
UNITED STATES V. MEXICO: THE FIRST TELECOMMUNICATIONS CHALLENGE CONFRONTING THE WORLD TRADE ORGANIZATION

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I. INTRODUCTION

When sixty-nine¹ members of the World Trade Organization ("WTO")² signed the Basic Telecom Agreement in 1997,³ they agreed to open some or all of their basic telecommunications services markets to foreign competition for the first time. The WTO signatories hoped that the Basic Telecom Agreement would ensure that national telecommunications monopolies became a thing of the past. Just a few years after its adoption, the Basic Telecom Agreement faced its first real test.

This test was the challenge by the United States to the practices of the Government of Mexico and its main telecommunications carrier, Teléfonos de Mexico DA de CV ("Telmex").⁴ The United States alleges that Cofetel, the Mexican communications agency, has adopted regulatory measures that are anti-competitive and tolerated established

trade barriers contrary to the Basic Telecom Agreement.⁵ This is the first formal WTO dispute concerning the Basic Telecom Agreement.

The U.S. decided to challenge the Mexican policies in the WTO both because of the legal issues involved and because of the commercial significance of the Mexican market to American-based telecommunications providers.⁶ To date, long distance calls between the United States and Mexico amount to nearly three billion minutes annually; Americans spent \$1.2 billion calling Mexico in 1999.⁷ After three years in the supposedly competitive Mexican market, however, the combined market share for U.S. companies and subsidiaries was less than 30 percent.⁸ Not only does Telmex control 81 percent of the Mexican long distance market and monopolize the local telecommunications market, it also has the highest profit return

¹ Fourth Protocol to the General Agreement on Trade in Services, Feb. 15, 1997, 36 I.L.M. 354 at 357 [hereinafter Basic Telecom Agreement]. Actually, the 69 WTO Members represent 70 contracting parties, as the European Union is bound in addition to its 15 Member states. The 60 WTO Members represent governments or separate customs territories with full autonomy in the conduct of their external commercial relations. Of the parties to the WTO Basic Telecom Agreement, Hong Kong remains a WTO Member by virtue of its status as a separate customs territory of the People's Republic of China and may participate in relevant international organizations and international trade agreements, such as the WTO. *Id.*

² See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994; The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 2 (GATT Secretariat 1994), 33 I.L.M. 1125 (1994) [hereinafter WTO Agreement]. The WTO was created by the Marrakesh Agreement Establishing the World Trade Organization.

³ Basic Telecom Agreement, *supra* note 1, at 366. As described below, the commitments undertaken as a result of the WTO Basic Telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS. These

commitments are colloquially referred to as the WTO Basic Telecom Agreement. *Id.*

⁴ See generally, Telmex, at <http://www.telmex.com> (last visited Oct. 12, 2001). Telmex is a telecommunications company located in Mexico City, Mexico that was formerly owned by the Mexican Government but privatized in 1990. The company provides telecommunications services that include local and long-distance wire service, wireless communications, audio and data, digital wireless network access and Internet. *Id.*

⁵ Mary Greczyn, *U.S. Taking Mexican Interconnection Concerns to WTO*, COMM. DAILY, July 31, 2000. The decision to seek involvement of the WTO came after Deputy U.S. Trade Representative Richard Fisher spoke with Mexican Deputy Trade Minister for Commercial & International Negotiations Luis de la Calle and Jorge Nicolín, head of Mexican regulatory agency, Cofetel. *Id.*

⁶ See Anthony DePalma, *U.S. Taking Mexico Phone Dispute to W.T.O.*, N.Y. TIMES, Nov. 9, 2000, at C6 [hereinafter DePalma].

⁷ Jonathan Kandell, *Yo Quiero Todo Bell*, WIRED, Jan. 2001, at 134.

⁸ *Id.* at 134. In 1999, Telmex registered profits of \$3.9 billion on revenue of \$10.2 billion. *Id.*

per line of any major telecommunications carrier in the world.⁹

Although this first WTO telecommunications dispute concerns Mexico and the U.S., the outcome of this case could establish an important WTO precedent. As the first challenge under the Basic Telecom Agreement, the dispute may resolve ambiguities over how that agreement is interpreted by the WTO. Moreover, the case signals to other countries that the U.S. government will go to great lengths to enforce WTO agreements against other WTO members. The Mexico–U.S. telecommunications case may, and arguably should, become a prototype for a new type of WTO telecommunications case.

