustainable facilities-based competition in the Canadian telecommunications industry and broader economic growth. A recent announcement by the Canadian government that Canada will proceed with additional deregulation of its telecom market further highlights the need for U.S. and other foreign telecom suppliers and other non-Canadian investors to have opportunities for 100% facilities-based telecom ownership in this important market. We urge USTR to explore with the Canadian government possible opportunities to pursue the timely recommendation of the Telecom Policy Review Panel.

Other countries also maintain foreign ownership restrictions in their telecom trade commitments impeding market entry, competition and economic growth, including China, India, Indonesia, Korea, Malaysia, Mexico, South Africa, Thailand and Turkey. CSI urges USTR to use all potential opportunities to press for the removal of these continuing telecom barriers to provide broad economic benefits to customers, service providers and carriers in all countries, including in particular through the revival of the stalled Doha Round negotiations.

Coalition of Service Industries

CSI hopes that USTR will consider all the matters raised in this letter and would be pleased to provide any additional information that would be helpful in the review.

Sincerely,

Bob Vastine

Bob Vastine
President