

The 1997 WTO Agreement on Telecommunications: Big Bang or Little Bang?

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I. The Multilateral Institutional Framework for International Trade in Telecommunications Services

The GBT deal on basic telecommunications is not a new, freestanding international treaty with its own elaborate text. It is instead a series of market opening measures embodied in fifty-five national schedules (representing sixty nine governments, because the European Commission negotiates on behalf of European Union member states). The national schedules are an integral part of a larger treaty, the General Agreement on Trade in Services (GATS), and states' market opening measures---known as Specific Commitments in WTO-speak---are subject to the disciplines of GATS principles know as General Obligations and Disciplines. Hence, in order to understand the GBT deal, we must understand the form and operation of the larger GATS system of treaty texts and national schedules, of which it is simply a modification.

The establishment of the GATS regime was one of the key results of the multilateral trade negotiation known as the Uruguay Round. Launch at Punta del Este in September 1986 and concluded at Marrakesh in April 1994, the Uruguay Round in fact comprised a series of interrelated negotiations among the 125 member governments of the General Agreement on Tariffs and Trade (GATT). These negotiations produced four major outcomes: First, the GATT institution was replaced with by the WTO, which among other things has a broadened mandate and a strengthened dispute resolution system. Second, the GATT regime for trade in goods created in 1947 was updated and expanded to address issues like trade-related investment measures and agricultural products. Third, a new regime on trade-related aspects of intellectual property rights (TRIPs) was established. And fourth, the GATS regime was created. The new organizational structure of the WTO reflects these outcomes; the three regimes are administered by corresponding bodies---the Council for TRIPs, the Council for Trade in Goods, and the Council for Trade in Services---each of which is broken down into a series of subsidiary groups focusing on specific issues or sectors.¹

From the 1970s when analysts began to think about international transactions in services as a trade issue that might be brought under the GATT, telecommunications has always been recognized to be central to any sort of future multilateral regime.² This is because telecommunications services play a dual role in the larger realm of international transactions in the services sector. First, it is a dynamic and lucrative industry in its own right that attracted the attention of policy makers, analysts, and private sector proponents of services liberalization. Today, the global telecommunications services market has been estimated to be worth about US \$600 billion per year, \$100 billion of which involves cross-border trade.³

Second, telecommunications services are also a key means of moving other types of "disembodied" (that is, temporally and spatially separated from the producer) information-intensive services---e.g. financial, management consulting, audio-visual, and advertising services---across national borders. Hence, in this capacity as an infrastructure for other forms of services delivery, telecommunications networks and services were designated by Uruguay Round participants to be a crucial form of the cross-border mode of supply for services generally. Cross-border delivery is one of four designated "modes of supply" for services under the GATS regime, the others being movement of the consumer to the producer's

country, movement of a natural person producer to the consumer's country, and "commercial presence" of producer entities in consumer countries via temporary establishment, corporate alliances, and direct foreign investment (FDI).

Telecommunications services' status as a form of cross-border supply has two consequences worth noting here. First, any agreement to liberalize international trade in other service industries would necessarily have to involve establishing a mechanism to ensure that providers of such services would have access to and use of public telecommunications, just as providers of good need access to and use of roads, waterways, ports, and so on. That meant that the GATS regime would have to contain special provisions dealing with the unique status of telecommunications. Secondly, when it came to establishing trade disciplines for services industries, WTO members would have to make concessions for the delivery of any given service on each of the four modes of delivery, including cross-border, where applicable. We will show how the GATS regime dealt with these two issues below.

The GATS regime established by the Uruguay Round is made up of three major components. The first is a Framework Agreement embodying overarching principles---the General Obligations and Disciplines, hereafter referred to as the GODs---as well as Specific Commitments and procedural rules. Some of these principles were transferred from the traditional GATT regime for trade in goods, albeit with necessary modifications to take into account the differences between goods and services trade. Others were created new to address specific issues and non-tariff barriers (NTBs) involved in services industries that do not arise for trade in goods.

There are fifteen GODs: most-favored-nation treatment (MFN), or nondiscrimination; transparency; disclosure of confidential information; increasing participation of developing countries; economic integration; labor markets integration agreements; domestic regulation; [mutual] recognition; monopolies and exclusive service providers; business practices; emergency safeguard measures; payments and transfers; restrictions to safeguard the balance of payments; government procurement; general exceptions; [national] security exceptions; and subsidies. Some of the GODs are binding on states either across-the-board, i.e. for all measures affecting international trade in services in the absence of provisions to the contrary, while others apply only to cases in which states make liberalizing concessions. Either way, all of them can apply to the basic telecommunications concessions, save where a government has taken narrowly defined exceptions for a particular sub-sector or invokes an across-the-board waiver for a sector (see Section II, below).

The Framework Agreement also includes three kinds of Specific Commitments. Since these are precisely what the GBT deal entailed, let us describe what these mean. GATS Article XVI pertains to Market Access, a term that is defined by example as the removal of certain kinds of NTBs on each of the four modes of delivery. The NTBs described in the provision include a) limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or economic needs tests; b) limitations on the total value of service transactions or assets in the form of numerical quotas or needs tests; c) limitations on the number of service operators or the quantity of service outputs; d) limitations on the total number of natural persons that may be employed in a particular service sector; e) measures that restrict or require specific types of legal entity or joint venture through which a supplier may provide a service; and f) limitations on the participation of foreign capital in terms of maximum percentage of foreign share holdings or the total value of investment.⁴ As is evident, market access commitment involve reducing or eliminating quantitative restrictions on foreign participation in a given market.

GATS Article XVII concerns National Treatment, or the obligation to accord to services and service suppliers of foreign countries treatment no less favorable than what a country affords to its own services and suppliers. This is important in telecommunications, but in truth most governments have not historically had explicit and extensive restrictions on national treatment that had to be made subject to concessions. Finally, GATS Article XVIII allows members to undertake Additional Commitments with regard to services measures not covered by Market Access and National Treatment, including on issues of qualifications, standards, and licensing.

Unlike the GODs, which may always apply unless exemptions or waivers are taken by governments, the Specific Commitments are negotiated undertakings by governments to liberalize a particular services sector or sub-sector according to each of the four modes of supply. That is, a given type of services transactions are opened to competitive supply only insofar as governments agree to do so; they can pick and choose what to liberalize and what not to liberalize. Thus, for example, governments can choose to allow networked-based supply of a particular service while not allowing supply via commercial presence, or vice versa.

The second major component of the GATS is the Annexes. These address issues specific to particular services sectors, modes of supply, and future negotiations that could not be adequately addressed under the broad aegis of the GODs. There are eight annexes dealing with Article II MFN exemptions, the movement of natural persons supplying services, air transportation services, financial services (two annexes), negotiations on maritime transport services, telecommunications, and negotiations on basic telecommunications. These last two are of particular interest here.

The Annex on Telecommunications establishes obligations for governments to ensure access to and use of public telecommunications transport networks and services. In other words, public telecommunications systems must be accessible as a mode of cross-border supply to foreign suppliers of various kinds of services, be it financial services, professional services, or whatever. The annex lays down principles requiring governments to allow foreign service suppliers access to and use of public networks on a reasonable and nondiscriminatory basis. Moreover, governments must ensure that foreign suppliers have access to and use of private leased circuits, and that they can: a) purchase or lease and attach terminal or other equipment interfacing with public networks; b) interconnect private leased or owned circuits with public networks, or with circuits leased or owned by another service supplier; and c) use operating protocols of the service supplier's choice, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally. In addition, governments must ensure that foreign service suppliers can use such networks and circuits to transfer information without undue impediments within and across national borders, and that they can access information contained in data bases held in any member country.

The Telecommunications Annex requires that governments apply no condition on access and use other than is necessary to safeguard the public service responsibilities of public telecommunications operators (PTOs), protect the technical integrity of public networks, or ensure that foreign service suppliers only provide services designated as open to competition by such governments. However, provided they meet these criteria, governments may adopt policies that: a) restrict resale and shared use of public services, b) require the use of specific technical interfaces and protocols for interconnection, c) require the interoperability of services, d) require type approval of terminal or other equipment interfacing with public networks, e) restrict the interconnection of private leased or own circuits with either public networks or the circuits of other service suppliers, and f) require notification, registration, and licensing for foreign service

The other annex of direct relevance here is the Annex on Negotiations on Basic Telecommunications. During the Uruguay Round, governments undertook Specific Commitments on telecommunications as a trade sector in its own right (as opposed to as a mode of supply, which is covered by the annex discussed above). The process of agreeing to such commitments, under the umbrella responsibilities of the GODs, was an intellectually difficult task that consumed a great deal of energy and bargaining time. In the end, fifty-five governments offered forty-four sets of commitments (the European Commission negotiated on behalf of European Union members, hence the numerical discrepancy) to liberalize particular kinds of value-added service provision according to the four modes of delivery, but only twenty-two were prepared to make any commitments on basic telecommunications. Moreover, the latter commitments tended to be quite narrowly drawn, i.e. liberalizing the provision of a specific sub-sector like mobile paging via select modes of supply.