This Note explores the implications of the first telecommunications case to be brought to the WTO for dispute resolution. Part I of this note explains the history and practical implications of the General Agreement on Trade in Services (“GATS”) and the Basic Telecom Agreement. In particular, this Note explains why WTO countries decided to regulate telecommunications in this way. Part II charts the course of the Mexico–United States dispute. Part III discusses the issues in this dispute that have already been resolved. Part IV analyzes the issues still confronting the WTO in this dispute. Finally, Part IV of this Note suggests how the WTO Dispute Settlement Body might resolve the issues raised in this dispute.

II. HISTORY

A. The General Agreement on Trade in Services

The 1947 General Agreement on Tariffs and Trade (“GATT”) dealt almost exclusively with trade in goods.¹⁰ The GATT was both an organization of sovereign states and an agreement. For the first fifty years of GATT’s existence, parties worked to reduce barriers to international trade in goods but largely ignored trading in services.¹¹ As a result of the Uruguay Round, the WTO inherited the GATT’s functions in 1995. The WTO is an international body that administers trade laws and provides a forum for settling trade disputes between member countries.¹² Although the WTO now operates a dispute resolution process, it has more power to enforce agreements among member countries than did the GATT. These enforcement powers include the authority to impose sanctions on a country that refuses to comply with a WTO-sponsored agreement.¹³

Although trade in goods had been the principal focus of the GATT prior to the Uruguay Round, developed countries had previously decided that it would be useful to negotiate an agreement governing trade in services given that they enjoyed a comparative advantage in that sector.¹⁴ Overall, trade in services, including the telecommunications and financial services,¹⁵ represented a substantial portion of total world trade.¹⁶ Liberalized trade in services between countries would provide advantages to overall international trading.¹⁷ Ultimately, trade in services was added to the Uruguay Round agenda and an agreement called the

⁹ See DePalma, *supra* note 6, at C6.

¹⁰ Kevin C. Kennedy, *Market Openings in the Telecommunications Goods and Services Sectors*, 33 INT’L LAW. 27, 28 (1999) [hereinafter Kennedy].

¹¹ *Id.* at 28. By that time the service sector had taken over manufacturing as the most important part of developed countries’ economies. Services industries accounted for sixty-one percent of GDP and over one-half of employment in developed countries. *The Manufacturing Myth*, ECONOMIST, Mar. 19, 1994, at 91.

¹² See Taunya L. McLarty, *Liberalized Telecommunications Trade in the WTO: Implications for Universal Service Policy*, 51 FED. COMM. L.J. 1, 59 (1998) [hereinafter McLarty].

¹³ See ICSID, THE WORLD BANK GROUP, Vol. 15, 2, at <http://www.worldbank.org/icsid/news/n-15-2-5.htm> (last visited Sept. 19, 2001).

¹⁴ Kennedy, *supra* note 10, at 29. The ratio of world merchandise trade to services trade was nearly four to one in 1997. See also FOCUS (WTO NEWSLETTER), Mar. 1998, No. 28

at http://www.wto.org/english/res_e/focus_e/focus28_e.pdf [hereinafter Focus]. The WTO estimates that world trade in commercial services exceeded \$1.3 trillion in 1997. *Id.* Jobs in the service sector provide nearly eighty percent of U.S. employment. That figure is expected to increase to approximately eighty-eight percent by 2005. *Id.*

¹⁵ Kennedy, *supra* note 10, at 29-30.

¹⁶ *Id.* at 29. The service sector created seventy-five percent of GDP in the United States in 1996. Bob Vastine, *Good News for U.S. Trade*, CHRISTIAN SCI. MONITOR, Mar. 17, 1997, at 18. In 1997, total U.S. exports of commercial services exceeded \$230 billion. See also Focus, *supra* note 14, at 6.

¹⁷ In extending the President’s fast-track negotiating authority under the Omnibus Trade and Competitiveness Act of 1988, Congress identified liberalization of trade in services as a principle negotiating objective. Section 1101(b)(9) of the 1998 Act provides in part:

the principle trade negotiating objectives of the United States regarding trade in services are: to reduce or to

General Agreement on Trade in Services (GATS) was signed after the Uruguay Round.¹⁸

In adopting the GATS, countries agreed for the first time to rules governing trade and investment in services.¹⁹ The GATS encompasses multilateral rules concerning treatment of foreign service and service suppliers as well as government regulations of trade in services.²⁰ The GATS agreement is divided into three main sections: (1) basic obligations, (2) market access and national treatment commitment and (3) annexes to the general rules on market access.²¹ First, the agreement establishes basic obligations governing trade in services applicable to all WTO members, which include

eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatments and restrictions on establishment and operations in such markets; and to develop internationally agreed rules, including dispute settlement procedures which: are consistent with the commercial policies of the United States and will reduce or eliminate such barriers or distortions, and help ensure fair, equitable opportunities for foreign markets.

