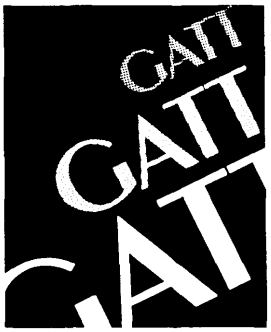
Domestic Deregulation and International Trade Negotiations

CHAPTER 7



Telecommunications deregulation in the United States has led to pressure for new international trading arrangements.

THOUGH SERVICES SUCH AS TELECOMMUNICATIONS W-C increasingly central to the operation of the global economy, rules governing international trade in services arc still being established. This chapter describes the process that is generating these rules, and examines the principal forum in which they have been debated, the General Agreement on Trade in Services, a component of the General Agreement on Tariffs and Trade (GATT). U.S. policy and negotiating positions for GATT talks arc then discussed, because these have become major determinants of U.S. international telecommunications policy.

U.S. deregulation and the worldwide consequences

Before the 1980s, the concepts of natural monopoly and universal service dominated telecommunictions. Telephone systems were conceived as intricate technical systems presided over by engineers and regulators whose main responsibility was to ensure the smooth operation of networks. Since telecommunications operators were national monopolies and each monopoly dealt directly with its foreign counterparts, there was no need for an international trading system. Public telephone operators (PTOs) struck political bargains that set stable patterns of relationships for many years. The International Teecommunication Union (ITU) coordinated the relationships of these national bodies. The ITU consultation process developcd technical standards to permit interconnection, and the international settlements process assured that accounts between countries would be reconciled.

With countries (through their national telephone operators) negotiating prices and terms of service with one another under the ITU, more generally applicable rules for trade were thought to be unnecessary. Because international telecommunications were provided by monopolies over circuits that the monopolies each half-owned, services were considered the result of joint investment, and not traded items.

In the late 1970s, telecommunications deregulation in the United States began to change these assumptions. Pressure for new international telecommunications trading arrangements mounted in the United States. as a result of deregulation, technological change, the entry of new suppliers, and the beginnings of political organization of telecommunications users.

Telecommunications competition in the United States began with microwave technology, which made long-distance competition possible in the 1970s, and with digitization of data, which blurred the distinction between computing and telecommunications. With the divestiturc of AT&T in 1984, the Modified Final Judgment (MFJ) laid down by a U.S. District Court became a key aspect of U.S. teleccommunications policy. Telecommunications costs and terms of use became a prime factor in profitability and competitiveness for many large businesses.

Large corporate users of telecommnunications began to form active interest groups. The largest users arc concentrated in a small number of firms: it is widely believed that 20 percent of users generate 80 percent of revenues, and less than 5 percent of users generate 20 percent of local traffic and over 50 percent of long-distance traffic. This concentration made it easy for large users to organize. They began to pressure political decisionmakers to allow them to intercon-

Competition in ***the United States challenged the monopoly service*** *providers in other countries, who have come under fire from international users and from domestic users as well.*

nect their offices independently of the telephone company.

The development of microelectronics brought new suppliers into the telecommunications equipment market. Computer equipment firms such as IBM and Control Data now wanted telephone monopolies opened up so that they could compete in the equipment markets. Some firms such as Electronic Data Services (EDS) and IBM saw new opportunities to offer information services, but needed access to the national network to do so. New network operators, first MCI and later Sprint, wanted to compete with AT&T for long-distance traffic.

Deregulation resulted in opening the U.S. telecommunications equipment market to foreign as well as American firms. This had immediate and significant trade consequences. The U.S. balance of trade in telecommunications equipment went from a surplus of $275 million in 1982 to a deficit of $2.6 billion 6 years later, due largely to the lack of reciprocal overseas markets for customer premises equipment (handsets and other terminal equipment). [1]

With U.S. deregulation, the government monopoly mode] of Postal, Telephone, and Telegraph (PTTs) administrations began to come under strain. Competition in one country presented problems for other countries. It raised questions about systems organization and operation, especially flows of funds between countries to settle international telephone financial accounts, How were national monopoly telephone operators to negotiate with several competing telecommunications firms in one country? How was "plain old telephone service" (soon known as POTS) to be distinguished from newer value-added services? Where competition was allowed, what conditions would be imposed on foreign competitors, especially those from countries where competition was not permitted? Who would be allowed to own what kinds of facilities or radio frequencies? How could competing service providers deliver enhanced and value-added services without having their own facilities? How could countries maintain distinctions between basic voice telephony and enhanced services (and so preserve the 1 ion's share of business for the monopoly provider), when technological change, such as digitization of voice signals, rendered them meaningless?[2]

The basic business practices and profitability of most foreign PTTs, as well as those of AT&T and its operating companies in the United States, were directly challenged by competition. Their stable organizational environment came under fire, along with their elaborate systems of cross-subsidies, which had been set up to achieve a variety of economic, social, and political goals, such as universal service,

In many countries, long-distance and international telephone services subsidized local telephone service, business telephone service subsidized residential telephone service, and urban telephone service subsidized rural telephone service. In some countries also, revenues from telecommunications

[1] Kenneth Robinson et al., "International Telecommunications Trade," *After the Breakup: Assessing the New Post-AT& T Divestiture Era,* Barry G. Cole (cd.) (New York, NY: Columbia University Press, 1991), pp. 428-445.

[2] Karl-Heinz Neumann, "Models of Service Competition in Telecommunications," *Restructuring and Managing the Telecommunications Sector,* Bjorn Wellenius et al. (eds.) (Washington, DC: The World Bank, 1989), pp. 19-21.

contribute to both the general treasury and the postal services These cross-subsidies would be difficult to sustain in a more competitive world, where companies are forced to reduce prices and costs. Furthermore, strong PIT telecommunications unions resist the inevitable change in employment levels and practices that result from deregulation and the attendant cost-cutting.

PTTs, which in the remainder of this chapter will be called public telephone operators (PTOs), arc also concerned about eroding market share and their perceived inability to finance network modernization unless they control the new high-value enhanced information and data services—the most profitable business traffic and also that traffic most likely to migrate to the competition. On the other hand, lower telecommunications prices mean lower costs for both business and residential consumers, and may ultimately result in increased revenues for the telephone operator due to greater calling volume.[4] Finally, PTOs worry that the presence of competitors will seriously undermine their control over their own operations.[5]

Liberalization of telecommunications occurred first in those countries where the political mobilization of business interests was greatest: the United States, the United Kingdom, and Japan. As one analyst has observed:

> *While winning the regulator-y battle at home, [U. S.] firms calculated that the U.S. bargaining power made global reform feasible, and they became the most prominent exponents of regulatory reform in many countries. But in the 1980s, a translational corporate coalition .for reform emerged as firms in other countries wanted to match the terms offered to U.S. companies.*[6]

Thus change in the United States brought about change in other countries. Large users in the EC saw that to be competitive with U.S. and Japanese firms, they needed to reduce their costs, increase their scale, and improve their ability to deliver flexible and timely services.[7] The Commission of the European Community acted to open parts of the European market to reduce telecommunications costs and thereby improve operating efficiency for all firms. To do this, users required (but did not immediately get) more favorable operating terms from PTOs.

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[3] Timothy E. Nulty, "Emerging Issues in World Telecommunicate ens," in Bjorn Wellinius et al. (eds.) op. cit., footnote 2, pp. 17-18.

[4] This has been the experience in Europe, Latin America, and Asia.