By the end of the Round, there was widespread recognition that cutting a broader deal on basic telecommunications would require additional negotiations because of the complexities and sensitivity of the issues involved. Hence, this additional annex provided a legal basis upon which to launch such negotiations with a view toward subsequently incorporating basic telecommunications concessions into the GATS framework. The annex provided that Article II MFN treatment and exemptions would apply to any basic telecommunications commitments only upon the final results of these negotiations or, should these fail, when negotiators issue their final report. After that time, any commitments must be offered on a nondiscriminatory basis unless a government has listed an exemption or taken a waiver.

Finally, the third major component of the GATS is the National Schedules in which governments inscribe their Specific Commitments on market access, national treatment, and additional commitments for each services sector or sub-sector according to the four modes of supply. These schedules run to two thousand pages, and cover a very wide range of market opening measures in different services sectors, including telecommunications. The recent deal on basic telecommunications, then, simply involved folding new commitments into these schedules under the legal framework of the GATS, rather than establishing a new treaty.

In accordance with the annex, a Negotiating Group on Basic Telecommunications (NGBT) was launched in April 1994. Participation was entirely voluntary, and at the outset there were thirty-three member governments and another twenty-four governments involved as observers. Pending conclusion of the negotiations, participants agreed not to apply any measures affecting trade in basic services that would affect their bargaining positions and leverage, and set April 1996 as a date by which the negotiations would conclude. Beginning in May 1994, fifteen meetings were held at the WTO headquarters in Geneva wherein members attempted to clarify the current situation with respect to national regulatory regimes, explore the complex issues involved, and move toward consensus on what kinds of services should be included in the schedules in what format. In addition, many so-called "rump groups" were informally created to discuss matters outside the formal institutional structures of the WTO, and intensive bilateral negotiations were held among participating governments in an effort to secure from each other concessions of particular interest to their service suppliers.

The NGBT confronted some difficult conceptual issues. For example, Australia proposed that international accounting rates should be treated as market access limitations by separating out from international correspondence and scheduling

"termination services. " This idea was not endorsed by other governments, who concluded that enhanced competition brought by the agreement would reduce such rates over time. There were also questions about whether to schedule nondiscriminatory limitations on the number of services suppliers in situations where these were limited for strictly technical reasons like spectrum scarcity; how to regard universal service and public interest obligations that might have trade restricting effects, even though this is not their intent; how to treat new services like call back and calling card services under the modes of delivery; and how to deal with video services, particularly in regards to their provision over the Internet.

The biggest conceptual and policy breakthrough in the process was the agreement to include an American-authored Reference Paper on regulatory reform as a framework that governments could endorse in the Additional Commitments portions of their schedules. The paper laid out six key principles for the redesign of national regulatory rules and institutions for compatibility with trade disciplines. These consisted of: a) Competitive Safeguards. Governments are required to ensure that major suppliers, especially the national PTOs, do not engage in anti-competitive cross-subsidization, use information gathered from competitors with trade-restricting results, or fail to make available on timely basis technical information about their facilities and operations needed by competitors to enter the market. b) Interconnection. PTOs are to provide market entrants with interconnection at any technically feasible point in the network. Such interconnection is to be provided under nondiscriminatory terms, conditions and rates, and should be of a quality no less favorable than the provider gives its own services. Moreover, interconnection rates are to be cost-oriented, transparent, and where economically feasible, unbundled. A dispute mechanism administered by an independent body is also called for.

c) Universal Service. Such obligations are to be administered in a transparent, nondiscriminatory, and competitively neutral manner that is not more burdensome than is required. d) Public Availability of Licensing Criteria. Where licenses are needed, information and decision-making procedures concerning them are to be transparent. e) Independent Regulators. Regulatory bodies are to be separated from and not accountable to any service provider. And f) Allocation and Use of Scarce Resources. Any procedures for allocating and using frequencies, numbers, and rights of way are to be carried out in an objective, timely, transparent, and nondiscriminatory manner.

As the NGBT progressed, a number of countries shifted their status from observer to full participant, and through bilateral consultation the offers were enriched. By the designated end point of April 1996, there were thirty-four offers from forty-eight governments, many of whom were endorsing the Reference Paper. Nevertheless, the United States delegation was not satisfied that sufficient enough concessions had been made by important countries, and some American-based firms were balking at particular aspects of the deal. As such, the negotiations concluded without a final agreement, and the parties decided to extend the process, with somewhat different procedures, after some cooling off.

Hence, the new Group on Basic Telecommunications (GBT) was launched. Between July 1996 and February 1997, nine meetings were held to clarify the outstanding issues and build consensus, again accompanied by informal rump group sessions and intensive bilateral negotiations over the schedules. New countries joined the process, and the offers recorded in the schedules grew in significance. To overcome last minute obstacles in February, high-level interventions by President Clinton and other national leaders helped smooth over the discontent of certain governments with aspects of the deal, and on February 15, the GBT concluded its work successfully.

How significant is the GBT deal? Next we will turn to arguments for its positive contributions to the global market and policy environment, and then to arguments against the same.

II. Positive Aspects of the GBT Deal

1. Services Covered

Negotiators wisely did not want to "lock in" a defined set of services that would be deemed basic and made subject to trade disciplines, which would implicitly leave other services off the table. Moreover, negotiators sought to establish a technologically neutral agreement that did not equate the services in question with a defined set of delivery options, i.e. particular types of wired, wireless, and satellite-based networks. In such a dynamic environment, where rapid innovation is quickly generating new systems and services that were not envisioned just a short time ago---e.g. Low Earth Orbital Satellites, Internet access, and so on---adopting this approach left GBT participants the flexibility to expand the scope of negotiations and national schedules later on.

Accordingly, the GBT did not attempt to agree on a singular and potentially exclusionary definition of basic telecommunications services. Instead, they gave examples of the sorts of services considered to be basic, recognizing that others could be thus labeled in the future. Among the services included in this inductive definition by example were network-based and resale provision of international and domestic voice telephony, data transmission and Internet services, telex, telegraph, facsimile, private leased circuits, satellite services, mobile services, and video transport.

However, while in principle anything was on the table, in practice the European Commission and other players balked at defining video content services as basic and refused to list these in their schedules. At the same time, the United States ultimately decided to take MFN exemptions on one-way direct-to-the-home and direct broadcasting satellite services, as well as digital audio services.

By explicitly including networked service provision as well as resale, the group opened the door to scheduling market access commitments on both the commercial presence and cross-border delivery modes of supply. In effect, this acknowledges the reality that trade and investment in basic telecommunications are often indistinguishable, and should both be subject to multilateral rules. This investment agreement is unique to the GATS: there are no corresponding multilateral commitments on direct foreign investment (DFI) in goods and agriculture, although there is much talk of moving toward a comprehensive international regime in the future.

2. Market Access Commitments

The GBT deal is significant not only because of the scope of services covered, but also because of the broad domain of parties that have committed to substantially relax restrictions on market access (since national treatment restrictions are fairly unusual in telecommunications, less explicit action was required in this part of the national schedules). While the initial offers floated early in the negotiations tended to reflect government's existing domestic regimes, over time they were enriched to cut deeper into domestic limitations. In this sense, there is something of an asymmetry between the schedules produced during the Uruguay Round and the changes made to them by the GBT.

During the Round, governments generally offered "stand still" concessions: the liberalization programs already undertaken by governments at the national level---most frequently, on value-added services, but also in twenty two cases on a few basic services---were simply translated into WTO commitments. During the GBT negotiations, in contrast, many governments ended up offering "roll back" concessions that committed them under binding international law to cut more deeply into market limitations than their existing domestic liberalization programs had done. This is somewhat ironic in that competition in basic telecommunications has always been seen as more sensitive and politically difficult than it is in value-added services, but the shift is a reflection of how far governments have come in their thinking since the end of the Round.