19 U.S.C. §2901(b) (9)(A) (1994).

¹⁸ General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 44, 77-78 (1994) [hereinafter GATS]. Texts of all WTO agreements are available from the WTO's website at <http://www.wto.org>.

¹⁹ Kennedy, *supra* note 10, at 32.

²⁰ See GATS, *supra* note 18.

²¹ *Id.* The GATS is divided into seven parts, consisting of twenty-nine articles, eight annexes and one appendix. *Id.*

²² GATS, *supra* note 18, at art. XVII. This is a nondiscriminatory rule that requires a WTO Member to treat like services and service suppliers from other WTO Members no less favorably than it treats its own services and suppliers. Article XVII states that:

[I]n the sectors inscribed in its schedule and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.

Id.

²³ GATS, *supra* note 18, at art. II. Members must accord equal treatment (i.e., most-favored-nation treatment) to all other Members (Section 1 for Most-Favored-Nation Treatment). Trade in services spans a wide range of fields, however, and these contain many measures that cannot be subject to most-favored-nation treatment for various historical or other reasons. Accordingly, the GATS stipulates that if such measures are registered at the time the GATS enters into force, those measures may be exempted from the obligation of most-favored-nation treatment. The Council for Trade in Services shall review all exemptions granted for a period of more than five years. The first such review shall take place no more than five years after the entry into force of the WTO Agreement. In principle, such exemptions should not exceed a period of ten years. These exemptions are subject to negoti-

national treatment,²² most-favored-nation treatment ("MFN")²³ and transparency.²⁴ Second, the GATS establishes WTO members' market access commitments.²⁵ Each country adopted a schedule of commitments that is attached to the Agreement.²⁶ Third, there are eight annexes that balance the basic obligations and market access commitments of all signatories.²⁷ Members must guarantee that any measures taken by central, regional and local authorities, and by non-governmental bodies²⁸ that affect a service supplier's ability to supply services through one of the forms, are in accordance with GATS.²⁹ Members are exempt, however, from applying GATS obligations to those

ation in subsequent trade liberalizing rounds. *Id.*

²⁴ GATS, *supra* note 18, at art. III, para. 1. The transparency obligations do not override the need to protect confidential information. Article III provides that no Member is required to provide confidential information the disclosure of which would impede law enforcement, be otherwise contrary to the public interest or prejudice legitimate commercial interests of particular public or private enterprises. *Id.* at art. III., para. 2.

²⁵ GATS, *supra* note 18, at art. XVI. This provision requires WTO members to "accord services and service suppliers of any other [WTO] Member treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its schedule," and to refrain from imposing certain types of quantitative restrictions, economic needs tests or local incorporation requirements in those service sectors where the WTO Member has undertaken specific market access commitments. *Id.* A "quantitative restriction" is a cap on the number of permitted suppliers. An "economic needs test" is a limitation on the number of service suppliers based on an assessment of whether the market will be able to absorb new service suppliers without providing harmful to existing ones. *Id.*

²⁶ GATS, *supra* note 18, at art. III, para 1.

²⁷ GATS, *supra* note 18, at art. XX. Each WTO Member negotiates a Schedule of Commitments covering the various service sectors. If a WTO Member agrees to make market access commitments in given service, that Member must list quantitative restrictions and discrimination in favor of domestic firms that it wishes to maintain. *Id.* According to Article XIX, such restriction or discrimination is subject to negotiations during either the original negotiations or subsequent rounds. *Id.* at art. XIX.

²⁸ GATS, *supra* note 18, at art. I., para. 3(a). The non-governmental bodies must be acting with the delegated power of the government. *Id.*

²⁹ GATS, *supra* note 18, at art. XXVIII(c). "[M]easures by Members affecting trade in services" is defined by GATS to encompass measures with regard to:

the purchase, payment or use of a service; the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally; and the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member.

Id.

service suppliers that are supplying the service “in the exercise of governmental authority.”³⁰

1. Basic Obligations

For basic obligations, Article II of the GATS requires that Members “accord immediately and unconditionally to services and service suppliers of any other Member, treatment no less favorable than that it accords to like services and service suppliers of any other country.”³¹ This obligation is referred to as the “most favored nation” requirement. Under the MFN obligation, all countries must allow service providers from different countries non-discriminatory access to their markets.³² For instance, MFN requires the U.S. to be country-neutral to all WTO members that want to provide services in the U.S. market, regardless of

the level of openness of those countries’ markets to U.S. service providers.³³ Countries violate MFN principles for telecommunications if, for instance, they act discriminatorily when granting interconnection rights.³⁴ Thus, all WTO members that made basic telecommunications commitments must confer the benefits of those commitments on an MFN basis to all other WTO members regardless of those members’ participation in basic telecommunications negotiations.³⁵ The MFN provision in GATS can be exempted.³⁶ All countries must guarantee MFN treatment in all service sectors,³⁷ but they are authorized to accord particular countries less than MFN treatment as long as they list these exemptions in their MFN Article II Schedule in accordance with the requirements of the Annex on Article II Exceptions.³⁸