[5] European PTOs have been working over the past decade to strengthen their control of the evolution of both technology and the policies that shape it. In general, European PTOs are politically more powerful than their countries' computer and electronics industries, whereas in the United States the reverse tends to be the case. For example, the stronger role of PTOs is reflected in the scarcity of corporate private networks and the widespread use of X.25 protocols in Europe for data networks, while in the United States computer equipment companies have successfully pushed U.S. data networks toward other protocols as well as X.25.

[6] Peter F. Cowhey, "The International Telecommunications Regime: The Political Roots of Regimes for High Technology," *International Organization,* vol. 44, No. 2, spring, 1990, p. 188.

[7] See Giandomenico Majone, "Cross-National Sources of Regulatory Policymaking in Europe and the United States," *Journal of Public Policy,* vol. 11, No. 1, pp. 79-106.

Changing attitudes toward services and trade

The globalization of business pushes firms to seek telecommunications operations that can help them deliver similar services worldwide, and this may mean bypassing national networks or locating operations elsewhere. The country with the environment most conducive to telecommunications for business sets the standard for all others.[8]

As major users tried to modernize their networks, they sought more flexible terms of access and prices and the right to attach new equipment. Foreign telephone operators were unwilling to provide these terms, arguing that such changes would require new investment or new operating procedures. In reality, these restrictions protected foreign markets from inroads by U.S. or other foreign firms.

Meanwhile, U.S. telecommunications equipment manufacturers, in particular AT&T, were alarmed by their eroding share of the equipment market (as noted above). While the portion of the market initially most affected was consumer premises equipment (e.g., telephone handsets), U.S. switching equipment manufacturers saw their market share threatened over the long run.[9] It is widely believed that there is significant world overcapacity in manufacturing of central office equipment, as the cost of designing, developing and producing it rises precipitously.

U.S. equipment manufacturers believe the way to gain access to European telecommunications equipment markets is to break the link between PTOs and their national preferred monopoly suppliers. One way would be to liberalize services markets, which would engender competing service providers, and, in turn, result in more competitive equipment markets, since each national competitor would try to develop its own sources of supplies.

In essence, U.S. users want access to foreign markets on nondiscriminatory terms. But large users in the United States cannot achieve their objectives without outside allies, as changes in foreign regulatory regimes will be necessary. Foreign users want terms and service similar to their U.S. counterparts to protect their competitive advantages. Under serious pressure from the EC Commission, beginning notably with its 1987 Green Paper on telecommunications services, PTOs now realize that they must respond to their large users to keep control of their own domestic telecommunications systems. They have begun, reluctantly, to reduce cross-subsidies to small users in order to relax barriers to terminal equipment trade.

The United States, the United Kingdom, Japan, Australia, Canada and Sweden have now introduced some forms of competition in basic services and in network facilities

[8] Jonathon David Aronson and Peter F. Cowhey, When Countries Talk: *International Trade in Telecommunications Services* (Cambridge, MA: Ballinger Publishing Company, 1988), p. 33.

[9] AT&T claimed that Siemens, the German telecommunications equipment giant, was sell ing its equipment in the United States for less than a quarter of what the Deutsche Bundespost Telekom, the German telephone operator, was paying, in essence dumping telecommunications switching equipment in the United States and cutting into AT&T's markets. AT&T declines to pursue Siemens in trade courts at the current time. OTA interview with International Trade Administration official, Dec. 4, 1992.

(i.e., facilities-based competition).l" Shifting the international telecommunications regime toward competition has been difficult because the traditional monopoly regime in most countries is supported by institutional and governmental interests. PTOs arc usually powerful government ministries that often contribute substantial funds to their general treasuries. Many PTOs assume that they would fail to compete effectively with U.S. firms that have had nearly a decade of experience in a competitive marketplace. There is usually resistance from a PTO labor force, which in many European countries is organized and extremely powerful. Some countries also see their PTO as important to the maintenance of national sovereignty.[11] Altering the telecommunications regime significantly will thus require sustained political dedication and effort. Many EC governments are resisting the efforts of the EC Commission to liberalize telecommunications.

Moving toward GATT

As the consensus on telecommunications as a natural monopoly began to crode in the 1970s, the lack of rules covering trade in services could be seen as blocking the expansion of free trade. U.S. banking, telecommunications, data processing, and other service firms saw that new technologies put within their reach lucrative markets that they could not go into under the existing trade regime. Thus, a small number of firms, led by the American International Group (an insurance company), American Express, Citicorp, Merrill Lynch, and Sea-Land (a shipping firm), began to press for services to be included in GATT Congress acceded to this pressure: with the passage of the Trade Act of 1974, Congress for the first time asserted that services were to be included in the definition of international trade, and directed the Administration to work toward an expansion of GATT to include trade in services.

The United States was unable to make much headway in the Tokyo Round of GATT in the 1970s, but this failure led to efforts by the United States to take the issue up in the Organization for Economic Cooperation and Development (OECD), where it was believed that a more analytic approach to developing the conceptual framework might be possible. The members of OECD were persuaded to begin a study of service trade issues. Trade-oriented service firms succeeded in persuading Congress to give services equal footing with merchandise trade in the 1979 Trade Agreements Act, which then led to the 1984 Trade and Tariff Act specifying that the President should give high priority to the negotiation of multilateral and bilateral agreements governing services trade. [12] By 1982, U.S. efforts came to fruition in the form of an agreement in GATT

Shifting the international telecommunications regime toward competition has been difficult as poweful interests in many countries resist.

[10] The first three countries have been on the forefront of regulatory change. The United States, the United Kingdom, and Japancomprise about 60 percent of the world telecommunicateons market. They are also t he largest and most important international financial centers, and have many multinational manufacturing enterprises that demand leading edge communications and computing technologies.

[11] Recent rejection of telecommunications privatization in Venezuela, and continuing difficulties in the privatization of telecommunications authorities in some countries in Eastern and Central Europe attest to the significance nations continue to attach to their own telecommunications systems.

[12] Jonathon David Aronson and Peter F. Cowhey, op. cit., footnote 8, p. 37.

that countries that wished could undertake national studies of trade in services.[13]

Political support for including services in an international trading regime based on GATT grew in the mid- 1980s when increasing U.S. trade deficits prompted American free trade supporters, concerned with what they saw as increasing protectionism, to seek new allies to protect free trade. In the 1988 Trade Act, Congress explicitly included telecommunications trade as a priority for U.S. trade negotiations, and specified a set of general and specific objectives that the United States Trade Representative (USTR) was to seek in opening foreign markets to U.S. suppliers of both equipment and services.[14] If U.S. services firms could gain access to foreign markets more readily, then U.S. equipment sales would improve as well. Also, if PTO monopolies were forced open, U.S. equipment firms would stand to gain from sales to the new competitors. The coming together of these interests led to real innovation in trade policy.

As the consensus that telecommunications is a natural monopoly began to erode, the lack of rules covering trade in services became an impediment to free trade.

