

Chun Hung Lin¹:

Conceptual Appraisal of Trade in Service on Telecommunications under WTO Legal System

I. Introduction

For promoting global economic growth and integration, the WTO was established since 1995 and trade topic including goods, services, intellectual property, development, investment, etc. was discussed and negotiated through this strong and prosperous international trading system. Meanwhile, the services sector is the largest and fastest growing sector in the world economy and generally accounts for more than 50 percent of global GDP.² According to the World Bank, services account for between 60 percent and 70 percent of production and employment in developed countries and roughly 50 percent of production and employment in developing and least developed countries.³ In developing countries, the service sector accounts for the largest share of total economic output.⁴ Provided that service market is playing a more and more important role, negotiations on trade in services was begun long ago from the Uruguay Round in 1994. The General Agreement on Trade in Services (GATS) is the first set of multilateral rules governing international trade in services. Trade negotiations and agreement in service were developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution. The GATS basically covers most internationally traded services and telecommunications service is one of them. The GATS mandates WTO member governments to progressively liberalize trade in services through successive rounds of negotiations. Considering the importance of service market as well as developing countries issues, the modest progress made at the ministerial

¹ Chun Hung Lin is Associate Professor of Law, Feng Chia University Graduate Institute of Financial and Economic Law, Taichung Taiwan; LL.M., SJD, Golden Gate University, San Francisco USA; LL.B. National Chengchi University, Taipei Taiwan; Member of Arizona Bar (USA).

² It accounts for only 20 percent of total world trade -- a reflection of the potential growth that could be unleashed by significant services liberalization in the Doha round. Between 1980 and 2004, world cross-border services trade grew from \$363 billion to \$1.8 trillion.

³ From India to Brazil, the share of services in world trade and investment has been increasing and has been among the fastest-growing components of world trade over the past 15 years. Trade in services, as estimated from balance of payments statistics, was greater than \$ 1.3 trillion in 1999, representing over one-fifth of world trade in goods and services. See World Bank, "Trade in Services in the World Economy," at <http://web.worldbank.org/> (January 6, 2006). Also see Marc A. Miles, Kim R. Holmes, and Mary Anastasia O'Grady, 2006 Index of Economic Freedom (Washington, D.C.: The Heritage Foundation and Dow Jones & Company, Inc., 2006)

⁴ According to data published by the World Bank, the service sector accounted for 54 percent of middle-income economies' total GDP in 2000, and 44 percent of GDP for low-income countries. World Bank data also indicate that service sector GDP is the fastest-growing component of total GDP in both low- and middle-income economies. Moreover, service sector GDP in such economies is growing faster than the world average.

meeting of Doha Round of negotiations, with the so-called Doha Development Agenda, however, is disappointing. After WTO members failed to reach agreement both at the Fifth Ministerial meeting at Cancun, Mexico in 2003 and the Sixth Ministerial Conference at Hong Kong in 2005, the significant uncertainty seems envired around future negotiations. Also the very viability of the WTO for negotiating trade liberalization was in question.⁵

In 1994, 125 countries participated in the Uruguay Round of Multilateral Trade Negotiations and signed the Final Act under the structure of GATT in Marrakesh. This Round created a new trading system, the World Trade Organization (WTO), to replace the former GATT. The new WTO comprises a Ministerial Conference, a General Council, a Dispute Settlement Body and three subsidiary Councils on services, goods and intellectual property rights to deal with issues concerning global trade cooperation and negotiations. Meanwhile, in developing the General Agreement on Trade in Services (GATS), the Uruguay Round continued to address it as one kind of a framework agreement for trade in services. GATS contains the traditional GATT provisions, but clearly adapts some concepts for future negotiations.⁶ GATS operates on three parts. At first, the main text contains general principles and obligations. Secondly, the annexes deal with rules for specific sectors. Thirdly, the individual countries' specific commitments and lists show where countries are exempted from the principle of non-discrimination and how to access their markets. The GATS annexes temporarily comprise several activities including movement of natural persons, financial services, telecommunications, air transport services, and maritime services, among others.

