

Legal Foundations And Stages Of Development Of Telecommunications Regulation Within The Framework Of The World Trade Organization (WTO)

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Abstract: This article examines the legal framework for regulating telecommunications services within the World Trade Organization (WTO), the stages of their development, and key principles. A brief analysis of the General Agreement on Trade in Services (GATS), the Annex on Telecommunications, and the Reference Paper is provided, supplemented by statistical data from the author.

Keywords: World Trade Organization, Annex, telecommunications, Uruguay Round, Reference Paper, Group on Basic Telecommunications, negotiations, liberalization.

Introduction: Due to globalization and the advancement of digital technologies, the telecommunications sector has become a multifaceted infrastructure of the modern international economy. This, in turn, requires a reconsideration of the legal foundations regulating telecommunications and the elimination of existing shortcomings. Moreover, the transnational nature of telecommunication services necessitates international coordination in their regulation. The World Trade Organization plays a special role in addressing such issues.

It is well known that the main condition for new countries to join the WTO is the alignment of their national legislation with the provisions of existing agreements. Since its establishment in 1995, the World Trade Organization has played a leading role in liberalizing and regulating the telecommunications sector. This process has encompassed not only technical aspects but also legal and institutional issues. For a long time, the telecommunications sector was managed by national monopolies. However, since the 1980s, as a result of technological development and economic liberalization processes, this sector began to attract attention as an object of international trade. One of the key legal foundations for regulating telecommunications within the WTO framework is the General Agreement on Trade in Services (GATS). The regulation of this sector by the WTO has gone through

a specific historical trajectory.

Stage I: Uruguay Round (1986–1994)

Negotiations on telecommunications regulation began in the Uruguay Round in 1986 and lasted until 1993. This was the 8th round of trade negotiations, involving 123 countries. At the start of the Uruguay Round, discussions on telecommunications liberalization and court precedents were still very limited, since this period coincided with the breakup of AT&T in the United States and the absence of internal liberalization criteria in the European Union. Therefore, most privileges and advantages remained in the hands of national telecommunications operators.

The Uruguay Round negotiations represented the first attempt to address unfair trade practices in the services sector through multilateral talks. Before the Uruguay Round, GATS negotiations focused only on eliminating restrictions on goods trade. However, due to the growing importance of telecommunication services, this sector was included for the first time in international trade negotiations.

The main features of this stage were:

- Recognition of telecommunication services as an object of trade;
- The need for a new legal basis for trade in services;

- The necessity of transition from national monopolies to a liberal market system.

Stage II: Post-Uruguay Round Negotiations (1994–1997)

During the post-Uruguay Round negotiations, in 1995 the Annex on Telecommunications to the General Agreement on Trade in Services (GATS) came into effect. This was the first agreement aimed at considering information and communication technologies both as an object and as a means of international trade in goods and services. However, the results achieved in the telecommunications sector after the Uruguay Round were deemed unsatisfactory. Therefore, the opportunity to continue negotiations and ensure improvements until 15 February 1997 was confirmed.

From April onwards, a new body—the Group on Basic Telecommunications (GBT)—was tasked with expanding the negotiations. Under the auspices of the WTO, the GBT concluded the world's first multilateral agreement on the liberalization of trade in basic telecommunications services. The agreement included 55 schedules covering 69 governments (including Antigua and Barbuda, Argentina, Australia, Bangladesh, Belize, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, Colombia, Côte d'Ivoire, Czech Republic, Dominica, Dominican Republic, Ecuador, El Salvador, the European Communities and its member states, Ghana, Grenada, Guatemala, Hong Kong, Hungary, Iceland, India, Indonesia, Israel, Jamaica, Macau, Malaysia, Japan, New Zealand, Norway, Pakistan, Papua New Guinea, Peru, the Philippines, Poland, Romania, Senegal, Singapore, Sri Lanka, Switzerland, the Slovak Republic, South Africa, Thailand, Trinidad and Tobago, Tunisia, Turkey, the United States, and Venezuela).

Participating countries undertook binding commitments to open their core telecommunications markets to foreign competition. Thus, the WTO successfully concluded nearly three years of extended negotiations on market access for basic telecommunications services.

The main achievements of this stage were:

- Comprehensive commitments on basic telecommunications services;
- Participation of a larger number of countries;
- Adoption of a more liberal approach.

As a result of these negotiations, on April 24, 1996, the Reference Paper was created. This document is a set of regulatory principles for participants to consider adopting in their schedules of commitments on basic telecommunications.

Stage III: Entry into Force and Implementation of the Agreement (1998–2004)

The Protocol and its annexed documents entered into force on 5 February 1998. On that date, the schedules of the signatories regarding basic telecommunications services became an integral part of the GATS schedules of commitments that had been in force since the conclusion of the Uruguay Round in 1994. In a number of schedules, members' commitments regarding specific services were to be implemented gradually. Although these schedules formally entered into force as part of the Protocol, the actual dates of implementation of such commitments were those indicated in the schedules themselves.