In the U.S. Government, conceptual work began in the mid-1980s to clarify the notion of trade in services, hitherto not recognized as a legitimate subject of multilateral negotiation. In economic theory, services were generally not thought of as tradeable items; therefore measurement of such services that were traded was practically nonexistent. With no conceptual framework or data, governments typically believed that services trade was insignificant, and therefore unnecessary to include in multilateral negotiations. Lacking both adequate measures of trade and conceptual frameworks on which to hang policy, support for services exports was almost nonexistent. For example, financing of goods trade is well understood, and there are a variety of Federal programs to promote goods trade abroad, but services do not receive financing proportionate to their significance in overall U.S. exports.[15]

In the case of telecommunications services, the negotiation of the U.S.-Israel and U.S.-Canada Free Trade Agreements in the

13 The events leading to GATT signatories agreement to consider discussing trade in services is a complex story. See Geza Feketekuty, *International Trade in Services: An Overview and Blueprint for Negotiations* (Cambridge, MA: American Enterprise Institute and Ballinger Books, 1988); and Bela Balassa, "The United States," Patrick A. Messerlin, Karl P. Sauvant, et al., *The Uruguay Round: Services in the World Economy* (Washington, DC, and New York, NY: The World Bank and the United Nations Centre on Transnational Corporations, 1990), p. 129. For a dissenting view of the desirability y of the United States' efforts to continue to support GATT, see Clyde V. Prestowitz, Jr., Alan Tonelson, and Robert W. Jerome, "The Last Gasp of GATTism," *Harvard Business Review,* March/April 1991, pp. 130-138.

14 While both equipment and services are the subject of t he 1988 Trade Act, t he shift in the U.S. balance of trade in telecommunications equipment from a surplus of $275 million to a deficit of $2.6 billion provided much of the impetus for the legislation. The breakup of AT&T had led to the unilateral opening of the U.S. market in telecommunications equipment without any attempt to extract reciprocal concessions from U.S. trading partners. See Kenneth G. Robinson et al., op. cit., footnote 1, p. 431, passim. Throughout this chapter, Robinson and the other contributors make virtually no reference to telecommunicate ions services.

15 OTA interview with Robert Atkins, International Trade Administration, Department of Commerce, Oct. 1, 1992.

1980s laid much of the intellectual groundwork.[16] The concepts of trading telecommunications services and their coverage by GATT principles are now widely embraced, but less than 10 years ago, they were thought to be radical innovations.

In general, the United States led the way to relaxation of restrictions on international telecommunications during the 1980s. For example, there was growing interest in the idea of deploying telecommunications satellites outside the monopoly international telecommunications satellite consortium, Intelsat. Under U.S. pressure, INTELSAT liberalized its process for approving competitive satellite systems and, and in return, the United States has refrained from attacking Intelsat's exclusive carriage of international public switched international telephone traffic. INMARSAT, the international maritime satellite communications organization, has begun to explore new business opportunities considered beyond its purview a decade ago, such as aeronautical and Iand-mobile personal communications services.

Choosing a forum

The choice of GATT as the arena for changing international trade relationships with regard to telecommunications was made carefully. The European PTOs' resistance to change had been buttressed by the fact that there was only one international forum for discussion of telecommunications issues, the International Telecommunication Union (ITU). The ITU has always been the province of national telecommunications authorities and, therefore, has never been sympathetic to competition. Although the ITU has little real power in the enforcement of international agreements, it is important in creating frameworks in which rules and regulations operate.

OECD has also played an important role in issues such as privacy, accounting rates, and financial and capital flows, but it is considered to reflect the interests only of the richest countries. The United Nations Conference on Trade and Development (UNCTAD) has long played a role in coordinating international shipping and insurance services, and could well have assumed some jurisdiction over telecommunications. This was rebuffed by the industrialized nations, because of the weakness of UNCTAD's dispute-resolution mechanisms.

GATT was ultimately chosen by the United States as the venue for pressing for changes in the international telecommunica - tions regime, in part due to the perception that only GATT has a dispute-resolution mechanism with teeth for enforcement. The choice of GATT meant that services, and telecommunications services in particular, had to be cast into terms that the traditional trade community would accept; their tradability had to be established. Given the institutional opposition to change in both the ITU, which would lose some control of international telecommunicate ions, and

[16] For a clear and complete discussion of the U.S.-Israel Free Trade Area Agreement, and the role it played in helping U.S. trade negotiators to formulate basic principles on trade in services, see Carol Balassa, "Negotiation of Services in the U.S.-Israel Free Trade Area," unpublished manuscript. For a general treatment oft he t rade in services concept formation, see Geza Feketukut y, *International Trade in Services* (Washington, DC: American Enterprise Institute, 1986). Much of the early work on trade in services was driven by user Issues, and was fully supported byUSTR. The agency played an im port ant role inelaborat ing these ideas.

within GATT, which had seen its mission solely in terms of trade in goods, the United States found it necessary to attempt to effect changes on two fronts. In these efforts the United States was joined by the United Kingdom and later by several other countries.

Building an international constituency

An important series of negotiations affecting telecommunications services trade occurred at the ITU World Administrative Telegraph and Telephone Conference (WATTC) in 1988 in Melbourne, Australia.[17] This conference established a new set of International Telecommunication Regulations, which on July 1, 1990, superseded those written 25 years before. The main issue in Melbourne was how ITU members, no longer all public telephone operator monopolies, would deal with the questions of deregulation, privatization and competition. Many countries feat-cd the United States would induce the ITU to accept regulations that would force competition, which would run against their own national policies and might infringe on national sovereignty.

Against significant opposition, the United States has constructed an intellectual framework and a political foundation for more liberal trade in services.

At the root of U.S. concerns in Melbourne was an interest in facilitating the deployment of specialized, private intracorporate networks. ITU regulations have the force of international law, and the ITU Consultative Committee on International Telegraph and Telephone (CCITT) regulations, though voluntary, are widely adopted by member countries. The United States wanted to make sure that these regulations did not provide countries with a means to prohibit private networks or competitive service offerings. A compromise position was adopted (Article 9), stating that countries wishing to permit special arrangements for value-added services or private networks could do so.] [8]

Large telecommunications users in the United States saw the results of WATTC as crucial to their ability to conduct their business internationally and, to underline the importance of these results, there is now some concern that the subsequent GATT trade in service negotiations may actually reduce firms' scope of activity. Other U.S. service industries, such as construction, maritime shipping, and air transport, were less enthusiastic about submitting services to a GATT regime. The U.S. construction industry, for example, wants help competing with foreign firms that have access to government financing for overseas business, and resists opening the U.S. market to such foreign firms. Maritime shipping and air transportation have separate trade agreements that set their trade rules, and these industries tend to see open markets as disruptive.

The United States also had to convince other countries to allow services to be put on the agenda. Many countries wanted to con-

17 G. Russell Pipe, "Telecommunications Services: Considerations for Developing Countries in Uruguay Round Negotiations," United Nations Conference on Trade and Development, *Trade in Services: Sectoral Issues (New* York, NY: United Nations, 1989), pp. 74-78.

[18] The subsequent CCITT D.1 recommendations provide all the details on private line services. U.S. trade officials attended these meetings and watched closely to see that t he resulting regulations or resolutions did not commit the United States to positions that would violate the 1988 Trade Act.

[19] OTA interview with Phi l ip Onst adt, sen ior manager of internaional telecommunicate ions regulatory affairs for the International Communications Association, a U.S. industrassociation of international telecommunications users, Nov. 12, 1992.

tinue to trade with the United States on a preferential basis, and would go along with the United States only to an extent.

While Canada, the United Kingdom, Sweden. and Japan were the earliest supporters of the U.S. position on services, some European countries were more reluctant to follow the U.S. lead. France wanted more assurances but later become a vigorous supporter of a GATT services agreement. Germany was concerned about the future position of the Bundespost, the largest German employer, under a new services trade regime. The EC has jurisdiction in Europe on trade, but not on services; however, the EC came to support the general idea of trade in service negotiations by March 1985.