II. GATS Annex on Telecommunications

1. Historic Background

Because telecommunications service posed one of the most important trade negotiations in service under WTO, it is necessary to further examine and review the issue of trade and telecommunications service. And since 1986, commitments in telecommunications services were first made during the Uruguay Round, mostly in value-added services. In extended negotiations from 1994 to 1997, Members negotiated on basic telecommunications services. Since then, new commitments have been made either by new Members, upon accession, or in a unilateral fashion by an existing Member. After the Uruguay Round, the Marrakesh Ministerial Meeting adopted decisions concerning services that included negotiations on trade in basic telecommunications. With the participation of thirty-three WTO Members, the negotiations began under a working group called the "Negotiating Group on Basic Telecommunications" (NGBT) in May 1994. The NGBT adopted the policy of voluntary participation and fifty-three WTO Member governments

⁵ World Trade Organization, "Doha Work Programme: Draft Ministerial Declaration," See WT/MIN(05)/W/3/rev.2, December 2005. Office of the U.S. Trade Representative, "Update from Hong Kong: Duty-Free Quota Free," Fact Sheet, December 18, 2005, at www.ustr.gov/Document_Library/Fact_Sheets/2005 (January 5, 2006).

⁶ John H. Jackson: *The World Trading System, Law and Policy of International Economic Relations*; The MIT Press, Cambridge, Mass. & London, England, 2nd Ed., p 307.

had decided to participate fully in the Group. The negotiations in the NGBT are open to all member governments and the proceedings are reported periodically.⁷ In addition, one group called the GBT (Group on Basic Telecommunications) was set up in April 1997 and is responsible for implementing the further extension of negotiations. This Group was to modify the rules on participation in meetings so that all WTO members and observers could have a full voice in those activities.

Additionally, participant countries met monthly and held numerous bilateral negotiations on market access offers. Participants also maintained informal contacts at the 1996 Singapore Ministerial Meeting and the 1997 Geneva meeting.⁸ Afterwards, the WTO negotiations on market access for basic telecommunications resulted in 34 offers and covered 48 governments in April 1996. From 1994 to 1997, with the three-year negotiations, the commitments of 69 governments contained in 55 schedules were annexed to the Fourth Protocol of the General Agreement on Trade in Services in February 1997.⁹ At the end of 1997, governmental meetings were held and had accepted the Fourth Protocol. However, they were unable to reach a consensus, because 20 participants had not yet deposited their acceptance pending the completion of domestic ratification processes.¹⁰ At the beginning of 1998, with 12 parties not submitting acceptances, a decision to implement the Protocol in early February was arrived at and the results of the WTO negotiations on market access for basic telecommunications services formally entered into force.¹¹ The major industrialized countries and over 40 developing countries including the Central and Eastern European economies all participated. The markets of the participants accounted for more than 91 percent of global telecommunications revenues. It is believed that because of special characters of telecommunications and the telecommunication developmental gaps between industrialized and developing countries, a more detailed multilateral agreement and structure on telecommunication under WTO will take a longer way to achieve. From the beginning of 2000, telecommunications, like all services, are included in the new process of negotiations requested by GATS Article XIX.¹² Because written into the GATS is a commitment by WTO members to progressively liberalize trade in services, several countries and regional blocs have submitted negotiating proposals in telecommunications services.

⁷ See <http://www.wto.org/wto/services/19-bastl.htm>

⁸ See <http://www.wto.org/wto/services/tel01.htm>

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ On that date, a few of the participants had not yet ratified and deposited their acceptance of the Protocol. The commitments of each such government will formally enter into force 30 days from the date of its acceptance.

¹² GATS Art. 19 Paragraph 1 stated that "In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations."

2. Legal Structure of GATS Annex on Telecommunications

GATS contains several annexes including air transport, financial services, movement of natural persons, and telecommunications. There are two annexes under the GATS; one is Annex on Basic telecommunications and the other is Annex on Negotiations on Basic Telecommunications. The GATS Annex on Telecommunications provides specific rights to services and services suppliers with respect to access to, and use of, the public telecommunications transport networks and services. However, the Annex does not cover the provisions of telecommunications by a foreign supplier. It addresses access to telecommunications by services users who have rights under the Agreement.¹³ The Annex requires each Member to ensure that all service suppliers seeking to take advantage of scheduled commitments are accorded access to and use of public basic telecommunications, both networks and services, on a reasonable and non-discriminatory basis.¹⁴