Another basic obligation and a core principle

³⁰ GATS, *supra* note 18, at art. I, para. 3(b). The GATS states, though, that measures affecting trade in services must conform to GATS obligations when the measures would cover a governmental supplier that is either supplying the services on a commercial basis or supplying the service in competition with another supplier. *Id.* at art. I, para. 3(c). Therefore, under the parties’ negotiations of basic telecommunications services, this provision would subject PTT to GATS principles unless the parties specifically exempted their domestic PTT from the obligations.

³¹ GATS, *supra* note 18, at art. II, para. 1.

³² McLarty, *supra* note 12, at 23.

³³ TRADE DIRECTORATE TRADE COMMITTEE, TRADE AND INVESTMENT INTERFACE, TD/TC/WP(96)(32), at http://www.oecd.org/ech/index_2.htm, Aug. 6, 1996 [hereinafter Trade Directorate]. MFN exceptions have been inscribed in roughly six out of ten country schedules submitted by GATS signatories (i.e., with sixty-one schedules out of a total of 106 featuring MFN exceptions). Such MFN exceptions have been claimed for some 350 measures. In virtually all cases, listed measures do not have a fixed termination date. The bulk of the MFN exemptions have been lodged in a relatively small number of sectors, and these are typically sectors in which few or no commitments were made in the Uruguay Round. Indeed, for the most part, MFN exemptions tend not to be lodged in sectors where negotiations on specific commitments have been finalized. *Id.* at 2, 9.

³⁴ See, e.g., http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/09serv_e.htm (last visited Sept. 23, 2001). MFN applies to all services, but some special temporary exemptions have been allowed. When the GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favorable treatment to particular countries in particular services activities by listing “MFN exemptions” alongside their first sets of commitments. In order to protect the general MFN principle, the exemptions could only be made once; nothing could be added to these lists. They were reviewed in 2000 and should last no more than 10 years. *Id.*

³⁵ GATS, *supra* note 18, at art. II. The structure of the GATS itself creates the classic “free-rider” problem. A Party can take an MFN exception. This exception is taken for a particular telecommunications sector and not with regard to another Party; although this is not looked upon favorably. For example, the United States was concerned about Canada’s level of openness to U.S. investors in Canadian satellite services. Therefore, the United States took an MFN exception for direct satellite broadcasting, generally, as opposed to taking an exception for Canada. *Id.*; McLarty, *supra* note 12, at n.102.

³⁶ GATS, *supra* note 18, at art. II, para. 2.

³⁷ *Id.* at para. 1. MFN reservations should be distinguished from market access and national treatment reservations. MFN treatment must be accorded to all listed and unlisted sectors unless the MFN exemption is taken. However, market access and national treatment must only be accorded to those listed sectors, and even then particular reservations can be taken. *Id.*

³⁸ GATS, Annex on Article II Exemptions, Apr. 15, 1994, WTO Agreement, The Results of the Uruguay Round of Multilateral Trade: the Legal Texts 352, para. 1 (GATT Secretariat 1994), 33 I.L.M. 44, 68 (1994) [hereinafter GATS Annex]. The individual Member’s Schedule on Article II exemptions became an integral part of the Annex on Article II Exemptions. *Id.* Any new MFN exemptions after the date of entry into force of GATS will have to be taken in accordance with the waiver procedures of Article IX, para. 3 of the WTO Agreement. WTO Agreement, *supra* note 2; see GATS Annex, at para. 2. In that case, a three-fourths vote by the WTO Members in favor of the MFN exemption would have to be obtained by the exempting Member. WTO Agreement, *supra* note 1, at art. IX, para. 3(a); see GATS Annex, at para. 3. Such exemptions apply to a narrow range of sectors. Moreover, these sectors are ones in which recent attempts at trade and investment liberalization have encountered recurring difficulties regardless of negotiating setting or where the appeal of bilateralism and reciprocity-based approaches remains for policy or practical reasons the preferred route to liberalization and/or trade facilitation. Finally, it bears recalling that the GATS Annex on Article II Exemptions states that MFN exemptions should not in principle exceed a period of ten

of the GATS is transparency.³⁹ Article III requires that each Member publish all international agreements that affect trade in services as well as “all relevant [domestic] measures of general application, which pertains to or affect” the provision of services.⁴⁰ The Members must also notify the Council for Trade in Services about any new measures that “significantly affect trade in services.”⁴¹ Members, however, are not obligated to publish any information that is confidential, and this loophole is taken advantage of at any possible point.⁴²