Once the United States had secured EC support for service negotiations, other developing countries had to be persuaded not to oppose the idea. Opening GATT to services was viewed with suspicion by developing countries, who saw the dominance of the United States and other advanced nations in high-tech services as a threat. Brazil and India led the developing countries in opposing services in GATT. However, free trade gradually came to be seen as potentially compatible with economic development objectives. Due to lower unit labor costs, developing countries may have advantages in some subsectors of services.[20] Increased service trade also can benefit developing countries because cheaper inputs, such as telecommunications, can make other economic activities more competitive. The Unitcd States was willing to make political concessions to developing countries on interest rates and debt arrangements, and threatened that it would turn to bilateral service trade agreements (which would benefit only those who participated) unless GATT was used as a forum. In September 1986, the United States won its struggle to get services trade on the agenda.

GATT

GATT is a wide-ranging agreement, covering many countries. For most of its history, GATT dealt with trade in commodities and merchandise. When it was established in 1948, the most fundamental elements of world trade were steel. coal, and manufactured goods. Services were thought to comprise an insignificant proportion of world trade.

The United States argued that established GATT principles of market access, fair competition, and resolution of trade disputes should apply to services, including telecommunications. Because trade in services is more difficult to measure than trade in goods, and barriers to trade arc likewise difficult to define, GATT would be a valuable forum for resolving grievances over market access. This principle is of fundamental importance to U.S. negotiators and to U.S. companies.

GATT rules arc designed to be applied across al I commodities and signatories.[21] This general principle gave rise to a serious dispute over the U.S. position that services could be part of a GATT framework: some

20 Patrick A. Messerlin and Karl P. Sauvant, "Introduction," in Patrick A. Messerlin, Karl P. Sauvant, et al., op. cit., footnote 13, p. 2.

21 GATT discipline does not fully apply to certain sectors, such as agriculture and textiles. Richard H. Snape, "Principles in Trade in Services," Patrick A. Messerlin, Karl P. Sauvant, et al., op. cit., footnote 13, p. 7. See also G. Russell Pipe, "Telecommunicate ens," in the same volume.

argued that since services are so varied in their characteristics, it was not practical to negotiate a single set of trade rules for them. Others argued that a general framework would be more likely to lead to liberalization than would an approach dealing only with individual sectors. General principles are at the heart of GATT' rules on trade, and the effort in the services negotiations has been to find ways to apply these rules, derived from trade in goods, to service sectors.[22]

This argument was resolved with a compromise that general principles would be agreed on through a separate parallel negotiation on services, to take place alongside the negotiations on trade in goods. This would keep the services agreement from becoming too quickly incorporated into GATT without giving countries an opportunity to mitigate its effect on various sectors of their economies.[23] Second, there were to be sector-specific negotiations, codified in annexes, including one for telecommunications. This compromise permitted concerns for general principles and maximum flexibility both to be satisfied. Finally, it was agreed that the rights enumerated in the annex would come into force only if there was agreement on terms of access to markets in specific sectors, such as telecommunications services.

Most disagreements among GATT signatories stem from governments' efforts to protect their domestic industries while attempting to gain access to sectors of others' markets. The concepts outlined below were agreed on in principle at the 1989 Uruguay Round Mid-term Review in Montreal. It was also agreed that the negotiations should next turn to the application of these general principles to specific sectors. This has been underway since 1990.

General principles

NONDISCRIMINATION. Nondiscrimination is a core principle of GATT. It asserts that any advantage extended to one signatory must be applied to all signatories, and that withdrawal of trading privileges for one country must mean withdrawal for all. This is the most-favored-nation (MFN) principle. Applying it to international telecommunications services conceivably could require important changes to the way in which services arrangements are set up, since these arrangements (i.e., accounting rates) are negotiated bilaterally. Existing arrangements would, however, likely be accepted as preexisting commitments.

MFN could permit free-riding by some signatories, who could take advantage of other countries having already reducing sectoral trade barriers. Country A may not have a reason to drop its telecommunications trade barriers with the United States if the United States has already dropped its own. Efforts have been made in successive GATT rounds to reduce this problem by negotiating concessions on specific products, as has occurred with respect to telecommunications procurement. This aspect of GATT has, however, become less important as countries increasingly negotiate bilateral concessions rather than multilateral ones.[24]

22 Richard H. Snape, op. cit., footnote 21, pp. 5-7.

23 Stefan Voigt, "Traded Services in the GATT—What's All the Fuss About?" *Intereconomics, vol.* 26, No. 4, July/August 1991, p. 177.

24 Richard H. Snape, op. cit., footnote 21, p. 8.

NATIONAL TREATMENT. National treatment differs from MFN in that it requires that there be no less favorable treatment of foreign firms than of national firms. Restrictions may be imposed, but must apply to all firms equally, foreign or national. It does not imp] y a requirement to permit unconditional access to a market. Where no competition by domestic firms is allowed for a national monopoly, there will also be no competition by foreign firms.

MARKET ACCESS. Market access is one of the most important principles of GATT. It denotes the extent to which service providers wishing to offer a service in a foreign market can enter without confronting entry barriers or other requirements. The 1988 Montreal declaration states that firms may supply their services by whatever means they prefer, and especially identified the telecommunications sector as covered. For telecommunications services. market access includes:

- the right to lease lines for data transmission within and between countries:
- reasonable prices for services;
- freedom of choice in the types of equipment to attach to the network;
- reasonable flexibility in interconnection standards; and
- the right to store and process information.

LIBERALIZATION. Liberalization is often grouped with *transparency* and *predictability* as principles of GATT Liberalization is the general promotion of trade across borders, especially by means of increased market access and international competition, but with allowance for national policy objectives. Transparency is the public availability of the rules and regulations, including tariff schedules, that govern services in any country in order to limit the possibility of petty or covert bureaucratic or political limitations to legitimate trade. Predictability of trade rules follows from the consistent application of these principles.

SAFEGUARDS AND EXCEPTIONS. Safeguards and exceptions from international rules must be allowed if political agreement is to be achieved, since countries will generally not agree to bind themselves to inflexible principles. Safeguards and exceptions are permitted under GATT rules, and are very important in the telecommunications sector. National sovereignty has long been a concern of nations with respect to their telecommunications networks, and social, and political objectives are often sought through the use of telecommunications networks and pricing structures. Safeguards and exceptions allow countries with such concerns to reserve access to parts of their markets. Nations retain the right to regulate to achieve national policy objectives, with the proviso that such regulations are consistent with the liberalization commitments under the framework.

Non-discrimination and national treatment are important GATT principles; their application to telecommunications services must be negotiated.

These general principles have been the basis for negotiations since they were agreed to in 1989. However, their actual formal acceptance is not a foregone conclusion. Some arc especially troublesome as applied to services.

Trade economists, until recently, generally believed that services were only consumable at the point where they are produced, and thus arc limited to domestic markets. To the extent that such services were provided by foreign firms, it was thought that these firms generally are required to invest in or rent local facilities. With the market access principle, GATT could for the first time play a role in limiting

Box 7-A. TELECOMMUNICATIONA ANDNATIONAL SOVEREIGNTY

National sovereignty has been a critical issue in control of telecommunications networks since their origins in the early 19th century.[1] Nations have typically held that national control (either directly by the government or by government-sanctioned monopolies) was vital for economic independence and national security (control of communications for military purposes). In the late 1970s, the U.S. Department of Defense argued in court that AT&T ought not to be divested of its local operating companies on the grounds that this would harm national military communications systems.

With the erosion of monopoly telecommunications regimes **and the movement toward competition, pressure has mounted against maintaining national control in the name of security or sovereignty.** The military constructs and operates its own networks where it is concerned about control-this is as true in the United States as it was in the Soviet Union, which had several networks for military and Communist Part y use. Competition, particularly when it involves separate facilities, may provide increased security through having multiple suppliers of comparable service, and hence redundancy, which is one key to survivability.[2] Governments also have a variety of regulatory tools, including the right of expropriation or nationalization during wartime, to control the activities of telecommunications firms, whether domestic or foreign-owned.