What concessions were made? A review of the fifty-five national schedules and of informal, not-for-attribution summaries generated by the WTO and the U.S. government provides a basis for a brief overview according to the types of service and the types of commitments involved. This is provided for in the Appendix.

3. Regulatory Principles

A surprising sixty-three of the sixty nine governments submitting schedules committed themselves to new domestic regulatory principles that are subject to international monitoring, bargaining, and dispute resolution. A full fifty-seven countries committed themselves in whole or with a few exceptions to the Reference Paper's language on competitive safeguards, interconnection, universal service, public availability of licensing criteria, independent regulators, and allocation and use of scarce resources. This was one of the most dramatic examples of progress as the GBT negotiations unfolded. In April 1996, when the NGBT ended unsuccessfully, forty-four governments had included regulatory commitments, and only thirty-one had signed on to the Reference Paper.

To advocates of the GBT deal, the incorporation of regulatory principles into a trade policy framework is a remarkable and significant achievement. After all, the entire history of global telecommunications has involved states' jealously preserving sovereign prerogatives to regulate their national systems as they saw fit. The instruments of the international regime negotiated in the International Telecommunication Union (ITU) positioned sovereignty as an overarching principle, and governments sought to insulate their markets from foreign influence while reaping the benefits of international correspondence, e.g. by interconnecting monopoly systems at designated gateways and jointly providing services on a non-competitive basis.

With the shift to a trade framework of global governance, the new forms of international service delivery require what have been called "beyond the border" and "deep integration" measures. Accordingly, GBT members have bound themselves to make their domestic regulatory institutions and rules consistent with multilateral trade disciplines and transnational market forces. It is easy to imagine that much of the agreement's thrust might have been frustrated in practice without these regulatory obligations. For example, offering market access via commercial presence or cross-border delivery might mean little without an internationally recognized right to interconnect with other public telecommunications transport networks and services, or without mandatory access to licensing criteria.

4. Application of GATS General Obligations to Basic Telecommunications

The deal is significant not only because of the breadth and depth of the liberalization commitments listed in the national schedules, but also because the general obligations of the GATS framework agreement apply to these Specific

Commitments. As such, much of the telecommunications industry has been brought fully under the trade mechanisms of the WTO; indeed, telecommunications is clearly one of the most well covered service sector in the GATS. This is fitting, since from the beginning of the movement to bring services under the GATT, telecommunications was regarded as a key to any multilateral deal.

The mechanisms for application of GATS rules to telecommunications are a bit complex. While some of the framework agreement's General Obligations apply across the board to all measures affecting trade in services regardless of whether specific commitments have been made, others apply only where such commitments have been listed in the national schedules. Probably the key success here concerns Article II MFN treatment. This applies across the board to all measures, which is a big shift toward nondiscrimination and away from the reciprocity requirements that have caused friction between, in particular, the United States and its trade partners. For many companies seeking entry into markets like the United States, the fact that an opening to some is an opening to all (save where specific exemptions are scheduled) represents a substantial change from the status quo ante.

While Article III's transparency requirements concerning the publication of measures of general application and the need for prompt replies to requests for information on such measures apply across the board to all measures affecting trade in services, its notification requirements concerning new measures and changes to existing measures applies only to scheduled sectors. Similarly, Article VI's language on domestic regulation that requires members to maintain or establish tribunals or procedures for prompt and impartial reviews of complaints always applies. In contrast, the article's language requiring members to ensure that all measures are administered in an impartial manner, that any decisions on authorization must be notified to service suppliers in a reasonable time frame, and that members must not institute new practices that are inconsistent with the work program apply only to scheduled sectors.

Article VIII on monopolies and exclusive service suppliers mostly applies as scheduled; members are bound to ensure that such carriers do not, in the supply of reserved services, act in a manner inconsistent with MFN and their Specific Commitments. The same is true for abuse of dominant positions, e.g. cross-subsidization of competitive services from reserved services, and for the negotiation of compensatory adjustments when monopoly rights are granted. Finally, Article IX applies across the board, and states that in the case of business practices that restrain competition and trade, members must, upon request by another member, enter into consultations with a view to eliminating such practices.

We mention these distinctions in application because they are important to understanding how the GATS applies to any given industry. But in practice, all of the provisions listed above will apply equally to the commitments scheduled by GBT participants. The incorporation of basic telecommunications into the GATS's General Obligations could signal a major shift in the dynamics of market entry and scope of competition. For example, a government cannot with unchallenged impunity schedule the removal of quantitative limitations on commercial presence in packet switching but then layer on a set of procedural hurdles and information restrictions that make access impossible in practice. This sort of openness in name only has often been a hallmark of nominally liberalizing reforms, and it has allowed the accumulation of significant cross-national asymmetries in the actual (as opposed to announced) level of competition possible in any given market. Any practices that derogate from the applicable General Obligations can now be challenged in bilateral consultations, and cases that cannot be resolved may move to a hopefully impartial dispute resolution mechanism.

This last observation leads us to a broader conclusion that frames points made below: in a sense, the real significance of the GBT deal does rest on how deeply countries have liberalized any given sector or sub-sector in the short-term. To advocates of the agreement, it would be a mistake to measure its success solely in terms of the degree of change in national regimes and markets between January and February 1997. What matters more is that the deal signals the beginning of an evolutionary process of mutual adjustment that will unfold according to a clearly defined set of principles, baselines, and mechanisms. Hence, in their view, the GBT deal is indeed a big bang, but one that will build up slowly over the years to come, rather than being a one-off cataclysmic explosion of liberalization.

5. Multilateral Surveillance and Bargaining Framework

The GBT deal is significant because it institutionalizes for the first time a system of multilateral mutual surveillance, and a framework for bilateral bargaining over market entry. Regarding mutual surveillance, the agreement establishes a variety of information-sharing procedures through which everyone can see what everyone else is doing and whether it conforms to their shared principles. Through ongoing consultations in the telecommunications group of the Council on Services, reports on country conditions, and bilateral interactions, the ability of member governments to hide their transgressions under a shell should progressively evaporate.

Regarding the bargaining framework, clear and coherent rules and mechanisms are established according to which bilateral consultations must be conducted and measured. A country whose service supplier is seeking entry abroad is no longer left to argue and plead with its trade partner because it can now claim a right based on a binding and explicit set of multilateral rules. The net effect of this institutionalization of surveillance and bargaining guidelines should be to subject disparate national liberalization programs to a measure of harmonization in terms of pace and content. That could be very significant for the difficult implementation work that lies ahead.

6. Dispute Resolution and Sanctions

The GBT deal brings basic telecommunications---and hence, most of the global market---under an internationally legitimate enforcement mechanism. For any country that wishes to fend off bilateral pressure tactics, this is an important break with the past. The institutional mechanisms and multilateral consultations involved may be especially important for small and developing countries that would otherwise find themselves on their own and at a substantial disadvantage in dealing more powerful countries. The process begins with bilateral consultations, in which the Director General of the WTO may offer his or her "good offices" in an effort to mediate. If these efforts fail, the Dispute Settlement Body (DSB) establishes a panel with clear terms of reference and an agreed composition; an expert review group may also be consulted. The panel then examines the issues in meetings with the parties and any relevant third parties over a period not to exceed six months, three months in urgent cases. The panel then submits its report to the parties and then to the DSB for an interim review. The DSB must decide on the report within sixty days unless it is appealed, and an appellate review not to exceed ninety days may be launched. The DSB monitors the implementation of the adopted panel report or appellate body recommendation, and parties may then negotiate compensation pending full implementation.

If all else fails, the DSB can authorize retaliatory measures against the infringing party that in principle would have full legitimacy under the rules. This could provide parties, especially smaller ones, with a degree of safety from undue pressure tactics and unilateral bullying. In fact, trade policy makers hope, the threat of such legitimate sanctioning may often preclude conflicts by giving members strong incentives to settle their differences before they reach the boiling point.

Never before have telecommunications services been subject to such a clear and forceful multilateral framework for preventing and resolving bilateral conflicts; the instruments of the ITU, for example, lack provisions for resolving disputes over competition.

There are, however, some potentially significant problems with this mechanism. One is whether in practice the composition and conduct of the DSB and its panels will be sufficiently open and democratic to enjoy the necessary legitimacy in the first place. Another is whether the involvement of the DSB, and indeed of the telecommunications group of the Council on Services, in the intricacies of domestic regulatory issues like interconnection will not prove unwieldy and ineffective. We will return to these questions below in recounting some of the arguments that can be made against the agreement.