The Annex is composed of seven paragraphs. The objectives of the Annex are “to recognize its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities” and “to elaborate upon the provisions of the Agreement with respect to access to and use of public telecommunications transport networks and services.”¹⁵ The Annex applies to all participants’ measures concerning access to and use of public telecommunications transport networks and services and covers government measures relating to all providers of public basic telecommunications services including public and private owned operators.¹⁶ This Annex does not apply to measures affecting the cable or broadcast distribution of radio or television programming. It requires the participant to authorize service suppliers of any other participants to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or not offered to the public generally.¹⁷ The Annex also applies to telecommunications within countries or across borders between and among defined network termination points. Different from other GATS Annexes, the Annex on Telecommunication emphasizes access and use rather than supply or provision aspects.¹⁸

¹³ Terence P. Stewart: “The World Trade Organization: The Multilateral Trade Framework for the 21st Century and US Implementing Legislation;” American Bar Association Section of International Law and Practice, p 544, 1996.

¹⁴ See <http://www.wto.org/wto/services/tel07.htm>

¹⁵ See GATS Annex on Telecommunications Paragraph 1.

¹⁶ This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

¹⁷ See GATS Annex on Telecommunications Paragraph 2.

¹⁸ G Russell Pipe (1994) Uruguay Round Trade Agreement Provisions Affecting Telecommunications; Strategic Planning Unit - International Telecommunication Union, Geneva; P 11.

3. Telecommunications sector and its definition

The telecommunications sector plays a dual role in economic activities, not only itself a distinct circle in economic system but also a supplying means for other sectors. The telecommunications sector includes both service and equipment and relates to several WTO agreements. On the equipment side, the GATT schedules of tariff concessions and developments in the Agreement on Technical Barriers to Trade (Standards) are both important.¹⁹ Developments that address both telecommunication goods and services are the expanded coverage of the Government Procurement Code and the new rules on trade related aspects of intellectual property rights. Additionally, GATS puts trade in telecommunications services, both basic and value-added, within the ambit of the new multilateral trading system. These agreements have far-reaching implications for the telecommunications sector.

Participant countries also agreed to set aside national differences in basic telecommunications definition and negotiated in both public and private telecommunications services involving transmissions of customer supplied information. Participants agreed that basic telecommunications services provided over network infrastructure as well as those provided through resale would both fall within the scope of commitments.²⁰ As a result, market access commitments will cover cross-border telecommunications supply and services provided through the establishment of foreign firms, or commercial presence. Under the Annex, “telecommunications” means the transmission and reception of signals by any electromagnetic means. “Public telecommunications transport service” means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. “Public telecommunications transport network” means the public telecommunications infrastructure that permits telecommunications between and among defined network termination points.²¹ Due to the differences of definition in each country, some members hoped to limit certain coverage on telecommunications but some wanted to expand telecommunication categories. Thus, an open and flexible schedule was achieved to fit those requirements and series of mutual agreements replaced a more detailed multilateral one in Annex and commitments.

In addition, under GATS Annex on Basic telecommunications, there are two kinds of telecommunications services defined. One is basic telecommunications which was indicated all telecommunication services, both public and private that involve end-to-end transmission of customer supplier information. Basic telecommunication services are provided through cross-border supply, and through the establishment of foreign firms or commercial presence, including the ability own and operate independent telecom network infrastructure. Examples of basic

¹⁹ See <http://www.wto.org/wto/services/tel104.htm>

²⁰ Ibid.

²¹ See GATS Annex on Telecommunications Paragraph 3.

telecommunication services includes (a) Voice telephone services, (b) Packet-switched data transmission services, (c) Circuit-switched data transmission services, (d) Telex services, (e) Telegraph services, (f) Facsimile services, (g) Private leased circuit services, etc. Categories covered by basic telecommunication commitments are local & long distance, international, wire-based²², radio-based²³, on a resale basis (non-facilities based supply), and facilities-based supply, etc. Value-added telecommunication services are telecommunications for which suppliers “add value” to the customer's information by enhancing its form or content or by providing for its storage and retrieval. Examples are on-line data processing, on-line data base storage and retrieval, electronic data interchange, email, voice mail, and so on. For those participants, there are voice telephony, data transmission, telex, telegraph, facsimile, private leased circuit services, fixed and mobile satellite systems and services, cellular telephony, mobile data services, paging, and personal communications systems to be chosen for negotiations.²⁴ A few participants even chose to extend their offers to value-added services and telecommunications for which suppliers “add value” to the customer's information. At the end of the Uruguay Round, value-added services were included in 50 governments' commitments as a result under the WTO Multilateral Trade Negotiations.²⁵