However, national sovereignty is still a significant concern. Israel has recently rejected a bid to privatize its network, for fear of compromising national security and sovereign y, and many developing countries are also unwilling to do so. Many countries fear the effects of "propaganda" transmitted to their citizens by external enemies. Others fear a dilution of their distinctive cultures. Many experts warn that the huge volume of funds electronically transmitted around the globe daily seriously decrease the control a country can exert over its currency and its ability to implement national monetary policy.[3]

1 Manley R. Irwin, "National Sovereignty and Global Networks," OTA Contractor report, July 1992.

2 However, if competitioncauses companies to operatetoo close to safety marginsin order to cut costs, or toscrimp on capital investment, it may engender lower reliability.

3 U.S. Congress, Office of Technology Assessment, *U.S. Banks and International Telecommunications*, OTA-BP-TCT-100 (Washington, DC: U.S. Government Printing Office, September 1992).

SOURCE OFFICE OF TECHNOLOGY ASSESSMENT, 1993.

national restrictions on foreign investment.[25] Market access, apart from direct imports, also deals with the right of foreigners to establish businesses in a signatory country. This means permission to setup telecommunications networks to deliver services and the right to make investments in such networks (''the right of establishment' '). Since service delivery often involves a specialized or private network, firms need to be able to create and operate corporate networks with minimum hindrance. Services firms also want ''the right of nonestablishment," the right to operate without having to set up a subsidiary or other local presence if services can be delivered directly. Essentially, firms want to structure their operations according

25 Peter F. Cowhey, op. cit., footnote 6, p. 194.

to the requirements of the services to be provided.

Network design is important in delivering services, and therefore standards-setting is part of market access. This implies that national networks should have diverse representation in their standards-setting processes. including input by users as well as carriers and equipment providers. Currently, the ITU standards process gives great latitude for national or regional variation in standards, allowing some nations to close their markets behind a wall of national standards. Foreign services providers and equipment companies want to play a more direct role in standards-setting to prevent this. This notion of vesting large users with what amount to minimum rights through GATT is a new concept.[zh]

Market access would also require more GATT oversight of signatory policies on telecommunications service pricing, customer service levels, and procedures for redress of grievances in disputes between users and telecommunications operating authorities. Treating these as trade issues would benefit large foreign users who depend on local telephone companies to make the final connection to customers.

The Telecommunications Annex

A GATT Telecommunications Annex was informally agreed to by GATT member states in spite of the stalled GATT general negotiations. Negotiators say that the principles embodied in this annex were partly worked out in the course of negotiations of the U.S.-Israel and U.S.-Canada Free Trade Agreements, and latcr some of the essential elements of this annex were adopted in the North American Free Trade Agreement (NAFTA).[27]

The current telecommunications annex to the General Agreement on Trade in Services has been called the Telecommunications Users' Bill of Rights, because it lays out for the first time explicit rights of users. The basic outlines of the annex provisions are:

- Transparency must be ensured, including information on tariffs and conditions of service, specifications of technical interfaces, information on standards organizations, information on conditions of attaching terminal equipment, and licensing or recgistration information.
- Network access must be assured on reasonable and nondiscriminatory terms, and pricing of public telecommunications must be cost-oriented. Leased lines will be available to signatories, and users must be

Service providers and equipment manufacturers are demanding a direct role in standards-setting so that markets won't be closed to them through technical Incompatibility.

[26] Peter F. Cowhey, "The Future of the Telecommunications Market place," *The Telecommunications Revolution: Past, Present, and future,* Harvey M. Sapolsky, et. al. (eds.) (London and New York: Routledge, 1992), p. 153,

27 This report does not deal with international telecommunications in other areas than Europe. However, it must be noted that some observers sharply disagree that NAFTA telecommunications provisions are essent I ally t he same as t hosen GATT. The Communications Workers of America (CWA) argues that certain provisions of the NAFTA treaty would preempt some State and Federal regulations, in violation of the Communications Act of 1934. Under NAFTA, CWA argues, States would lose regulatory oversight over some aspects of domestic telecommunications, and the Federal Communications Comm ission in some areas would be Improperly subordinated to executive branch authority. USTR, which negotiated the agreement, argues that loss of such oversight is exaggerated. See John Morgan, Adm inistrative Assistant tot he Secretary-Treasurer, Communications Workers of America, "Testimony before the U.S. International Trade Commission," Nov. 17, 1992.

able to attach terminal equipment to the network. Private circuits must be connectable to the public-switched network, and users must be permitted to use their own operating protocols over these networks.

- Intracorporate and other communications may move within and pass **across national** borders of signatory countries, including those aimed at gaining access to foreign databases.

The signing parties also agreed to impose no conditions on access and use of public networks other than as necessary to safeguard the public service responsibilities of suppliers of public telecommunications networks or services. Examples are protecting the technical integrity of the networks or making sure that only services that have been agreed to are supplied.

In the view of large users, the theoretical application of GATT principles to telecommunications turned out, in the political arena of trade policy formulation and diplomacy, to be less than perfect. Some argue that U.S. trade negotiators did not push hard enough to extend market access and favorable operating conditions for big users.[28] In particular, companies find that they do not have much latitude in making arrangements for capacity resale: while they are given the right to set up networks in the first part of the annex, in another part this right is subject to restrictions, with the balance appearing to favor continued restriction. According to Michael Nugent of Citicorp, which is a major user of international telecommunications services and operator of extensive private corporate networks,

> *[t]he way the annex is shaping up, it is turning into a bill of rights for the telephone administrations and for those who seek restrictions on usage of the network.*[29]

In the view of large users, the original U.S. submission, which was not accepted, reflects a much better compromise between the U.S. Government and industry.[30] It contained substantial rights for users and service providers, whereas the current draft at many points allows a PTO or national regulatory body to limit access, usage, and bypass, in the name of safeguarding public service rcsponsibility.[31] Large users, like carriers, also believe that no agreement on telecommunications is probably better than a bad agreement. Some have argued that this would permit the negotiation of trade agreements without the hindrance of multilateral coverage.

In contrast to either U.S. industry position, EC believes that MFN under the terms outlined in the telecommunications annex should be granted now. This may be driven by institutional dynamics: EC is trying to increase its leverage over telecommunications regulation so it can enforce the agreement itself, thereby taking control of this aspect of EC economic regulation from member states. With this agreement, EC may

2a OTA interviews with service indust ry represent atives; see also Bob Davis, "GATT Talks Near Collapse at the Deadline," *The Wall Street Journal*, Dec. 18, 1991, p. Al 1.

29 Michael Nugent, Citicorp, cited in Craig Johnson, "IS There Life Still in the Uruguay Round?" *Transnational Data and Communications Report, vol.* 14, No. 2, March/April 1991, p. 7.

30 OTA interview with service industry representative, June 4, 1992.

3 Nugent, op. cit., footnote 29.

come to play a more central role on both trade and telecommunications regulation.

The problem of basic telecommunications services

The final major issue under discussion in the current round of talks on telecommunications is market access for basic telephony, specifically the ability of firms to offer basic long-distance telephone service in foreign countries. This market is open in the United States, although not without restrictions. (See ch. 1, box 1-A; for example, foreign firms cannot hold radio licenses and hence cannot directly offer some forms of long-distance service.) Long-distance services are not competitive in most other countries.