Article VI set out the specifications for Members to identify and negotiate the reduction of specific service sector non-tariff barriers, such as criteria for licensing,⁴³ anti-competitive business practices⁴⁴ and activities of monopoly providers.⁴⁵ Article VI requires Members to ensure that “measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.”⁴⁶ In addition, it requires that licensing schemes or other such qualification requirements are administered in a manner fair to the applicants⁴⁷ and puts in place, when practicable, a mechanism for review of administrative decisions that affect a provider’s ability to supply services.⁴⁸

As part of the basic obligations, “granting a monopoly share of a service market to a domestic supplier is generally inconsistent with the goal of market liberalization, but such practice is com-

mon for the basic telecommunications service sector.”⁴⁹ Although the signatories to the GATS recognized that the “elimination of monopoly suppliers in these sectors is a decision that individual countries should have the right to make based on their national objectives and their domestic anti-competition policy, they committed not to let these monopolies become an additional barrier.”⁵⁰ Therefore, the GATS permits monopolies to stay in place, but subjects their operation to certain obligations.⁵¹ Any monopoly supplier of a service⁵² must, within its relevant market of monopolization, comply with the Members’ general obligations and specific sector commitments.⁵³ Outside its monopolized market, the monopoly supplier must not abuse its monopoly position or act inconsistently with any of the Members’ commitments.⁵⁴

2. Market Access and National Treatment

For the General Obligations discussed above, Members are bound by the principles for all service sectors, unless otherwise accepted within their Schedules, which is not commonly performed.⁵⁵ By contrast, with GATS Specific Commitments—market access and national treatment—Members are bound only if they make an affirmative commitment in their Schedule to be bound.⁵⁶

The market access commitment compliments

years following the WTO’s entry into force. Such exemptions are to be reviewed within five years of the entry into force and be the subject of negotiations in subsequent liberalization rounds. GATS Annex, at art. III.

³⁹ GATS, *supra* note 18, at art. III.

⁴⁰ *Id.* at art. III, para. 1. See McLarty, *supra* note 12, at 25.

⁴¹ GATS, *supra* note 18, at para. 3.

⁴² *Id.* at art. III.

⁴³ *Id.* at art. VII.

⁴⁴ *Id.* at art. IX.

⁴⁵ *Id.* at art. VIII, para. 2. A “monopoly supplier of a service” is “any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service.” *Id.* at art. XXVIII (h). Also, the obligations on any “monopoly supplier of a service” apply as well to those “exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.” *Id.* at art. VIII, para. 5.

⁴⁶ GATS, *supra* note 18, at art. VI, para. 1.

⁴⁷ *Id.* at paras. 3, 5(a). When determining whether a Member’s licensing and qualification requirements or technical standards are being used to nullify a commitment, standards of international organizations will be considered, as

well as the disciplines on standards that are established by bodies of the Council on Trade in Services. *Id.* at paras. 4, 5(b).

⁴⁸ GATS, *supra* note 18, at art. VII, para. 2.

⁴⁹ McLarty *supra* note 12, at 27.

⁵⁰ *Id.*

⁵¹ See generally, GATS Annex, *supra* note 38.

⁵² GATS Annex, *supra* note 38, at art. XXVIII (h). A “monopoly supplier of a service” is “any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service.” Also, the obligations on any “monopoly supplier of a service” apply as well to those “exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.” *Id.* at art. VIII, para. 5.

⁵³ *Id.* at art. VIII, para. 1.

⁵⁴ *Id.* at para. 2.

⁵⁵ McLarty, *supra* note 12, at 27.

⁵⁶ McLarty, *supra* note 12, at 21. But there are various exceptions to the obligations that apply to all service sectors, similar to exceptions contained in the GATT, which are outlined in the GATS. There are different than the sector-specific exemptions that Members

MFN and national treatment obligations within the GATS Specific Commitments in several ways.⁵⁷ The principle states that a country should allow the highest possible access to the telecommunications market, for instance, by not imposing certain quotas or quantitative restrictions.⁵⁸ Members do not have to open their service markets to foreign service suppliers within Article XVI.⁵⁹ Article XVI only states that when a "Member undertakes sector-specific market access commitments in its Schedule, they must be within certain parameters."⁶⁰ For instance, when a Member undertakes market access for a service, it will be assumed that there will not be any limits on the ability of a foreign service supplier to enter the domestic service market.⁶¹

The principle of national treatment requires a country to grant foreign service-providers treatment no less favorable than it grants to its own

list in their Schedules. GATS includes institutional provisions, such as authorization for dispute settlement. Finally, GATS contains commitments to continue negotiations on various issues important to all services.

