



WTO principles and telecommunications in developing nations: challenges and consequences of accession

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Abstract

The accession to the World Trade Organisation (WTO) of developing nations brings into sharp relief the successes and shortcomings of the General Agreement on Trade in Services, which attempts to balance the concerns and interests of developed and developing nations alike. This paper reviews some of the key social and economic issues that arise in the field of telecommunications generally and specific issues facing developing countries arising from WTO accession and implementation of WTO principles. Lastly it considers the WTO decision in the US–Mexico dispute.

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1. Introduction

The impending accession to the World Trade Organisation (WTO) of a large number of developing nations will bring into sharp relief the successes and shortcomings of the Organisation's General Agreement on Trade in Services (GATS), which attempts to balance the concerns and interests of developed and developing nations alike.

On 5 February 1998, the Fourth Protocol, establishing rules governing the future trade in basic telecommunications services, came into force. That the focus of this agreement is on basic services

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is significant. For while value-added services were subject to the existing GATS, basic telecommunications services such as local, long-distance and possibly international services, were not. Of the 69 governments that assented to the Protocol, some 40 represented developing nations. This too is significant. For the restrictions imposed on governments by the Protocol have the potential to fall with disproportionate weight upon developing nations, the populations of which are less able to bear the cost imposed by the loss of benevolent government policies as a result of the required conformity with relevant WTO principles.

In this paper, the relevant WTO principles referred to are

- the GATS,
- the Annex on Telecommunications forming part of the GATS,
- country-specific commitments and exemptions which are scheduled under the GATS, and
- the regulatory principles contained in the Reference Paper which is the subject of additional commitments by many member countries of the WTO.

This paper seeks first to review some of the key social and economic issues that arise in the field of telecommunications generally and, more specifically, in the context of developing nations. In particular, those aspects of telecommunications policy in the developing world that seek to address fundamental social and economic problems are considered. Secondly, it considers specific issues facing developing countries arising from WTO accession and implementation of the WTO principles. While the WTO principles affecting telecommunications may be open to interpretation and therefore able to be interpreted by reference to conditions in a particular country, even some of the broader principles can be difficult to implement in developing countries. The WTO principles can have potentially significant and, some would argue, unintended consequences as has been seen in recent disputes brought under the auspices of the Dispute Settlement Body of the WTO as discussed in Section 3 of this paper. Lastly, it considers the WTO decision in the US–Mexico dispute.

The importance of the world community demonstrating an ability to bring developing nations within the fold of WTO membership with a minimum of attendant cost to those nations cannot be overstated. It is in this broader context that this paper concludes that implementation of WTO principles must be carefully considered, including the impact on developing nations. While the WTO can be said to be deserving of some praise for its success in formulating principles relevant to the telecommunications sector across many different nations, for many developing countries the challenges remain before them in successfully implementing those principles in a manner which is sympathetic to the needs of the developing world.

2. Telecommunications regulation in the developing world

2.1. Trade in services and the developing world

The trade in services falls broadly into four categories under the WTO umbrella: those services which are supplied across national borders, those services consumed abroad (e.g., tourism), those services for which a commercial presence is required, and those provided through the presence of

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