The Telecommunications Annex did not resolve the issue of liberalization of basic services. The United States wants, as a matter of policy, to promote the opening of other long-distance markets to a level comparable to its own. Therefore, at the same time that the draft Telecommunications Annex was published. USTR proposed in a derogation, or partial exemption from the general agreement, that as soon as a GATT agreement is reached (now scheduled for December 1993) the major telecommunications signatory parties will seek to agree on terms to liberalize their basic long-distance telephony markets over the next 3 years, under conditions set forth by USTR in its proposal. These conditions basically consisted of commitments by foreign governments to break up their telecommunications monopolies:

- There would be no limit on number of competitors.
- Foreign firms would be allowed to offer basic long-distance service through facilities-based competition and through resale.
- Foreign investment would be permitted in basic long-distance services.
- There would be transparent, nondiscriminatory and cost-based access to basic telecommunications services.
- There would be a fair and transparent regulatory process overseen by an independent regulatory body.

If all the conditions were met, the full basic long-distance telecommunications market would be subjected to MFN by all parties.[32] U.S. trade negotiators' reasoning for not insisting on extending MFN to basic telephone service, but including it in the derogation offer. is that other countries were not willing to liberalize as quickly as U.S. carriers would like.[33] In the absence of specific market-access commitments, other countries would have limited the liberalization of their markets while attempting to enter the U.S. market. Application of MFN to basic telecommunications services would

*U.S. negotiators hold out for furfher talks on liberalizing **basic** long-distance services.*

32 The GATT negotiating process permits countries to take derogations from specific sections of an agreement, wit h the expect at ion that these except ions will become t he focus of future trade negotiations, and will eventually be elim inated when the conditions justifying the except ions no longer pertain. This may have played a signif icant role in weakening t he large users' posit ion wit h USTR, resulting in concessions to the European PTOs.

33 Init ially, USTR did support extending MFN to basic services, but changed its position after strong protests by AT&T and MCI.

lead to less market access.[14] Linking MFN with market access as outlined by the U.S. proposal would put pressure on nations to mutually exchange commitments in order to get MFN treatment. It would make opening up telecommunications markets somewhat less difficult for some countries, in that the agreement allows better control over concessions to be granted. Finally, the U.S. proposal recognizes that MFN works when there is a large enough number of countries offering the same terms of access, thereby minimizing the problem of free riders; the U.S. position is that there is not yet a sufficient number of countries to permit this in telecommunications services.[35]

The asymmetry in the degree of market openness between the United States and elsewhere is damaging to U.S. domestic interests, it is argued, and gives away an important bargaining lever that the United States might usc in bilateral negotiations to open other countries' markets.[36] This point is of particular importance to AT&T, which reportedly vigorously lobbied USTR to refrain from applying MFN to basic telecommunications services. [37]

Other U.S. long-distance carriers differ only marginally with AT&T on these points. For example, Sprint relies heavily on international leased lines and resale of voice services in Europe, and needs an agreement that allows them to do this easily. All service providers reportedly feel that no agreement is better than one that would lock open the U.S. market without the possibility of competing in others' markets.

Divisions between the U.S. interexchange carriers and their major users on the issue of basic services reflect different positions on the amount of competition to be permitted in the United States, and the degree to which the U.S. Federal Communications Commission (FCC) will continue to have the power to control the U.S. operations of foreign carriers. After the divestiture of AT&T in 1984, when the U.S. telecommunications market was unilaterally opened (except for local service), the FCC retained authority over foreign carriers (through its section 214 filings requirement) in order to protect the interexchange carriers from unfair foreign competition in services. This could occur because foreign carriers can cross-subsidize their competitive operations from their domestic monopoly service operations.

Large telecommunications users, on the other hand, want as much competition as possible to assure themselves of favorable prices and a wide choice of services. They would like foreign carriers to operate freely in the United States. If basic services are subject to the GATT agreement, the FCC will have less ability to restrict foreign carriers operations in the United States.

This disagreement among countries, however, is symptomatic of a deeper issue: trade negotiations in GATT reflect nations' de-

[34] Ambassador S. Lynn Williams, Deputy U.S. Trade Representative, cited in Craig Johnson, "IS There Life Still in the Uruguay Round?" *Transnational Data and Communications Report, vol.* 14, No. 2, March/April 1991, p. 6.

35 Ambassador S. Lynn Williams, Deputy U.S. Trade Representative, cited in Craig Johnson, op. cit., footnote 34.

[36] Randolph Lumb, AT&T vice-president for international regulatory affairs, cited in Craig Johnson, op. cit., footnote 34, p. 6.

37 OTA interviews with representatives from USTR, Nov. 5, 1992.

sires to retain control of their telecommunications infrastructures for reasons of economic sovereignty, wealth creation, privacy protection, civil defense, and national security. To the extent that countries are concerned about loss of sovereignty, they will inflate the definition of basic as opposed to enhanced services in an effort to minimize the domain of negotiable issues.[38]

At the core of the debate about deregulation and competition and thus about tradeability of services lies the question of defining basic telecommunications services and enhanced telecommunications services. The usual technical distinction is simply that basic services arc those where messages are delivered with little or no enhancement by computer or other manipulation, whereas value-added or enhanced services are those where signals have been manipulated in some way—selected, formatted, processed, stored, forwarded, etc.[39] Basic services are assumed to be best provided by monopoly service providers, to gain economics of scale. Enhanced services, it is assumed, may be provided competitively. But efforts to arrive at clear and useful definitions for trade purposes have encountered a theoretical difficulty: there is no agreement among economists about the extent to which modern telecommunications are inherently monopolistic.[40] There is agreement that some enhanced services can be easily provided competitively; the question is how close to plain old telephone service can deregulation come without decreasing economic or social welfare, Countries that wish to protect their telecommunications market and traditional telecommunications providers seek to define as much as possible as basic services. Non-telecommunications firms that seek to offer new services seek to define as much activity as possible as enhanced or value-added.

At the core of the debate over telecommunications market access are the definitions of "basic" and "enhanced" services.

Negotiating GATT

How GATT negotiations work

GATT agreements arc generally arrived at by the mutual exchange of concessions between countries. One country may offer to reduce restrictions on foreign banking, for example, in exchange for another country lowering barriers to trade in insurance. While the classical economic theory of comparative advantage would emphasize the benefits of free trade for both the exporting

38 Peter Robinson, "Globalization, Telecommunications and Trade," *Futures,* October 1991, pp. 810-813.

39 Aronson and Cowhey argue also that a distinction between *infrastructure facilities* and *infrastructure services* ought also to be made, because control of facilities can affect the provision of competitive services. If facilities are provided only by a single monopoly telecommunications operator, then to ensure competition in services, stringent regulations must be made and enforced. Jonathan David Aronson and Peter F. Cowhey, op. cit., footnote 8, pp. 64-65. A looming question is the status of wireless communications technologies, which willlikely be international from the outset. See U.S. Congress, Office of Technology Assessment, *The World Administrative Radio Conference: Technology and Policy Implications,* OTA-TCT-549 (Washington, DC: U.S. Government Print Off Ice, May 1993).

40 GATT Secretariat, Multilateral Trade Negotiations: The Uruguay Round, Group of Negotiations on Services, Trade in Telecommunications Services, doc. no. MTN. GNS/W/52, May 19, 1989, p. 4; Jonathan David Aronson and Peter F. Cowhey, op. cit., footnote 8, p. 61. The distinction between basic and enhanced or value-added services was adopted essentially to avoid having services t hat can be offered competitively hamstrung by regulations designed for common carriers.

and importing countries, trade barriers are the consequence of political factors.[41]

Once the basic framework and the sectoral agreements are struck, the issue in GATT negotiations becomes the terms under which access to markets will be granted. This is a particularly sensitive issue where countries have monopoly service providers. An agreement to open markets under the most-favored-nation principle can hurt countries that have unilaterally liberalized earlier; MFN can lock open the markets of liberalized countries without obtaining equally open access to markets in countries that maintain a monopoly.