III. General Obligations and Disciplines for Telecommunications

1. Non-discriminatory Basis

Certain important obligations and disciplines of GATT also apply to GATS and its annexes. Among those rules, “non-discrimination” is the most basic one in trade agreements. Under GATT and GATS, the term “non-discriminatory” is understood to refer to “Most-Favoured-Nation” (MFN) and “National Treatment” (NT). Under GATS, MFN is defined to say that “each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.”²⁶ MFN prohibits WTO Members from discriminating among themselves, or treating other members less favorably than any other member. Although, it still permits individual members a one-off chance to exempt certain measures from the MFN obligation.²⁷ On the other hand, National treatment requires that each member “shall accord to services and service suppliers of any other member... treatment no less favourable than that it accords to its own like service and service supplies.”²⁸

Based on the non-discriminatory rule, each Member shall ensure that any service supplier of any other member is accorded access to and use of public telecommunications transport networks

²² Wire-base service is including, e.g. all types of cables and, usually, radio portions of fixed infrastructure.

²³ All forms of wireless, including satellite.

²⁴ See <http://www.wto.org/services/tel02.htm>

²⁵ Ibid.

²⁶ See GATS Art. II (1).

²⁷ See GATS Art. II (2).

²⁸ See GATS Art. XVII.

and services on reasonable and non-discriminatory terms and conditions in the telecommunications sector.²⁹ Each Member also shall ensure that service suppliers of any other member have access to and use of any public telecommunications transport network or service offered within or across the border of that member including private leased circuits.³⁰ Under the Annex, each member shall ensure that service suppliers of any other member may use public telecommunications transport networks and services for the movement of information within and across borders including intra-corporate communications and access to information contained in databases or otherwise stored in machine-readable form in the territory of any member.³¹

Additionally, several general obligations and disciplines of GATS are relevant to telecommunications. Article VI of GATS on domestic regulation sets out some rules of fair play for regulations not directly addressed by commitments entered in the schedules. Article VIII on monopolies and exclusive service providers and Article IX on restrictive business practices are relevant because of the prevalence of monopolies in the telecommunications sector and the frequent presence of telecom providers with a dominant market share and the potential to take unfair advantage of their position.³² Because the Annex focuses access to these services by users rather than the ability to enter markets to sell such services, members incur these obligations depending on whether or not they have liberalized the telecommunications sector. The annex obligations strike a fragile balance between the needs of users for fair terms of access and the needs of the regulators and public telecommunications operators to maintain a system that works and that meets public service objectives.³³ By the way, some articles mandate further negotiations such as the articles on government procurement, subsidies and emergency safeguards in the telecommunications sector.³⁴ Compared with GATT, the Annex on Telecommunication is simpler and not all rules of GATT applied to telecommunication sector. But a trace toward GATT structure on telecommunication sector seems likely expect in the future.

2. Transparency

The principle of transparency requires members to make public their laws, rules and regulations affecting trade in services, so that service suppliers can know the rules under which they can do business. This principle is the key element to promote the stability and predictability of the trading system. Under paragraph IV of the Annex, "each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport

²⁹ See GATS Annex on Telecommunications Paragraph 5 (a).

The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

³⁰ See GATS Annex on Telecommunications, Paragraph 5 (b).

³¹ Ibid, Paragraph 5 (c).

³² See <http://www.wto.org/wto/services/tel05.htm>

³³ See supra note Terence P. Stewart.

³⁴ See supra note G Russell Pipe, pp 6-7.

networks and services is publicly available.” The relevant information includes tariffs and other terms and conditions of service, specifications of technical interfaces with such networks and services, information on bodies responsible for the preparation and adoption of standards affecting such access and use, conditions applying to attachment of terminal or other equipment, and notifications, registration or licensing requirements.³⁵ Because transparency is one of the barriers in many telecommunications markets, this paragraph is an important feature of the Annex and a fairer trade system in the telecommunication sector can be achieved.