Id.

⁵⁷ *Id.* at 28-29.

The market access principle applies to services differently than it does to goods. Under GATT, market access encourages tariffication, which is the transfer of non-tariff barriers into tariff barriers, and then it requires the overall reduction or phasing out of tariffs. This principle applies easily to goods, and specifically to telecommunications equipment, as unreasonable packing requirements, content requirements, technical standards, and so on, may be set up by a country as trade barriers. These barriers can be quantified in tariff schedules, and as the country's market becomes more competitive, the tariffs can be reduced. Market access, as applied to services, includes allowing a country to provide services through four modes of supply in Article I, such as cross-border supply and commercial presence abroad. Thus, market access is one of the most important and pervasive issues facing service providers.

Id.

⁵⁸ *Id.* at 28-29.

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Id.

⁵⁹ McLarty, *supra* note 12, at 29.

⁶⁰ *Id.* "Before the conclusion of the 1997 Negotiations, Members' individual market access concessions were fairly

domestic service suppliers.⁶² For basic telecommunications, this means that foreign suppliers must have the opportunity to receive the same access to the public networks as a national provider, regardless of whether that provider is public or private.⁶³ In GATS, unlike in GATT, the national treatment requirements are not mandatory.⁶⁴ A country has to undertake the national treatment commitments in its Schedule in order to be bound and a Member can specify conditions or qualifications to such commitments.⁶⁵

If there are problems with any of the obligations within the GATS, Articles XXII and XXIII within the GATS provide consultation and dispute settlement provisions.⁶⁶ If a Member believes that another Member is violating one of its obligations in the GATS framework, one of the Annexes or in its Schedule of Commitments, then that Member can invoke the dispute settlement procedure

narrow for the telecommunications sector. [But], market access for basic telecommunications is now required for those Members that made February 15, 1997 offers." *Id.*; see GATS, *supra* note 18, at art. XVI.

⁶¹ GATS, *supra* note 18, at art. XVI, para (a)-(f).

⁶² *Id.* at art. XVII.

⁶³ *Id.* at para. 1. However, the Note records that the national treatment commitments should "not be construed to require any Member to compensate for any inherent competitive disadvantages which result from foreign character of the relevant services or service suppliers." *Id.* at n.11. This is noted, surely, because of the difference between goods, which are generally fungible, and services, which carry with them more personal and tailorable characteristics that a domestic service provider may be more cognizant of with regard to domestic consumers. *Id.*

⁶⁴ GATS, *supra* note 18, at art. XVII. National treatment will mean something different for countries in which the government is a market participant in addition to the market regulator. Even as a market participant, the government, in theory, should apply all international laws, regulations, taxes and standards neutrally among all market participants. If the government taxed other providers, would it have to tax itself? There are serious implications to the application of national treatment in a market that is dominated by a government-operated service provider that is supplying services on a commercial basis or supplying the service in competition with another supplier. *Id.* at art I, para. 3 (b).

⁶⁵ GATS, *supra* note 18, at art. XVII, para. 1. So, for example, if a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment. In addition, if the government limits the number of licenses it will issue, then that is a market access limitation. If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, this is an exception to the national treatment principle. See WTO, *Official Ministerial Website*, at http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/09serv_e.htm (last visited Jun. 30, 2001).

⁶⁶ GATS, *supra* note 18, at art. XXII, XXIII.

under the WTO.⁶⁷ Article XXIII, however, only provides a basic outline of authority; it does not establish the procedural formalities for dispute settlement.⁶⁸ The current rights and obligations are set out in the Dispute Settlement Understanding (DSU) of the WTO, which is referenced by GATS, Article XXIII.⁶⁹

Over many years, Members have made changes to the dispute resolution process⁷⁰ that indicate their willingness to take more of a legal rather than diplomatic approach. Some of the changes included the right for Members have recourse to the Dispute Settlement Body ("DSB") without the ability of one party to block panel formation,⁷¹ without the consensus requirement that applied before 1994,⁷² with strict time limitations,⁷³ with the right to appeal,⁷⁴ with the possibility of a cross-retaliation remedy,⁷⁵ and with the option of arbitration on the issue of retaliation.⁷⁶

⁶⁷ *Id.* at art. XXIII, para. 1 "If any Member should consider that any other Member fails to carry out its obligations or specific commitments under. . . [GATS], it may with a view to reaching a mutually satisfactory resolution of the matter, have recourse to the. . . [Dispute Settlement Understanding]." *Id.*

⁶⁸ *Id.* at art. XXIII.