The United States and other countries have taken different approaches to the procedures for deciding what should be liberalized. The U.S. position, spelled out in detail in its October 23, 1989 proposal, is that every services sector should be opened unless specifically excluded (and defined in a schedule list). Exclusions or reservations would be periodically reconsidered and withdrawn when circumstances permitted, This flexible approach offers some protection to countries unwilling to embark on massive liberalization immediately, but also provides the opportunity for the United States to continue to press for market liberalization in the future.[42] Other countries argued that all services sectors should be restricted unless specifically liberalized. In the U.S. view, this would limit the number of items that could be reviewed, and would limit the ability of signatories to press for reopening issues in the future.

The United States has argued that services should be liberalized unless specifically excluded, whereas other countries believe that services should be restricted unless specifically /liberalized.

The U.S. position did not prevail. Each country agreed to put on the table its sector-by-sector offers, i.e., those specific liberalizing commitments it was willing to make. At the same time, each country was permitted to list restrictions in other countries that it wished to see removed.

Initially, no country except the United States proposed a list of offers, while the U.S. list of sectors that it wished to restrict was so short that other countries were visibly embarrassed.[43] Currently, however, there are offers on the table from 27 countries (with EC counting as one country) on all sectors of the services negotiations, with 20 proposals specifically covering telecommunications services. In the view of some U.S. observers, the offers merely describe the status quo and promise little additional liberalization.

The process of deciding what U.S. offers will be extended, while not strictly speaking secret, is largely shrouded from public view. By and large it consists of the process described below and in chapter 8, through which USTR solicits input from other government agencies and listens to lobbying by various firms, industries, and interest groups with a stake in the outcome, as required under the 1988 Telecommunications Trade Act. With the complexity of the issues, and with the paucity of data about services (discussed in chapter 8), there is no way for trade negotiators to assess the likely consequences and effects of their offers, restric-

41 Brian Hindley, "Principles in Factor-Related Trade in Services," in Patrick A. Messerlin, Karl P. Sauvant, et al., op. cit., footnote 13, p. 14.

42 Bela Balassa, "The United States," in Patrick A. Messerlin, Karl P. Sauvant, et al., op. cit., footnote 13, p. 130.

43 OTA interview with Margaret Wigglesworth, Coalition of Service Industries, June 12, 1992. See also Richard H. Snape, op. cit., footnote 21, pp. 10-11.

tions, or final agreements. It falls to the private sector to analyze the likely costs and benefits, and then to press for a negotiating position that retlects their assessments of advantages and disadvantages of any particular position. In this process, those with direct economic stakes in the outcome may have a voice, but there is no direct voice for the interest of consumers and jobholders in affected industries.

Formulation of U.S. negotiating positions in GATT

Congress is concerned about the degree of access to the U.S. market that is afforded other countries compared to the access that U.S. firms have overseas. The 1988 Trade Act established telecommunications as an area of particular concern, and directed USTR to assume the lead in both telecommunications equipmcnt and services negoti - ations. Congress' intervention, exercising its constitutional power to regulate foreign trade and commerce, reflected its suspicion of the free trade policies of recent Administrations and the reluctance during those Administrations to take action against U.S. trading partners who engage in unfair trading practices.

Congress typically does not have much interaction with USTR whilc negotiations arc proceeding. Trade negotiation documents are sometimes classified to prevent leaks that could affect the U.S. bargaining position,[44] which tends to make Congress less well-informed about the issues, some of which are highly technical.[45]

The U.S. negotiating position on trade in services and telecommunications is remarkably clear-cut for a relatively new policy issue. A number of participants note that significant policy innovation has occurred over the past decade. The fragmentation of policymaking (see chapter 8) sometimes results in trade policy conflicts, but these conflicts are usually over details of the trade agreements or over negotiating strategies, with only a few over fundamental issues. General principles of transparency, progressive liberalization, national treatment, most-favored-nation, nondiscrimination, and market access all arc relatively noncontroversial for government. network operators, equipment providers, and large users. Government and business share a common view of the benefits of liberalization in trade in services, and business plays a significant role in advising trade negotiators on their positions.

The trade negotiation positions of the United States arc formally the responsibility of USTR, in conjunction with the Treasury Department. USTR. however, has a small staff, and is dependent on other agencies for specific sector-al expertise. USTR assembles teams of negotiators from a number of agencies, such as the International Trade Administration (ITA) and the National Telecommunications and Information Administration, both in the Department of Commerce. The FCC, through its Common Carrier Bureau, plays an important role, because of its technical expertise. Representatives are also drawn from the Bureau of Communications and Information Policy (CIP) at the State Department, although CIP is thought by some trade participants and by some of its own staff to make relatively little

[44] This occurred for example during the negot iations for NAFTA.

[45] OTA interviews with USTR of ficials, Nov. 5, 1992.

contribution to trade policy.[46] The Antitrust Division of the Department of Justice is also part of the team,[47] and other agencies sometimes participate.

Formal and informal advisory committees and task forces also are consulted by USTR in developing positions. Formal committees include an Advisory Committee on Trade Policy and Negotiations, composed of chief executive officers (CEOs) of large firms, labor unions, and trade associations; and five sectoral Policy Advisory Committees, also drawn from the CEOs or executive vice-presidents of service companies. There are in addition 17 Industry Sector Advisory Committees, one of which is devoted to services.

Trade associations and lobbying groups also contribute to USTR deliberations. The U.S. Chamber of Commerce has an International Telecommunications Subcommittee that marshals and elaborates U.S. users' views, as does the U.S. Council for International Business. The International Telecommunications User Group (INTUG), based in London, speaks for users of international telecommunications here and in Europe and is a vigorous and outspoken proponent of liberalization and freer rnarket access. Its membership is composed chiefly of national communications users associations of the developed countries. A U.S. member is the International Communications Association (ICA), the largest U.S. user group, which itself deals mostly with domestic issues. Another important user group is the Coalition of Service Industries (CSI), which represents 14 very large firms.[48]

In most policy areas industry groups or interest groups line up behind different government agencies; these alignments are clear in the area of international telecommunications services.[49] The natural interest groups are:

- the dominant long-distance wrier (AT&T);
- the alternativc interexchange carriers (MCI and Sprint);
- the regional Bell holding companies (RBHCs);
- large users with an interest in operating private networks for themselvcs and others (such as EDS, IBM); and
- other, usually smaller users, with an interest in service at favorable costs and flexible operating conditions.

It appears that AT&T receives considerable support from the FCC, USTR and, at times CIP; the regional Bell operating companies from the FCC and NTIA; and alternative long-distance carriers from the FCC and

[46] OTA interviews with senior State Department officials, USTR officials, and with senior staff members of the Committee on House Foreign Affairs. A proposed reorganization of the State Department (*State 2000 Report*) indicates that CIP is to be downgraded and put under the Economics, Business and Agriculture Bureau, although the head of CI P will cent inue to enjoy ambassadorial rank, under exist ing legislat ion. CI P has suffered from being lodged in a department that is unfriendly to functional offices. See ch apter 8.

47 According to participants and observers, Department of Justice has not recently played any significant role in negotiations.