Members also agreed on the Marrakesh meeting that negotiations shall be entered into on a voluntary basis with a view to the progressive liberalization of trade in telecommunications transport networks and services within the framework of the GATS.³⁶ The negotiations in the NGBT shall be open to all governments and the European Communities which announce their intention to participate. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the Schedules annexed to the GATS and shall be subject to all the provisions of the Agreement.³⁷ Commencing immediately and continuing until the implementation date to be determined under paragraph 5, it is understood that no participant shall apply any measure affecting trade in basic telecommunications in such a manner as would improve its negotiating position and leverage. Members also recognize this provision shall not prevent the pursuit of commercial and governmental arrangements regarding the provision of basic telecommunications services.³⁸ The implementation of paragraph 7 shall be subject to surveillance in the NGBT. Any participant may bring to the attention of the NGBT any action or omission which it believes to be relevant to the fulfillment of paragraph 7 and such notifications shall be deemed to have been submitted to the NGBT upon their receipt by the Secretariat.³⁹

3. Exemptions and Specific Commitments for Telecommunications

a. Exemptions for Telecommunications

The essential rights of telecommunications consumers are provided in Paragraph Five, where access is accorded to the network "on non-discriminatory terms and conditions" to services providers with rights under the agreement. To consider the security and confidentiality of messages, members may take necessary measures that would not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.⁴⁰ Member also may impose special conditions on access to and use of public telecommunications transport networks and services for those reasons including (i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally; (ii) to protect the technical

³⁵ See GATS Annex on Telecommunications Paragraph 4.

³⁶ Uruguay Round decision on negotiations on basic telecommunications Adopted 15 April 1994 at Marrakesh.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ See GATS Annex on Telecommunications Paragraph 5 (d).

integrity of public telecommunications transport networks or services; or (iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.⁴¹

As mentioned above, those conditions for access to and use of public telecommunications transport networks and services include (i) restrictions on resale or shared use of such services; (ii) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services; (iii) requirements, where necessary, for the interoperability of such services and to encourage the achievement of the goals; (iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; (v) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or (vi) notification, registration and licensing. Due to developmental differences, developing countries can place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen their domestic telecommunications infrastructure and service capacity and to increase their participation in international trade in telecommunications services.⁴² Those measures aim to protect lower-developed countries' telecommunication constructions from industrialized countries' exploitations and raise developing countries' willingness to participate in trade negotiation on telecommunication sectors.

b. Schedules of Commitments for Telecommunications

The Annex requires each Member to ensure that all service suppliers seeking to take advantage of scheduled commitments are accorded access to and use of public basic telecommunications, both networks and services, on reasonable and non-discriminatory basis. Participants incur these obligations whether or not they have liberalized or scheduled commitments in the basic telecommunications sector. This is because the Annex addresses access to these services by users rather than the ability to enter markets to sell such services; the latter is addressed in schedules of commitments. As such, the beneficiaries of the disciplines in the Annex will be firms that supply any of the services included in a Member's schedule of commitments; not only be value-added and competing basic telecommunications suppliers, but banking or computer services firms, for example, that wish to take advantage of market access commitments made by a WTO Member. The annex obligations strike a fragile balance between the needs of users for fair terms of access and the needs of the regulators and public telecommunications operators to maintain a system that works and that meets public service objectives.

Additionally, similar to GATT tariff schedules on goods, each member of GATS may submit its schedules of services commitments. This is the means made legally binding to provide specified levels of access to trade in each member's market. The schedules are the result of a lot of

⁴¹ Ibid, Paragraph 5 (e).

⁴² Ibid, Paragraph 5 (g).

negotiations, and through those negotiations, the commitments are to be progressively expanded and liberalized. The schedules contain each member's commitments on market access and national treatment, and can also contain additional commitments.⁴³ Market access is defined as the term of quantitative restrictions and includes some other forms of limitations such as caps on foreign equity participation.⁴⁴ Additional commitments are a possibility to negotiate commitments on measures affecting trade in services that are not expressly captured by market access and national treatment.⁴⁵ The results of the negotiations on basic telecommunications are a partial view of the commitments the WTO has achieved in this sector.⁴⁶ In the schedules, each member may grant full market access and national treatment or enter any limitations on the telecommunication sector. Many service sectors included in the schedules are considered intensive users of telecommunications services. And the commitments through negotiations are inscribed in the schedules annexed to GATS.