⁶⁹ Understanding the Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, WTO Agreement, ANNEX 2, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: THE LEGAL TEXTS 404, 33 I.L.M. 1125, 1226 (1994). [hereinafter 1994 Dispute Settlement Understanding].

⁷⁰ McLarty, *supra* note 12, at 37. The Tokyo Round produced the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance. GATT B.I.S.D. (26th Supp.) at 210 (1980). Later, in 1982, The GATT Ministerial Declaration on Dispute Settlement was released. GATT B.I.S.D. (29th Supp.) at 13 (1983).

⁷¹ 1994 Dispute Settlement Understanding, *supra* note 69, at art. IV. The DSB must establish a panel no later than the second time it considers a panel request, unless there is consensus against establishment. *Id.*

⁷² *Id.* at art. XXI. A Member can no longer block adoption of a panel report, authorization of retaliation or time limitations for each step. The panel report has to be adopted by the DSB between 20 and 60 days after circulation to Parties unless a Party appeals or there is a consensus not to adopt the report. Parties can state in writing their objections to the report, but this will not have the effect of unilaterally blocking the report. *Id.*

⁷³ *Id.* Overall, it is now possible to adopt a panel report within 14 months or less. *Id.*

⁷⁴ 1994 Dispute Settlement Understanding, *supra* note 69, at art. 17. Either party is authorized to make an appeal to the Appellate Body. The appeal is limited to issues of law covered in the panel report, and the DSB must adopt the Appellate Report within 30 days unless there is a consensus not to adopt the report. The total time for the appeal is not to exceed 90 days. *Id.*

3. GATS Annex on Telecommunications

Within the area of services, telecommunications is a sector with a dual function, because it is a means of economic activity and the means of delivery for other economic activity.⁷⁷ Due to this complex role of the telecommunications sector, the GATS Annex on Telecommunications was established as a way to ensure that the telecommunications sector would not become a non-tariff barrier to trade and instead serve as a means of services delivery.⁷⁸ The Annex gives service providers reasonable and nondiscriminatory access to, and use of, telecommunications services within the borders of WTO members that have made commitments for value-added services.⁷⁹ This translates into the ability of foreign value-added service providers to enter a country and interconnect to the public telecommunications network

⁷⁵ *Id.* This is a significant addition to the 1994 agreement. The Multilateral Trade Agreements have been "packaged," and a Member that accedes to the WTO must accede to each agreement, including GATS. The preferred retaliatory action is within the same agreement and the same sector, such as among types of telecommunications services. If this is not possible, then retaliation may be effected within the same agreement but in a different sector, such as between telecommunications and financial services. Then, if those two alternatives are not possible, retaliation can be authorized within a different agreement, such as between telecommunication services and goods. *Id.*

⁷⁶ 1994 Dispute Settlement Understanding, *supra* note 69, at art. 25. The findings of arbitration are to be adopted by the DSB and implemented unless the DSB rejects by consensus the arbitration findings. The arbitration process is available only for the issue of when a Party must comply with panel and DSB recommendations. It is not for the issue of whether the Party is ultimately liable to comply with the recommendations because "liability," or noncompliance under the terms of the GATT, is locked in by adoption of an unfavorable panel or appellate report. *Id.*

⁷⁷ Kennedy, *supra* note 10, at 33.

⁷⁸ *Id.* at 34. The Annex applies to all measures that affect access to and use of public telecommunication transport networks and services. It does not apply to measures affecting cable or broadcast distribution of radio or television programming. Public telecommunications transport service means service that a member requires to be offered to the public generally (thus, they may be privately owned), and includes telegraph, telephone, telex and data transmission. Public telecommunication transport network means the infrastructure, which permits telecommunications between defined network termination points. GATS Annex, *supra* note 38 at 3(a), (c).