48 CSI was started in 1982 at the suggestion of William Brock, U.S. Trade Representative. Because it has only 14 members, CSI finds it easier to take strong positions on issues than most other t rade associations, whose members often have more cross-cutt ing interests on t rade issues. On t he ot her hand, because CSI has bot h large users and network operators as members, it cannot take a vigorous stand on some other user issues.

49 Chapter 8 has more detailed descriptions of these agencies and their relationships.

the Justice Department. The large users have strong support from USTR. The smaller users have only weak representation, chiefly in the Service industries branch of the International Trade Administration.

While the FCC's deregulatory orientation has largely benefited the alternative long-distance carriers and their users on the domestic level, the health of U.S. carriers in the international arena is a different question, and the FCC seems averse to policies that could harm AT&T. NTIA takes a strong promotional and supportive stance toward U.S. telecommunications operators. particularly RBHCs. The agency's *Infrastructure Report* and *Telecom 2000 Report* recognizes the importance of the domestic infrastructure in promoting economic growth and asserted that competition is the best means to promote domestic telecommunications development, but NTIA does not support trade policies that would potentially challenge domestic operators. There does not seem to be an explicit NTIA focus on users.[50]

USTR appears to be strongly influenced by AT&T and by large users, while other long-distance carriers and users complain that USTR pays insufficient heed to their needs.[51] Since USTR is at the center of overall trade negotiations, its function is to assimilate and aggregate input from a wide range of industries. USTR needs to have some distance from all interest groups in order to be able to adjust U.S. policy overall, and horse-trade with other countries. This may explain why USTR appears to many observers as standoffish.

Nevertheless, users may find a more sympathetic ear at USTR than at the telecommunications agencies. Users are drawn from a variety of industries, and so are not a natural constituency for telecommunications agencies. They typically spread their lobbying efforrts, since telecommunications is not their only regulatory or operating concern. Users' telecommunications requirements beyond plain old telephone service are also relatively new.

Long-range consequences of a GATT agreement

The success of GATT negotiations on services would represent important challenges to the traditional control of nations over their domestic affairs. With reliance on market access principles, trade officials would play a much greater role in international and even domestic telecommunications policy. This was recognized by Congress in the 1988 Telecommunications Trade Act, which gave USTR the leading role in multilateral telecommunicate ions trade negotiations.

USTR has already begun to intervene in specific telecommunications policy areas, even beyond the GATT setting. For example, USTR halted the FCC's proposed international simple resale initiative in late 1991, on the grounds that the FCC's timing on changing the ''dominant carrier regulation' would interfere with USTR's negotiations in GAIT (The FCC proposed to remove some reporting requirements on foreign carriers operating in U.S. markets; these carriers were all treated by the FCC as ''dominant

*With reliance on market access principles, trade officials play a much greater role in international and even **domestic telecommunications policy.***

[50] This maybe changing in regard to spect rum management, where NTIA has established a private sector liaison office.

[51] For example, in OTA interviews with of ficials of the International Communications Association, July 22, 1992,

carriers or monopolies with the power to restrict competition in their home markets.) The FCC complied with USTR's request to delay its action: later USTR gave the FCC its approval to go ahead. Such conflict among agencies is likely to increase.[52]

The fact that trade officials have emerged as important players in international telecommunications negotiations is important because their ministries have multiple constituencies with less specific focus on telecommunications issues than do telecommunications agencies. Some observers believe that trade officials should not be given too much authority, as they lack subject matter expertise. Furthermore, trade officials arc not necessarily concerned or knowledgeable about efforts to improve the competitiveness of national industries. In the United States, this responsibility is presumably lodged in NTIA, if anywhere, and NTIA plays a limited role in trade negotiations.

One potential consequence of the increasing trade focus of international telecommunications may be that as political leaders increasingly come to preside over international telecommunications through trade ministries, they may negotiate telecommunications trade deals that are suboptimal from the standpoint of telecommunications users or carriers, It sometimes is politically expedient to agree to trade policies, such as asymmetrical market access, which are harmful to one segment of a national industry. In other words, national competitiveness and free markets are not always compatible goals.

The web of negotiating relationships is further complicated by the fact that separately and within GATT, bilateral negotiations take place among countries, and not all countries arc party to all multilateral negotiations. The 1988 Trade Act specifically requires the President to negotiate access to foreign markets in telecommunications, and authorizes him to use sanctions if such access is not achieved (section 301). These arc necessarily bilateral negotiations:[53] parties that recently have been identified as having serious barriers to U.S. telecommunications trade are South Korea, which has reduced its trade barriers through bilateral negotiations, and the European Community,

52 Peter Cowhey argues that this may bring about an equilibrium outcome or stalemate because no one will have strong Incentives to resolve the conflict. Peter F. Cowhey, op. cit., footnote 6, p. 198.

53 The most recent example of t his is in the dispute over t he ECUtilities Directive, an equipmentissue. This directive went into effect on Jan. 1,1993, after the failure to reach agreement with the United States on the GATT Government Procurement Code. It requires that EC countries have open bidding procedures, but in the absence of an international or bilateral agreement they are to give preference to EC firms in procurements. A 50 percent EC-content requirement was established, with a 3 percent price differential favoring EC companies.

The United States is seeking the elimination of such Buy National rules in the GATT Government Procurement Code negotiations. See United States, Off Ice of the United States Trade Representative, 1992 *National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: U.S. Government Printing Office, 1992), pp. 75-76. Agreement in GATT would provide rules specifying open, nondiscriminatory procurement. Furthermore, the United States and the EC disagree on the status of the Bell operating companies and AT&T in t he Government Procurement Code. The EC claims, and AT&T has acknowledged, that AT&T preferentially buys its own equipment, known as "self -dealing." The fact that AT&T is both a service and an equipment provider causes the United States serious problems in trade negotiations.

In announcing the imposition of sanctions against the EC in February 1993, USTR hoped that the EC would waive the discriminatory provisions of the Utilities Directive.

which has not. Furthermore, with the growth in importance of computing and other electronic media in telecommunications, a complex network of standards organizations now has a role in telecommunications policy debates. [54]

Given that countries have differing telecommunications history, politics. and infrastructure, they will not all move smoothly or at the same pace from the stable domcstic monopoly/ITU model toward a relatively stable competitive market. Some may experiment with a variety of telecommunications structures and policies. This could result in persistent failure to eliminate obstacles to efficient interconnection of equipment and networks, which could hurt U.S. firms wishing to take advantage of their installed technical base, their experience, and their established operating procedures. This in turn may affect the competitiveness of U.S. companies in areas of the world that following a telecommunications trade path differ--ent from that favored by the United States.

Are there clear winners and losers in the changes occurring in global telecommunications services trade patterns'? So far, there appear to be few losers. Although much of the change came at the behest of large telecommunications users, the cost reductions and improved flexibility in operating terms seems to have significant spillover benefits for residential and small and medium business users. Computer equipment and electronics firms and enhanced services providers have benefited by lowcr costs and improved terms of access. Although many services providers arc now saying that no GATT agreement is better than a bad agreement (i.e., one that would lock open the U.S. market without giving them full rights to compete in others' markets), it is likely that they will acquiesce in an agreement that has broad political support. Even organized labor, which may have less bargaining power with the opening up of the telecommunications system, expects to endorse the Uruguay Round GATT agreement, when and if it is finalized. [55]

[54] For a recent discussion of the standards-making process inrelation to U.S. competitiveness, see U.S. Congress, Off Ice of Technology Assessment, *Global Standards: f3ul/ding Blocks for the future,* OTA-TCT-512 (Washington, DC: U.S. Government Printing Off Ice, March 1992).

55 Morgan, op. cit., footnote 27.