IV. Related Issues for Telecommunications

1. Technical Cooperation

Under the Annex on Telecommunications, there is the recognition that an efficient and advanced telecommunications infrastructure within and among countries is essential to the expansion of global trade in services. For this purpose, the annex requires that each member endorses and encourages the participation of the developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the international and regional development programs, including the International Telecommunication Union (ITU), the United Nations Development Program, and the International Bank for Reconstruction and Development.⁴⁷ Within developing countries, members are encouraged and supported with telecommunications cooperation at the international, regional and sub-regional levels.⁴⁸ In addition, for cooperation with relevant international organizations, members shall make available telecommunications information and developments to assist in strengthening developing countries' domestic telecommunications services sectors.⁴⁹ For the least-developed countries, members are required to give special considerations and opportunities in encouraging foreign telecommunications suppliers to assist in the transfer of technology, training and other telecommunications infrastructure supports.⁵⁰ However, lower-developed countries, on one side, are eager to secure foreign investment and suppliers to improve their telecommunication infrastructures. On the other side, they are worried that industrialized countries will exert

⁴³ See <http://www.wto.org/services/tel06.htm>

⁴⁴ See GATS Art. XVI.

⁴⁵ See GATS, Art. XVIII.

⁴⁶ See GATS Annex on Telecommunications, Paragraph 6 (c)

⁴⁷ Ibid, Paragraph 6 (a).

⁴⁸ Ibid, Paragraph 6 (b).

⁴⁹ Ibid, Paragraph 6 (c).

⁵⁰ Ibid, Paragraph 6 (d).

technical advantage to engage in unfair competitions or even destroy their traditional lifestyles and transactional models.

2. Relation to International Organizations and Agreements

Due to the importance of international standards for global compatibility and inter-operability of telecommunication networks and services, members undertake measures to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.⁵¹ Thus, intergovernmental and non-governmental organizations and agreements play an important role in ensuring the efficient operation of domestic and global telecommunications services, in particular the ITU. Obviously, GATS on Telecommunication emphasizes trade and service part of telecommunication sectors, so it is an important step to make GATS on Telecommunication to conform to those international agreements under ITU and related international organizations. Therefore, members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.⁵²

3. Future Development of GATS on Telecommunications

The results of the negotiations on basic telecommunications are only one part of what the WTO has achieved in this sector. The negotiations increased the total number of Member governments with commitments on telecommunications to eighty-six and contained in seventy-two schedules.⁵³ The negotiations on Telecommunications is still continuing under WTO Rounds, and its decisions and commitments will be playing an increasingly important role in the telecommunications market and have a deep influences for global telecommunication development. Under the mandate of Article XIX⁵⁴, the latest round of negotiations began in

⁵¹ Ibid, Paragraph 7 (a).

⁵² Ibid, Paragraph 7 (b).

⁵³ Ibid, Paragraph 6 (d).

⁵⁴ Article XIX Negotiation of Specific Commitments :

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article

January 2000. In March 2001 the Guidelines and Procedures for the Negotiations on Trade in Services were adopted by the Council for Trade in Services. At the Doha Ministerial Conference in November 2001 the services negotiations became part of the “single undertaking” under the Doha Development Agenda, whereby all subjects under the negotiations are to be concluded at the same time.

V. Conclusion

The GATS Annex on Telecommunications provides specific obligations regarding basic telecommunications services, including transparency of conditions for access to telecommunications networks and services, specifications of technical interfaces, standards-setting bodies affecting for standards affecting access and notifications, regulations, and licensing requirements; and reasonable and non-discriminatory terms and conditions for access to public telecommunications transportation networks.⁵⁵ In addition, in the services negotiations of the Doha round, the language reflects the negotiating flexibility contained in the General Agreement on Trade in Services (GATS) and would allow developing countries to choose the sectors and subsectors that they make commitments and specify the terms under which foreign services providers operate.⁵⁶ Article XIX, paragraph 2 of the GATS allows special and differential treatment for developing countries, including “appropriate flexibility” for opening fewer sectors and “progressively extending market access” based on their individual development.⁵⁷

Although provided special and differential treatment for developing countries, GATS Annex on telecommunication implied attracting the willing of more and more developing countries’ participations on one side, but discoloring the true meaning of free trade. Numerous studies from a variety of sources, and using a variety of methodologies, consistently show that removing barriers to global services trade will strengthen prospects for economic growth in the developing world, create jobs, diversify economies, and develop human capital in knowledge-based industries.⁵⁸ Freeing trade stimulates economic growth, creates better jobs, encourages

IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

⁵⁵ 37 Int'l Law. 677; Fall 2003.