7. Institutionalized Dialogue and Conceptual Convergence

The GBT agreement also institutionalizes dialogue among parties and collective examinations of problems, thereby promoting conceptual progress and convergence. All social actors---individuals, business, governments, etc.---behave on the basis cognitive constructs, interpretations, and understandings of their interests and the larger environments in which they operate, and these "mental images" help to define what is (in)appropriate and (in)advisable in any given decision situation. As many social scientists now recognize, the development of cognition generally is not something that happens in an atomistic, entirely individualized manner, since most of us do not live in a cave. Instead, it is to a significant degree a collective experience, one that plays out through complex processes of ongoing interaction and communication. The collective development and internalization of shared information and beliefs is an essential underpinning of all international institutions and patterns of world order. Indeed, the very institutionalization of trade in services discourse in the 1980s signaled a major shift in how international telecommunications relationships were collectively understood, and in how policy problems were defined, bargained over, and resolved.

The GBT deal expands and extends this process of conceptual development and convergence. Even if GBT members did not decide to agree on a singular and limiting definition of basic services, their inductive definition via examples went a long way toward promoting convergence and clarifying what sorts of services should be scheduled, and that dialogue will now continue in a structured form over time. Questions of statistical measurement and national accounting of basic services will be continuously addressed in a manner that promotes shared understandings and negotiations. Further, national regulatory schemes and institutional arrangements will be reexamined on an ongoing basis in light of newly shared criteria. This is especially important for developing and newly emerging countries, many of whom will need a great deal of assistance in the years ahead in redefining their internal arrangements to achieve conformity with international standards and notions of best practice.

8. Facilitating Organizational Efficiencies and Strategic Choice for New Entrants

By changing the rules to remove market distortions, the GBT deal will give service providers greater latitude to optimize their organizational structures and strategies and thus enhance their performance and ability to raise capital. Prior to the agreement, the absence of a stable, predictable, and coherent regulatory environment across countries forced companies to undergo contortions if they wanted to participate in various markets. For example, globalization efforts often required finding domestic counterparts with whom to form joint ventures or other kinds of strategic alliances, since full-blown direct foreign investment in public networks and services was limited or precluded. This kind of adjustment is akin

to what has happened historically in goods industries, where tariffs and NTBs forced companies to make local investments in markets they wished to serve.

With the commercial presence concessions of the GBT deal, companies can often choose more freely, on the basis of economic rather than political considerations, what sorts of internal organizational structures, external relationships with suppliers and customers, and service offerings are best suited to their overall strategies. Of course, some countries have preserved equity limitations in their national schedules, but over time these may be bargained away or unilaterally removed in the context of WTO governance. This is, after all, what has happened to tariffs over successive GATT rounds. Once equity limitations and other restrictions are formally specified and on the table, they are subject to pressures to be taken off it. As that process unfolds in the years ahead, the argument goes, private firms and entrepreneurial public PTOs alike will have greater and greater latitude to improve their efficiency and their ability to innovate to the benefit of their customers and the world economy more generally.

9. Consolidating Pro-Liberalization and Free Trade Coalitions in Member Countries

The GBT deal helps to consolidate pro-liberalization and trade coalitions. In the public sector, the institutionalization of trade in services over the past decade has been an important factor in altering national decision-making processes. In the past, telecommunications policy was largely the proprietary preserve of ministries of posts and telecommunications or regulatory bodies like the U.S. Federal Communications Commission (FCC) and the state public utility commissions. Where national carriers were closely aligned with or part of the ministries, government policy unsurprisingly acted to preserve their monopolies or at least slow down competitive entry by alternative providers. Similarly, many observers argue that nominally independent regulatory agencies like the FCC were subject to "capture" or strong influence by the major carriers they were supposed to regulate, although the evidence suggests that this has not been consistently the case over time.

Either way, absorbing telecommunications into the trade policy environment has clearly altered the inter-ministerial or inter-agency mix by making the organizational objectives and intellectual frameworks of trade, industry, and finance ministries or agencies a vital part of decision making. In Europe, it also has strengthened in parallel the position of the Commission relative to national telecommunications ministries. Further, it has often pushed awareness and involvement in telecommunications policy matters out of obscurity and up the political ladder to the desks of top-level elected officials. In consequence, permanent bureaucratic coalitions have been established that have stakes in promoting liberalization to the benefit of the economy as a whole, rather than in protecting the prerogatives of traditional national carriers, and elected leaders have come to see telecommunications as part of their "high-politics" national strategies.

The same sort of coalition building has been happening in the private sector. Pro-liberalization and trade firms that are looking to international markets for their futures have been emboldened to press the case for more openness at home as a price for gaining access abroad. Users, too, have been emboldened to push for freer trade, since this allows them to procure the best services without regard to the nominal nationality of their providers. Like the telecommunications ministries, national carriers whose first preference might otherwise be for protectionism are no longer in a position to unilaterally define problems and push for preferential solutions.

The GBT deal deepens these trends. It does this most directly by requiring, in line with the Reference Paper and the

GATS General Obligations, that carriers and ministries be separated, and that transparent and fair procedures be employed in dealing with foreign firms' pursuit of market access, authorization, and so on. But it does it indirectly as well, by simply strengthening the overall trend of making trade ministries and objectives and pro-trade firms a stronger part of the policy mix. And this is true not just in matters of value-added services and private networks, as before, but now also in the biggest portion of the market---basic telecommunications.

10. Redefining Multilateral Governance

There is a multilateral concomitant to this domestic shift in the balance of influence. That is, the institutionalization of telecommunications as a part of the WTO's ongoing work programs has very significant implications for global governance. Since the late 1980s---and especially since the 1988 World Administrative Telegraph and Telephone Conference---the ITU has moved quite strongly to change its spots. Gone are the days when the Place des Nations complex served as the exclusive clubhouse of national monopolies that designed international agreements to buttress their market power and preclude competition.

Many of the key instruments of the international telecommunications regime---e.g. the accounting and settlements system, the technical standardization process, the regulations on private leased circuits and networks, and so on---have been changed to allow governments and firms to develop competitive market arrangements, so much so that one could argue that the regime has undergone a fundamental transformation over the past decade.^[1] Moreover, many of the ITU's institutional procedures have been adjusted to actively solicit the participation of a wide variety of the private firms in its work and decision-making. The entry of the GATT, and now the WTO, into the global mix---which has been called "the ultimate bypass"---was an important part of this story, because it essentially removed the ITU's 130-year old monopoly on multilateral rule-making, and it forced ITU members to adapt their agreements in anticipation of a contested policy market.

The GBT deal quite obviously deepens these trends. As the Council on Services' work program on telecommunications takes off and the DSB begins to involve itself in any bilateral conflicts, much of the most interesting and important action in multilateral telecommunications policy making will shift down the street from Place des Nations to the WTO's location at Place Albert-Thomas. The ITU will continue to play important roles on many key issues---e.g. technical standardization, frequency spectrum management, technical assistance to developing countries, information dissemination and so on---but the economic aspects of telecommunications will increasingly shift to the WTO. . This is significant because none of the ITU's instruments actively promotes competition and market entry; they simply allow it, if members wish to go this route. Moreover, the growing influence of the could even make it easier for other international institutions, such as the World Intellectual Property Organization or plurilateral bodies like the Group of Seven, the OECD, and the Asia Pacific Economic Cooperation to cut market-enhancing deals.

In sum, then, there are a number of arguments one could make for why the GBT deal is both profoundly significant---a big bang of sorts, albeit a slowly building one---and beneficial for the global telecommunications market and policy environment. But clearly, the ultimate importance of the deal will depend in part on the hard work that lies ahead in the ongoing implementation phase. It will also depend to a significant extent on not just the trade lawyers and policy makers, but on whether or not the private sector is able to take advantage of the market openings it makes possible in order to generate substantially greater international competition and innovation.

But at the same time, there are also grounds upon which one could maintain that there is less to the deal than meets the eye, and in fact that in some respects it has significant shortcomings and flaws. In this view, the deal may be more of a "little bang," or even no bang at all. Let us turn now to these arguments.

III. Potential Problems with the GBT Deal

Politics is the art of the possible. By that standard, the WTO countries deserve a pat on the back for passing the GBT Agreement, after ten years of trying. The agreement is a step in the right direction. But it is quite another matter to declare it, as the credit-grabbing victory bulletins emanating from WTO negotiators did, a revolution, and a breakthrough, a telecommunications D-Day. Much of that view is steeped in the belief that reality in the information sector is shaped by WTO regulation, rather than the other way around.