The main features of this stage were:

- Practical implementation of commitments;
- Adaptation of national regulatory systems;
- Creation of a competitive environment;
- Strengthening of foreign investment.

Stage IV: Market Liberalization and the Development of Competition (2004–2010)

By the mid-2000s, telecommunications markets became increasingly liberalized. This was clearly reflected in the entry of new operators, declining prices, improved service quality, and accelerated technological innovations.

Stage V: New Technologies and the Digital Economy (2010–2020)

From the 2010s onwards, the telecommunications sector underwent profound changes:

- Introduction of 4G and 5G technologies;
- Expansion of internet services;
- Emergence of digital platforms;
- Intensification of data trade.

Stage VI: The Modern Era and Future Prospects (2020–Present)

Since 2020, the COVID-19 pandemic has had a major impact on the telecommunications sector, leading to several developments:

- Sharp increase in demand for digital services;
- Growth of remote work and distance learning;
- Rising importance of digital infrastructure;
- Recognition of telecommunications services as essential.

As noted above, the trade rules applied to telecommunication services are embedded in the core provisions of the GATS (General Agreement on Trade in Services). These provisions outline the trade principles

applicable to all types of services. In addition, the GATS contains an Annex on Telecommunications, whose rules apply to all WTO members. The Annex guarantees reasonable access to and use of public telecommunications services in a given market for all service providers benefiting from commitments specified in a member's schedule.

The Annex on Telecommunications consists of seven sections, but its core obligations are set out in the section on access to and use of "public telecommunications transport networks and services" (basic public telecommunications).

The Annex requires every WTO member to ensure that all service providers seeking to take advantage of scheduled commitments have reasonable and non-discriminatory access to, and use of, the public telecommunications services and networks. Members must fulfill these obligations regardless of whether or not they have liberalized the telecommunications services sector. This is because the Annex focuses on ensuring users' access to such services, rather than on providers' opportunities to enter the market (i.e., to sell services). Market access is addressed in the member's schedule of commitments.

Thus, not only value-added service providers or those competing in basic telecommunications services, but also other service providers—such as banks or computer service companies—that wish to benefit from a WTO member's market access commitments may take advantage of the provisions of the Annex. The obligations set out in the Annex create a delicate balance between users' need for fair access conditions and the need for state telecommunications operators and regulatory authorities to continue operating systems that provide public services.

In paragraph 3 of the Annex, the main definitions are provided:

(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

(b) "Public telecommunications transport service" means any telecommunications transport service that a member is required, formally or in practice, to make publicly available. Such services may include telegraph, telephone, telex, and data transmission. Typically, such services involve the real-time transmission of customer-supplied information between two or more points without any change in form or content.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure that provides telecommunications between defined network termination points.

Another important element of regulation in the

telecommunications sector is the "Reference Paper," which carries legal force only for WTO members that have attached it, in full or in part, to their schedules of commitments. The Reference Paper served as a model for telecommunications sector reforms during the period of market liberalization, reflected the best practices of that time, and largely continues to do so today.

The Reference Paper mainly consists of definitions and general principles of telecommunications regulation. For example, it begins with definitions, according to which:

- "Users" are both consumers of services and service providers.

- "Essential facilities" are facilities of a public telecommunications transport network or service that:

- (a) are supplied by only one or a limited number of suppliers; and

- (b) cannot be economically or technically substituted in order to provide a service.

- "Major supplier" means a service provider that has the ability to materially affect the terms of participation (in particular, prices and supply) in the basic telecommunications services market due to:

- (a) control over essential facilities; or

- (b) use of its market position.

The key elements of the Reference Paper can be summarized as follows:

Competition safeguards:

- Prevention of monopolistic practices by major suppliers;

- Measures against anti-competitive practices;

- Guarantee of equal opportunities for interconnection.

Interconnection guarantees:

- Right to interconnection with the major operator;

- Interconnection at any technically feasible point;

- Fair terms and tariffs.

Independent regulatory authority:

- The regulatory authority must be separate from, and not accountable to, suppliers of basic telecommunications services.

Universal service:

- Universal service obligations must be fulfilled in a transparent, non-discriminatory, and competitively neutral manner.

From the above analysis, it can be concluded that the legal foundations of telecommunications regulation within the WTO framework are formed through international trade rules, the adaptation of national legislation to WTO requirements, and international trade agreements, all aimed at ensuring a fair and transparent trading environment among countries.

At the same time, rather than providing specific international regulations for direct control of the telecommunications sector, the WTO establishes general trade-related principles. Member states, in turn, shape their national legislation in line with WTO requirements, including issues such as information security and the protection of personal data.

[ecom_e/tel23_e.htm](#)

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