



**Telecommunications Industry Association (TIA)
Comments and Recommendations
Concerning the Draft FTAA Chapter on Services**

September 2003

Article 1: Scope and Sectoral Coverage

Modalities: Services negotiations should be conducted using the so-called “negative list” approach, meaning that all services sectors and sub-sectors should be covered and bound unless a party affirmatively makes an explicit exception or reservation. Hence, WTO/GATS negotiating modalities (“positive list” approach) should not be used, as they do not promote the maximum extent of liberalization under the FTAA.

Comprehensive liberalization: In the area of telecommunications services, in particular, FTAA countries should make comprehensive commitments to liberalize all telecom sectors and sub-sectors. Where a particular country has sensitivities in a discreet sub-sector, it should seek to extend the phase-in of liberalization commitments but should not exclude the entire sub-sector.

Basis of Negotiations: Negotiations should commence from the current level of market access accorded under domestic legislation and regulations, and should not abrogate from existing access or acquired rights enjoyed by foreign services suppliers.

Modes of Supply: The WTO/GATS establishes four modes in which services can be supplied, of which “commercial presence” is one. A service provider has a “commercial presence” in a market when it has established investments in that market. However, depending on which negotiating modalities are agreed to, commercial presence / investment may be inadvertently dropped from the services chapter because of confusion over which chapter – either services or investment – should address this issue. TIA would like to see that “commercial presence” is properly addressed in the FTAA chapter on services.

Article 8: Definitions

See the discussion above on “commercial presence.” For these reasons, “commercial presence” should be among the terms defined here.

Article xxx (no number assigned): “Domestic Regulation” and “National Regulations”

It is appropriate that FTAA countries have the ability to regulate services and introduce new regulations, including the granting of licenses and other authorizations, provided that they do not nullify or impair obligations under the FTAA chapter on services.

TIA calls on ministers to acknowledge that regulation of services can have an indirect and unintended effect on goods necessary to render services, and that such regulations can serve as technical barriers to trade in goods.

Article xxx (no number assigned): “Future Liberalization” and “Future Work”

It is appropriate that the FTAA chapter on services calls for future efforts to eliminate restrictions and further liberalize hemispheric trade in services, subsequent to the conclusion of the FTAA Agreement.

Article xxx.6 (no number assigned): Technical Cooperation

It is appropriate that parties to the FTAA demonstrate sensitivity to the circumstances of small and relatively less developed countries participating in the FTAA. However, any technology transfer contemplated under this provision should be rendered “on a commercial basis,” to the extent that the technology at issue is owned and controlled by private sector entities.

Annex on Telecommunications:

During the VI ABF in Quito in November 2002, Services Workshop participants agreed to incorporate the concept of “technology neutrality” into the recommendation on telecommunications made to ministers. However, because time ran short for final review and translation, the final report to ministers did not include this important contribution that agreed to by a consensus of workshop participants. Therefore, TIA wishes to re-introduce this concept, which unfortunately is absent from the draft FTAA chapter on services released in November 2002.

In summary, the concept of “technology neutrality” ensures that governments not mandate or otherwise favor the use of a particular technology standard or technology platform used to provide telecommunications services. Service providers should have the flexibility to determine which technology should be used based on commercial and competitive considerations, without governmental direction or interference.