Of course, the people directly involved in the drafting, lobbying, analyzing, and implementing of the Agreement have contributed a vast effort, and therefore it is natural for them to believe that the object of their attention is a monumental change rather than simply a monumental effort. But the question must be asked: Does the WTO's GBT Agreement make a difference? Certainly much less than claimed. In some areas, it made no difference. In others the Agreement modestly accelerated processes that had started already. And in other cases it will slow down future change. This will be discussed in the next section.

1. The Scope of the Agreement is being Exaggerated

The market access offers, according to the WTO, account for over 90% of telecom revenue worldwide and could account for up to \$1 trillion in gains to global income. According to the US government, the agreement will lead to an 80% reduction in the costs of telephone calls and create up to a million new jobs in the US alone. Similar victory bulletins were issued by other countries, and repeated by an under informed press. But are they correct?

These figures are less remarkable than they seem, since 73.6% of the world telecommunication market is already accounted for by the US, Japan, and the EU. The 69 signatory countries represent just over half of the 130 members of the WTO, and 55% of the world's population. In comparison, 160 countries are now connected to the Internet, and 187 countries are members of the ITU. Some of the largest markets of the future, China, Taiwan, Russia, Egypt, and the Arab world are not included.

Because countries made different offers, the scope of their commitments differ greatly. Additionally some of the signatories attached conditions to their signing, such as delay to the date of implementation, thereby in effect providing a protective cushion for their monopolists. Countries could then cherry-pick and become, for some purposes, telecom havens.

Foreign investment commitments are an example. The agreement on this subject was only gained in the closing hours of the meeting, and was one of the most controversial of all subjects. Only 56 countries, out of 69 WTO member governments, signed the foreign ownership provisions of the agreement. Of these, 21 countries are committed to

implement the agreement at a later date (from 1999 for Peru to 2004 for Pakistan), 18 have limitations on foreign investments (either on incumbents, or on selected services), which leaves only 17 nations that have signed the agreement without a major reservations. Canada maintained its current limit on foreign carrier ownership of 46.7%, including a limit of 20% for direct ownership--in facilities-based suppliers. Japan maintained 20% ownership limits for NTT and KDD. The major European countries have reserved the right to maintain state holdings in their national carriers, including France Telecom, Deutsche Telekom and Telefonica of Spain. In Portugal, only companies established in the country will be able to offer international services.

Of the 55 total market access offers or schedules (covering 69 states including the 15 EU member states), only 42 schedules covered voice telephony over the public telecommunications network, 41 covered local services, 38 covered domestic long distance, 28 covered resale of public voice, and of the offers covering voice 40% are to be phased in over various periods of time.⁶

Under its definition (one-way video to the public), Internet-style video services would be excluded.

Furthermore, certain components that may have some connection to telecommunications now or in the future have been omitted from the agreement. The transmission of audiovisual material, for example, was excluded from the deal, assuaging French concerns about their audiovisual restrictions primarily imposed against the US. As telecommunications and broadcasting converge through digital technologies, the audiovisual exclusions could become a huge loophole. And this is not the end of creation exemptions. Democratic countries will not meekly follow their trade negotiators. The US Congress, for example, is concerned about foreign investment restrictions in Mexico, Canada and Japan. The EU, similarly, faces 15 separate parliamentary approvals (and possibly public referenda) before its offer is finalized. As this process progresses, conditions will be set regarding countries= actual acceptance and implementation.

Satellite service is another area where a separate sub-agreement was signed. 42 countries signed the Satellite sub-agreement, but many of these countries have a later date of implementation. The satellite sector, probably the segment of telecommunications most instantaneously open to international entry, is also the segment where countries chose to delay market access from the WTO's Jan. 1, 1998, deadline. Many exemptions are designed to protect specific industries, e.g. Argentina limits fixed satellite service via geostationary satellites to protect Nahuelsat, and Brazil requires firms to use foreign satellites only when they offer better technical, operational, or commercial conditions.⁷ Of the 52 countries which agreed specifically to include satellite services in their offers, 23 chose to delay access--often until 2000 or later (2013 for Jamaica). Canada, for example, agreed to eliminate Telsat Canada=s exclusive rights on satellite facilities and earth stations serving the North American market only by 2002. Partly in response to the Canadian foreign investment restrictions, the US, at the last minute, took an exemption from providing most-favored-nation (MFN) treatment for Digital Broadcasting, Direct-to-home video services via satellite and Digital Audio Radio Services. These services are defined as telecommunications in the US rather than broadcasting as in other countries. Because broadcasting is not part of the agreement, US providers could be discriminated against in other countries.

Hence, the most likely competitive entry route by international carriers satellite communications -- is being delayed, while other less likely entry routes are being opened, possibly because such entry poses no competitive threat.

2. Liberalization was happening anyway

The new WTO agreement is a recognition that the telecommunications industry is changing. The US, EU, and Japan had already initiated various unilateral and bilateral liberalization initiatives before the WTO, and they would have continued to do so. Nor will the agreement end bilateral disputes.

The US has been liberalizing at home at an accelerating pace, and has been pushing the same agenda internationally. In Europe, the European Commission has been keen to push its members toward liberalization and privatization. Europe had agreed on substantial liberalization for 1998. The WTO agreement strengthens the Commission's hand (e.g., it negotiated for all 15 member countries), but it is not a cause of European liberalization. Japan, has also been pushing liberalization. Participation in the WTO demonstrated continued commitment to economic openness and satisfied domestic pressures for a relaxation of government regulation.

In the developing world, too, liberalization has emerged as a major force. Much of Latin America telecommunications has been privatized already, motivated by central government officials seeking to push their firms and bureaucracies toward economic reform in a critical sector. Developing countries liberalize to attract much needed foreign investment.

Even before the GBT agreement, international opening has created, in a few short years, a truly astonishing number of global telecommunications activities, with no end in sight. Several of the largest carriers have already achieved a significant penetration of international markets. In 1996, BT was present, directly or by way of venture activities, in markets accounting for 80% of multinational corporations, and of 57% of all international voice traffic. Sprint, AT&T, and MCI have similar, but lower, market penetrations. Concert and GlobalOne, two of the main alliances, have an even greater reach. The GBT increases the opportunities marginally, but much of the opening would have continued in any event.

3. The WTO may also slow down liberalization.

In the WTO, all nations have equal voting power. Thus, the United States, a large country dedicated to liberalization, may find itself in the minority. It is likely that the WTO will be dominated by coalitions of countries who can play the international game well, and who take a centrist position. It is also likely that the WTO will be strangely affected by dominant firms. In telecommunications, the history of international agreements, going back to the 19th century, has been one of cartel protection. It would be surprising if the new supranational regulatory arrangements would not similarly be captured by those desiring stability rather than change.

Already, in the actual negotiations leading up to the WTO agreement, large firms sought to influence negotiators and outcomes, to the point that US negotiators were prohibited by their government from having dinner with industry representatives during the negotiations to avoid being lobbied.⁸ Few NGOs or consumer organizations took an active role. In the future, the complexity and proliferation of WTO meetings on the technical aspects of telecom trade disputes will leave only the largest of players able to afford continued participation of these new proceedings.

The multilateral harmonization process reduces the ability of any country to aggressively push liberalization by unilateral action. For example, the FCC had proposed a policy for accounting rates under which foreign carriers could be

prevented from gaining access to the US if the settlement rates paid by US carrier to foreign carriers for the termination of US calls in their country do not meet FCC benchmarks. The imposition and level of these benchmarks would vary depending on the country's level of economic development. Such an FCC policy may not be consistent with the principle of MFN. This is ironic insofar as the intent of the FCC's discrimination is to give more of a financial breathing room to poor countries that depend on the hard currency earning of telephone traffic, and to end the ability of rich countries to hide behind the poor. But such a differentiated approach may be impossible under the WTO agreement.

Given the 10 years of deliberations needed in coming to an agreement, there is little reason to believe that the WTO telecommunications decision making process will be speedy. The WTO, as a bureaucracy of bureaucracies, will be capable of responding to rapid change in the telecommunications industry -- such as callback and Internet telephony -- even less quickly and meaningfully than national regulators. The WTO's Geneva neighbor, the telecommunications ITU, is a case in point. Why should the WTO be different, after an early burst of energy has been dissipated?

4. The Problems of International Harmonization

A fundamental question is: Is harmonization of regulation across international boundaries necessarily a good thing?