⁵⁶ “WTO Launches Services Requests with Exemptions for Some Countries;” Inside U.S. Trade, Vol.24 No.9; Inside Washington Publisher; Mar. 3, 2006.

⁵⁷ Drusilla K. Brown, Alan V. Deardorff, and Robert M. Stern, “Multilateral, Regional, and Bilateral Trade-Policy Options for the United States and Japan,” University of Michigan, Research Seminar in International Economics, Discussion Paper No. 490, December 2002, and “Computational Analysis of Multilateral Trade Liberalization in the Uruguay Round and Doha Development Round,” University of Michigan, Research Seminar in International Economics, Discussion Paper No. 489, December 2002.

⁵⁸ “U.S. Seeks Sharply Lower Barriers to Trade in Goods, Services;” States News Service; Dec. 12, 2005, Washington D.C., USA.

innovation, and improves living standards for millions of people.⁵⁹ However, many developing countries held back too much on making serious counterproposals, preventing the momentum needed to carry the meeting forward to a substantive conclusion.⁶⁰ Failure to conclude the Doha agenda in past meetings successfully means significant lost opportunities for countries around the world to make economic gains. Although industrialized countries are aggressively pursuing greater market access to world services markets, developing countries are reluctant to open their markets and expose domestic firms to the rigor of global competition. Indeed, many developing countries have thwarted progress in WTO trade negotiations by demanding preferential access to world markets without embracing trade liberalization in their domestic economies.⁶¹

On the whole, the GATS Annex on Telecommunications provides meaningful opportunities for foreign services suppliers to achieve their telecommunications needs.⁶² For many countries, especially developing countries, the fundamental issue posed by the Annex on telecommunication was whether universal service would be undermined at the expense of giving services multinational priority to the telecommunications network. In recent years, however, there is a new direction by which telecommunications can be provided without following this way. Universality can be well achieved by providing a more open market to allow for the new technologies entering this sector. As more countries go through this direction, the rights provided under the Annex, rather than its safeguards, are likely to become more paramount. On the other side, underdeveloped countries expect to use those opportunities to attract foreign investment and suppliers to improve their telecommunication infrastructures. But how to balance the protection of their domestic telecommunication industries from industrialized countries' technical advantages and heightening the efficiency and technical skill of telecommunication industries domestically will be an important task in the future negotiations at GATS. Moreover, because of its character in relation to national security and information confidentiality, telecommunications was controlled and regulated by national governmental power in most countries for a long time. Thus, a more flexible and open agreement was formed at this time. More complicated commitments and Schedules as well as more applied exemptions in GATS on Telecommunication than other Annexes also describe its special characters and difficulties in relaxing domestic regulations from governmental-controlled to market competition systems. It is known that without respect for national borders and sharing such a limited natural resource internationally, a global telecommunication trade agreement for negotiation and cooperation is necessary. Hence, it is believed that confronting the telecommunication gaps between

⁵⁹ The World Bank estimates that the continued reduction of tariffs on manufactured goods, elimination of subsidies and non-tariff barriers, and a modest 10 percent to 15 percent reduction in global agricultural tariffs would allow developing countries to gain nearly \$ 350 billion in additional income by 2015. Developed countries would stand to gain roughly \$ 170 billion. World Bank, *Global Economic Prospects 2004: Realizing the Development Promise of the Doha Agenda*, at <http://econ.worldbank.org> (January 2, 2006).

⁶⁰ Daniella Markheim: "Moving Forward After Hong Kong Trade Talks;" *Heritage Foundation Reports*, Backgrounder No. 1915, Feb. 22, 2006.

⁶¹ A recent Cato Institute report examines a number of studies on trade and economic performance in sub-Saharan Africa, concluding that the region's poor growth rates and low measure of economic freedom are, in part, a function of pursuing a high degree of trade protectionism. See Marian Tupy, "Trade Liberalization and Poverty Reduction in Sub-Saharan Africa," *Cato Institute Policy Analysis* No. 557, December 6, 2005.

⁶² See *supra* note Russell Pipe, p545.

industrialized and developing countries will play a key role on the success of GATS on Telecommunication at next Rounds and future construction of an efficient trade system on global telecommunication cooperation.