Jagdish Bhagwati, one of the world's most respected trade economists, and one of the WTO's own senior advisors, has argued that the effort to harmonize regulations and standards among trading nations is a hopeless and counterproductive. Free trade is most efficient when there are differences among nations that can be exploited by industry seeking to specialize. When nations seek to harmonize their regulatory environments, they remove many of the gains from trade that we would have in a less rigidly ordered world.⁹

In music, where the term harmonization originates, it does not mean sameness, but rather differences that work well together. Government negotiators have now turned the meaning on its head. The stated justifications for uniformity are to facilitate interaction, eliminate negative externalities, prevent free riding, and gain the economies of scale.¹⁰ On the other hand, countries differ in endowments, technologies, preferences, institutions, and coalitions. Why then should they share the same regulatory approach for telecommunications? The WTO and its GBT are just another instance of the permanent struggle between centralism and diversity, between globalism and localism.

Why not differentiate telecommunications policy? After all, telecommunications encroach on domestic politics, touching on sensitive issues such as a nation's control of its communications infrastructure, the funding of social objectives, redistribution and employment policies,¹¹ to use just a few examples. Citizens of one country with different tastes for the trade-off among these issues should not have to accept the tastes of another country just because trade negotiators have agreed that such differences may create barriers to trade.

Resistance is to be expected. Already, the US has begun to undermine the new procedures in its dispute with Europe over the Helms-Burton law dealing with Cuba. The US has argued that the matter affects its national security and is thus exempt from panel adjudication. Similar exemptions could be claimed, in telecommunications, for a variety of reasons e.g. environmental protection, health, etc.

A related issue is the absence of treatment against private monopolies in telecommunications.

Carriers in high-wage, strong-union countries may be at a disadvantage in competing with carriers from employing low-wage, low-unionization firms. The impact of strikes in the telecommunications and services sector can be mitigated by routing the communications to or through different countries. This may undermine the bargaining strength of national labor unions.

The reason for the shift to the WTO is not one simply of economics and globalism. One must recognize that the choice of regulatory arrangements and institutions is not merely procedural, but policy determinative. The allocation of regulatory power has an impact on the policy outcomes themselves.

The determination of the regulatory level is in itself a decision about the strictness of regulation that will prevail. Interest groups pragmatically desire the regulatory level whose outcome they like best, regardless of their official ideology. In this case, various PTOs with international ambitions and large users perceived that they would get better results by going to Geneva, to force a few slow countries to speed up liberalization. They may be correct in the short term. But in the long term, they have signed on to a system without due process and with secretive and politicized proceedings.

5. The WTO Process will be slow

It is claimed that the new process, by setting a variety for disputes of timelines, will speed up liberalization. Is that true? Even the agreed-upon time schedule applies only to the WTO segment of a dispute. But there may be lengthy procedures in advance in each of the major countries.

The WTO is an organization of governments, not a civil court. Unlike bringing their grievance to a national court, Companies must rely on their governments to put forward their case in what is essentially an intergovernmental procedure. The firm must convince their national governments to back its claim and then present it to the other governments, the arbitration panel, etc.

This means that 1) the government will have to conduct its own investigation into the complaint; and 2) it will next have to make sure that its support of firm A will not negatively impact the trade position or well being of another national firm B; 3) it may even need to make a ruling on whether the firm is in fact a national firm or a foreign country; 4) it will have to decide whether the case is worth spending national resources on a protracted WTO battle.

In the US the government has made it already clear that it will not take all complaints to the panel but only especially grievous incidents against a single signatory to the overall GATT agreement (not necessarily in the telecommunications sector).

All of this means that the dispute resolution process may require a long road to justice for those firms with legitimate complaints. The complexity, uncertainty, and expense of this procedure will serve as a disincentive to use the new

procedure.

6. Remedies may be insufficient

A major problem with placing supranational regulatory authority in the hands of the WTO is that it is an organization concerned with trade rather than telecommunications. No sector receives ultimate priority over another. As a result, negotiating bottlenecks are resolved by linking issues. Concessions on one sector are often traded off against concessions in another. Thus a restriction on telecommunications may be traded for a restriction over toothpaste.

7. Jurisdictional Disputes

The WTO Agreement moves much of the focus on international cooperation in telecommunications away from the ITU to the WTO. It is true that the ITU, a more logical body for telecommunications regulation, has been captured by the PTTs since its birth. But, as discussed, there is no reason to believe that the same would not happen to the WTO. It is argued that the WTO is less specialized than the ITU, and hence less susceptible to pressure. But in reality, the WTO is just as specialized, only along a different dimension. Trade is important, but surely it is not the only value in a society.

In practical terms, the WTO agreement does not spell out the ways in which the ITU could aid in its implementation. As a result, the ITU activities related to the agreement are likely to emerge in an ad hoc fashion. Due to the jurisdictional overlap old agency disputes are likely to flare in Geneva. Forum shopping will be encouraged, and players will try to play off the agencies against each other.

On the positive side, such confrontation may spur the ITU to consider more controversial issues, and accelerate its torpid pace.

Conclusion

Telecommunications regulation has evolved from a primarily domestic concern to one of international significance. As liberalization of the telecommunications sector spreads to many countries, it is transforming the international system of telecommunications.

Liberalization has led to the emergence of global telecommunications network alliances and carriers, to new types of service providers, and to an end of the traditional notion of telecommunications as a national and territorial sector.

The benefits of any new international collaborative arrangements in dealing with the new environment must be weighed against their cost in transaction costs, and in particular against their impact in reducing policy innovation by various countries. In many cases, the best coordination mechanism would be through market forces and arbitrage rather than through inter-governmental collaboration. This would suggest liberalization and a reduction in deregulatory asymmetry rather than the creation of regulatory symmetry.

However, market forces by themselves do not deal with all policy problems, such as redistributive goals, negative

externalities, law enforcement, and the transition to a competitive system that may require interconnection arrangements. But these are primarily national issues, calling for differentiated national responses.

The absence of formal coordination among countries does not mean that countries do not adjust their policies to each other. Thus, one need not to create elaborate mechanisms of policy coordination. The history of these mechanisms is one of retarding change by an emphasis on consensus, stability, and harmonization. Those are values appropriate to government utilities, not to a high technology sector undergoing revolutionary changes. If anything, telecommunication has historically been cursed with an excess of policy collaboration, and with a compulsion to protect against many hypothetical problems well in advance. Today's priorities are not the solving of every problem, but the creation of opportunities for the new information age. Where problems emerge, they can be dealt with at the time.

It might be different tomorrow. But today, the world of telecommunications needs more policy experimentation and less harmonization.

Appendix

Beginning with the type of services offered, for voice telephony, forty-seven of the schedules (covering sixty one governments) commit to competitive supply by two or more providers. Generally these allow the supply of public voice services, either immediately or on a phased in basis, in at least one market segment. Breaking this down further, forty-one schedules (fifty five governments) made commitments on local service, thirty-eight schedules (fifty two governments) made commitments on domestic long-distance, and forty-two schedules (fifty six governments) made commitments on international service. Resale of public voice services is included in twenty-eight schedules (forty two governments), or more than seventy percent of the fifty-nine governments permitting some competition in telephony. Two governments committed to open voice competition in all market segments only over closed user group networks. It should also be noted that twenty-five of the sixty-one governments scheduling telephony services will have their commitments phased in.

For non-voice services, forty nine schedules (covering sixty three governments) included commitments on data transmission; forty one schedules (fifty five governments) allow competition in the supply of leased circuit capacity; forty six schedules (sixty governments) allow market access for cellular mobile services; forty five schedules (fifty nine governments) include commitments on other types of mobile services like personal communications services, mobile data, or paging; thirty seven schedules (fifty one governments) committed on some or all kinds of mobile satellite services or transport capacity; thirty six schedules (fifty governments) make commitments on fixed satellite services or transport capacity; and eight governments scheduled some additional commitments on value-added services like electronic mail, on-line data processing, and data base retrieval.

Turning next to the type of commitments made, twenty-nine governments---two thirds of them from industrialized countries---guaranteed market access for international telecommunications services and facilities. Another twenty-three governments, primarily from the developing and newly emerging countries---will have such commitments phased in between the years 1999 and 2013. Six additional countries are open for only selected international services, while twelve have limited or no market access commitments in this area.

More specifically, regarding market access via commercial presence, twenty-seven countries (including almost all of the industrialized world) permit foreign ownership or control of all telecommunications services and facilities. Exceptions here include Australia (Vodafone and Telestra), Belize (the state-owned company), Chile (local service), France (France Telecom), Italy (Stet), Japan (KDD and NTT), New Zealand (49.9% limit in Telecom NZ for any one foreign firm), and Spain (Telefonica). Ten countries permit more limited foreign ownership or control of certain networks and services, while twelve countries allow only minority equity stakes.

While it would be beyond our purpose here to review all of the fifty-five schedules in detail, some broad patterns should be mentioned. In general, most of the industrialized countries of the Organization for Economic Cooperation and Development (OECD) region have committed to provide market access via the relevant modes of supply for all basic services and market segments (local, long-distance, and international). The most common exceptions involve limits on equity ownership (especially in traditional national carriers) that have been retained by some European countries, as well as Canada, Japan and Korea; and phased-in liberalization schedules for countries like Spain, Portugal, and Greece, and Korea. In many cases these countries were already well on their way toward opening markets, although a number of the Specific Commitments exceed previously announced initiatives and lock them into international law. In other cases, most notably Korea, the agreement took the government fairly far beyond what was previously announced.

Arguably, the most notable steps beyond extant domestic liberalization programs involve the countries outside the OECD region. With regard to the so-called "newly industrializing countries," Chile and Mexico went the furthest by committing to full competition, save local telephony in the former case and some equity limits in the latter. Others like Brazil, India, Indonesia, Malaysia, South Africa, Thailand and Turkey made more carefully circumscribed offers that opened certain market segments while reserving some or all of voice telephony for companies that have been granted exclusive rights. In many such cases, promises were made to review the situation after the year 2000 and the passage of new national laws.

The emerging markets of Eastern Europe like Bulgaria, Hungary, Poland, the Czech and Slovak Republics, and Romania also undertook notable but delimited commitments and promised to open themselves to further (sometimes complete) liberalization between 2000 and 2004. And some of the biggest surprises came from the lower-income developing countries. El Salvador clearly went further than the rest by offering full competition immediately. Most of the others offered the usual liberalization of specific markets with full or nearly full competition to be phased in later, e.g. Bolivia in 2001, Cote d'Ivoire in 2007, Grenada in 2006, Jamaica in 2013, Mauritius in 2004, Morocco in 2001, Peru in 1999, Trinidad and Tobago in 2010, and Venezuela in 2000. Given this pattern, one of the big strategic questions for potential competitors is whether it is worthwhile to gain a toehold now by entering those markets that have been opened (even if they are not immensely profitable at the moment) in order to have an established local presence when the rest are liberalized.

Range of Services to be Liberalized and Retention of Foreign Ownership Restrictions

Range of Services	Foreign ownership restrictions?	
	Yes	No
Opened		

All	Canada	Argentina	Iceland
	Colombia	Australia	Ireland
	France	Austria	Italy
	Japan	Belgium	Luxembourg
	Korea	Chile	Netherlands
	Mexico	Denmark	Norway
	New Zealand	Finland	Spain
	Portugal	Germany	Sweden
	USA	Greece	Switzerland
		Hong Kong	UK

Limited	Belize	Bolivia	Guatemala
	Brazil	Bulgaria	Jamaica
	Hungary	Czech Rep	Peru
	Indonesia	Dominica	Romania
	Philippines	Dominican Republic	Trinidad & Tobago
	Poland	Ecuador	Turkey
	Singapore	El Salvador	Venezuela
	Slovak Rep.	Grenada	
	South Africa		

Very Restricted	Antigua & Barbuda	Bangladesh	Papua New Guinea
	Ghana	Brunei	Senegal
	India	Cote d'Ivoire	Sri Lanka
	Israel	Mauritius	Thailand
	Malaysia	Pakistan	
	Morocco		
	Tunisia		

Source: Analysis, AWTO Agreement on Basic Telecommunications Services,
<http://www.analysis.co.uk/products/regulat/wto/default.htm>

Negotiating History of Agreement on Basic Telecommunications Services

Source: Analysis, AWTO Agreement on Basic Telecommunications Services,
<http://www.analysis.co.uk/products/regulat/wto/default.htm>

World Trade Organization (WTO) Basic Telecommunications

Services Agreement List of Implementation Dates

source: United States Trade Representative, <http://www.ustr.gov/agreements/telecom/agreements.html>

Foreign Investment

Commitments for implementation by 1/1/98 unless otherwise specified

56 countries permit foreign ownership or control of all telecommunications services and facilities (covering 97% of WTO member countries' total basic telecom services revenues)

Antigua and Barbuda (after 2004)

Argentina (2000)

Australia*

Austria

Bangladesh (after 2004)

Belgium*

Bolivia (2001)

Brazil**

Brunei (after 2004)

Bulgaria (2004)

Canada**

Chile (except local service)

Colombia

Cote D'Ivoire (after 2004)

Czech Republic (2001)

Denmark

Dominican Republic

Ecuador**

El Salvador

Finland

France*

Germany

Ghana**

Greece (2003)

Grenada (after 2004)

Guatemala

Hong Kong**

Hungary (2002)

Iceland

Ireland (2000)

Israel**

Italy*

Jamaica (after 2004)

Japan*

Korea**

Luxembourg
Mauritius (2004)
Mexico**
Netherlands
New Zealand*
Norway
Papua New Guinea (2002)
Pakistan (2004)
Peru (1999)
Poland**
Romania (2003)
Singapore (2000)
Slovak Republic (2003)
Spain*

Sweden
Switzerland
Trinidad and Tobago
Tunisia**
United Kingdom
United States
Venezuela (2000)

* These countries have limits only for certain incumbents, but nonetheless allow substantial foreign investment in them

**For selected services only

Regulatory Principles

65 countries guarantee pro-competitive regulatory principles (covering 94% WTO member countries' total basic telecom services revenues):

Antigua and Barbuda
Bangladesh*
Bolivia**
Brazil*
Argentina
Australia
Austria
Belgium
Brunei
Bulgaria
Canada
Chile

Colombia
Cote d'Ivoire
Czech Republic
Denmark
Dominican Republic
El Salvador
Finland
France
Ghana
Germany
Greece
Grenada
Guatemala
Hong Kong
Hungary
Iceland
India**
Indonesia
Ireland
Israel
Italy

Jamaica
Japan
Korea
Luxembourg
Malaysia**
Mauritius*
Mexico
Morocco*
Netherlands
New Zealand
Norway
Papua New Guinea
Pakistan**
Peru
Philippines**
Poland
Portugal
Romania
Senegal
Singapore

Slovak Republic
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Trinidad and Tobago
Turkey*
United Kingdom
United States
Venezuela*

* in the future

** partial adoption

International Services and Facilities

Commitments for implementation by 1/1/98 unless otherwise specified

53 countries guarantee market access to international telecommunication services and facilities (covering 99% of WTO member countries' total basic telecom services revenues)

Antigua and Barbuda (2012)
Argentina (2000)
Australia
Austria
Belgium
Bolivia (2001)
Brunei (2010)
Bulgaria (2005)
Canada
Chile
Czech Republic (2001)
Denmark
Dominican Republic
El Salvador

Finland
France
Germany
Greece (2003)
Grenada (2006)
Guatemala
Hungary (2004)
Iceland
Indonesia (2005)
Ireland (2000)
Italy
Jamaica (2013)
Japan
Korea
Luxembourg
Malaysia
Mauritius (2004)

Mexico
Netherlands
New Zealand
Norway
Papua New Guinea
Peru (1999)
Philippines
Poland (2003)
Portugal (2000)
Romania (2003)
Senegal (2006)
Singapore (2000)
Slovak Republic (2003)
Spain (12/1/98)
Sweden
Switzerland
Thailand (2006)
Trinidad and Tobago
Turkey (2006)
United Kingdom
United States
Venezuela (2000)

6 countries are open for selected services

Brazil
Cote d'Ivoire
Hong Kong
Israel
Pakistan
Ghana

Satellite Services and Facilities

Commitments for implementation by 1/1/98 unless otherwise specified

(covering 80% of WTO member countries' total satellite services revenues)

42 countries guarantee market access for services and facilities (domestic and international)

Argentina (2000)
Australia
Austria
Belgium
Bolivia (2001)
Brunei (2010)
Bulgaria (2004)
Canada (2000)
Chile
Colombia
Czech Republic (2001)
Denmark
Dominican Republic
El Salvador
Finland
France
Germany
Greece (2003)
Grenada (2006)
Guatemala
Hungary (2003)

Iceland
Indonesia (2005)
Ireland (2000)
Israel
Italy
Jamaica (2004 or after)
Japan
Korea
Luxembourg
Malaysia

Mexico (2002)
Netherlands
New Zealand
Norway
Peru (1999)
Poland (2003)
Portugal (2000)
Romania (2003)
Singapore (2000)
Slovak Republic (2003)
Senegal (2004 or after)
Spain (12/1/98)
Sri Lanka
Sweden
Switzerland
Thailand (2006)
Trinidad and Tobago
Turkey (2004 or after)
United Kingdom
United States
Venezuela.

6 countries guarantee market access for selected services and facilities

Brazil
Cote D'Ivoire
Ghana
Hong Kong
Mauritius
South Africa.

WTO IT equipment market coverage

Market Share of participating economies

Source: ITU World Telecommunications Indicators Database, WTO.

Country Offers

1. Canada maintained its current limit on foreign carrier ownership of 46.7% including a limit of 20% direct ownership--in facilities-based suppliers. Though Canada agreed to remove restrictions on foreign ownership of Montreal-based Teleglobe Canada Inc., the overseas telecommunications carrier for Canada will keep its monopoly on overseas telecoms traffic via cable and satellite until 1 October 1998. This is a year later than Teleglobe itself originally proposed when it began negotiations with the Canadian government in 1995.

2. The United States, partly in response to the Canadian foreign investment restrictions, took an exemption from providing most-favored-nation (MFN) treatment on one-way Digital Broadcasting, Direct-to-home (DTH) video services via satellite and Digital Audio Radio Services (DARS). The reasoning was that these services are defined as telecommunications in the US not broadcasting as in other countries, where US providers could be discriminated against. This exemption means the US will thus retain the right to control which companies may broadcast from satellites into the US and will be able to discriminate against any nation in these area on a case by case basis. The underlying reason for this last minute move seems to have been US frustration with the Canadian foreign ownership and broadcast content restrictions since this exemption is likely to specifically target the Teleglobe's satellite services.

8 other signatories, all developing countries, took MFN exemptions in various areas (these include Antigua & Barbuda, Argentina, Bangladesh, Brazil, India, Pakistan, Sri Lanka and Turkey).

3. Japan refused to remove 20% foreign ownership restrictions NTT and KDD. (Indeed current foreign ownership in NTT is only 4%, despite the 20% limit)

Japan agreed to allow licensed competition in telecom services by agreeing to lift the 33% limit for all other carriers. This means foreign operators will be able, for the first time, to own and operate networks in Japan.

4. Korea - foreign investment participation in Korea's facilities-based services will be phased in from a level of 33%, as of 1 January 1998, increasing up to 49% by 2001. Voice resale will be open to 49% foreign investment participation in 1999, increasing to 100% in 2001. Korea Telecom will be open to 20% foreign investment in 1998, eventually reaching 33% in 2001.

Korea will also open its wire-based services for full competition. All resale services, with the exception of voice transmission, will open 1 January 1998. Voice resale won't be allowed until 31 December 2000. Korea is ranked seventh for total telecom revenues, with 1.45% of the global market. The country runs a \$404.1 million telecom equipment trade surplus, the 10th largest in the world. It also ranks fourth for telecoms investment, attracting 2.3% of the world total; and fourth for main telephone lines, with 2.7%.] South Korea came up with up with a last-minute offer to allow foreign investment of up to 33 per cent in its telecommunications carriers from 1998 and up to 49% from 2001 (although the corresponding figures for national carrier Korea Telecom will be 20% and 33%, respectively).

5. The European Union, accounting for 28.3% of the world telecom market, committed to complete liberalization of the basic telecom services, including satellite networks and services and all mobile and personal communications services and systems. Liberalization will begin from January 1998 where it is not already in progress. Five of the less-developed EU member states will be allowed to retain their EC-granted derogations from the EU liberalization deadline of January 1998. Although the EC has yet to make formal agreements with most of these countries, it has reached political agreement for Spain to have a December 1998 liberalization date and for both Ireland and Portugal to have dates of January 2000. Greece has a 2003 liberalization date and Luxembourg are apparently still negotiating about when their markets should open.

Ireland will allow international interconnection of mobile networks only from 1999. Some restrictions remain, including 20% foreign equity limit on radio-based services in France, 25% limit on services in Portugal.

The EU accounted for 28% of global telecom revenue in 1995; the US had 29.64% of global telecom revenues in 1995. The EU ranks first for main telephone lines, with 27% of the total world main lines compared to 23.8% for the US. The EU also accounted for 26% of global telecom investment in 1995, compared with 15.2% for the US.

6. Brazil will cap foreign investment on its cellular market at 49% but only until 20 July 1999. Brazil will also require that users choose Brazilian satellites whenever their technical, operational and commercial conditions "are equivalent" to other countries' facilities. Like the US, Brazil took an exemption related to radio or television programming directly received by consumers.

As of 1 January 1998, Brazil has committed to open only its value-added, cellular mobile, paging and closed user group services. Cellular services are to operate on a duopoly basis; local telephone companies may act as one of these suppliers.

7. Mexico failed to change its rule of permitting a maximum of 49-per-cent foreign ownership of its carriers.

8. Argentina withdraws geostationary satellite services from its offer, thereby protecting its domestic, operator Nahuelsat SA.

Several Asian countries have opted for quite substantial delays in opening up all or some of their telecommunications services: Singapore (not until the start of 2000), Indonesia (2005), Thailand (2006) and Brunei (2010).

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eful to Marc Austin, John E. Kollar, Jennifer Schneider and Gene Fang.

¹ See, World Trade Organization, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (Geneva: WTO, 1994).

² On the evolution of trade in services thinking and its impact on the GATS negotiations, see, William J. Drake and Kalypso Nicolaïdis, "Ideas, Interests and Institutionalization: 'Trade in Services' and the Uruguay Round," in Peter Haas, ed., *Knowledge, Power and International Policy Coordination*, a special issue of *International Organization* 45 (Winter 1992): 37-100. This volume has been reprinted as Haas, ed., *Knowledge, Power and International Policy Coordination* (Columbia: University of South Carolina Press, 1997).

³ These figures are from, International Telecommunications Union, *1996/97 World Telecommunication Development Report: Trade in Telecommunications* (Geneva: ITU, 1997).

⁴ World Trade Organization, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, 1994, p. 342.

⁵ World Trade Organization, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, 1994, pp. 359-363. For an analysis of the application of the Telecommunications Annex, see, Lee Tuthill, "Users' Rights? The Multilateral Rules on Access to Telecommunications," *Telecommunications Policy* 20 (March, 1996): 89-99. On the implications of the General Obligations and the Telecommunications Annex for trade in telecommunications and other network-deliverable services, see, G. Russell Pipe, *Trade of Telecommunications Services: Implications of a GATT Uruguay Round Agreement for ITU and Member States* (Geneva: International Telecommunication Union, May, 1993); *Trade Agreements on Telecommunications: Regulatory Implications--- Briefing Report No. 5 of the International Telecommunication Union Regulatory Colloquium* (Geneva: ITU, March 1996); and Kalypso Nicolaïdis, "International Trade in Information-Based Services: The Uruguay Round and Beyond," in William J. Drake, ed., *The New Information Infrastructure: Strategies for U.S. Policy* (New York: The Twentieth Century Fund Press, 1995): 269-302.

⁶ "Data on Telecommunications Market Covered by the WTO Negotiations on Basic Telecommunications," Informal Background Information, WTO, 17 February [not an official document of the WTO]

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[1] For discussions of these developments, see, William J. Drake, "Asymmetric Deregulation and the Transformation of the International Telecommunications Regime," in Eli M. Noam and Gerard Pogorel, eds., *Asymmetric Deregulation: The Dynamics of Telecommunications Policies in Europe and the United States* (Norwood: Ablex, 1994): 137-203; William J. Drake, "The Transformation of International Telecommunications Standardization: European and Global Dimensions," in Charles Steinfield, Johannes Bauer and Laurence Caby, eds., *Telecommunications in Transition: Policies, Services, and Technologies in the European Economic Community*

(Newbury Park: Sage, 1994): 71-96; William J. Drake, "WATTC-88: Restructuring the International Telecommunication Regulations," *Telecommunications Policy* 12 (September 1988): 217-233; and Anthony M. Rutkowski, "Multilateral Cooperation in Telecommunications: Implications of the Great Transformation," in, William J. Drake, ed., *The New Information Infrastructure: Strategies for U.S. Policy* (New York: The Twentieth Century Fund Press, 1995): 223-250.