⁷⁹ Statement of Administrative Action, Apr. 15, 1994, WTO Agreement, reprinted in, Uruguay Round Agreements Act, H.R. 5110, 103d Cong., 2d Sess., H. Doc. 103-316, at 656 (1994).

for the purpose of offering value-added services to the public in that market.⁸⁰

All measures that concern the access and use of public telecommunications transport services are included within the GATS Annex on Telecommunications.⁸¹ There are no requirements that a member authorize a service supplier of any member country to acquire, construct, establish or otherwise supply telecommunication transport networks or services unless there is a scheduled specific commitment concerning access or use of these services.⁸² In addition, where there are telecommunication services that are not offered to the public generally, there are no requirements that a member must acquire, build or lease a network or supply these telecommunication services.⁸³

Paragraph five of the Annex is the nucleus of the entire agreement: "Access to and Use of Public Telecommunications Transport Networks and Services."⁸⁴ This paragraph provides that "each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in this Schedule."⁸⁵ This includes (1) the right to purchase or lease and attach terminal or other equipment that is necessary to supply services; (2) the right to interconnect private or leased or owned circuits with public networks or services; (3) the right to use operating protocols of the supplier's choice in the supply of any service; and (4) the right to use networks and services for the movement of interconnection within and across borders, subject to reasonable mea-

asures necessary to ensure security and confidentiality.⁸⁶

Any sector-specific commitments on market access or national treatment must be in a member's Schedule.⁸⁷ By listing a service sector in its Schedule, a member makes a commitment to allow foreign suppliers into its market and to treat them as its domestic suppliers.⁸⁸ Once a member makes a commitment in its Schedule, it cannot be withdrawn unless the commitment was one that did not benefit any other member or the withdrawing member gives a compensatory adjustment. This process is seen where there is a benefit withdrawn under Article XXI, the Modification of Schedules.⁸⁹

B. Specific Commitments

All the commitments described above were made as part of the Uruguay Round negotiations officially concluded in 1994.⁹⁰ Unfortunately, the Uruguay Round was unable to resolve certain differences over basic telecommunications services.⁹¹ As stated earlier, service trade accounts for a substantial portion of world trade today. Within this market, basic telecommunications account for about eighty-five percent of the trade in telecommunication services altogether and enhanced services account for the rest.⁹² Basic services are "voice and non-voice services consisting of the transmission of information between points specified by a user in which the information delivered by the telecommunications agency to the recipient is identical in form and content to the information received by the telecommunications agency from the user."⁹³ Enhanced services are

⁸⁰ McLarty *supra* note 12, at 38. Value-added services, or telecommunications for which suppliers "add value" to the customer's information by enhancing its form or content or by providing for its storage and retrieval, were not formally part of the extended negotiations. Nevertheless, a few participants chose to include them in their offers. Examples include on-line data processing, on-line data base storage and retrieval, electronic data interchange, e-mail or voice mail. WTO, Defining Basic Telecommunications, at http://www.wto.org/english/tratop_e/servte_e/te102_e.htm.

⁸¹ See GATS Annex, *supra* note 38.

⁸² *Id.* at para. 2.3.1.

⁸³ *Id.* at para. 2.3.2.

⁸⁴ *Id.* at para. 5. A footnote clarifies that the term "non-discriminatory" refers to MFN and national treatment as defined in the GATS. *Id.* at para. 5.1 n.16. It adds that sector-specific usage of the term means "terms and conditions no less favorable than those accorded to any other user of like public telecommunications transport networks or service

under like conditions." *Id.* This language strongly suggests that no derogations from the MFN or national treatment obligations may be listed in a Member's schedule of commitments regarding access to or use of public telecommunication networks or services. *Id.*

⁸⁵ *Id.* at para. 5.1.

⁸⁶ Compare GATS Annex, *supra* note 38, at paras. 5.3-5.5 with GATS, *supra* note 18, at art. III.

⁸⁷ GATS, *supra* note 18, at art. XX.

⁸⁸ *Id.*

⁸⁹ *Id.* at art. XXI, para. 2(a).

⁹⁰ McLarty, *supra* note 12, at 21.

⁹¹ *Id.* at 9. The Members were not ready in 1994 to make commitments on "basic telecommunications services" because, unlike enhanced services, the supply of basic services has been by state-owned operators or state-sanctioned monopolies. *Id.*

⁹² Kennedy, *supra* note 10, at 36.

⁹³ Jonathan David Aronson & Peter F. Cowhey, *When*

those services in which the voice or non-voice of information being transferred from one point to another undergoes an end-to-end restructuring or format change before it reaches the customer.⁹⁴ During the Uruguay Round negotiations, disputes over regulatory environments and market openings within the basic telecommunication services were key differences between the United States and other members.⁹⁵ While a decision on market openings in the telecommunications sector was unattainable, it was established that Members should postpone a conclusion and negotiations beyond the Uruguay Round.⁹⁶

As noted, the GATS required each country to announce and adhere to a "Schedule of Commitments."⁹⁷ In 1997, the GATS signatories finally announced their Schedules of Commitments.⁹⁸ The 1997 Schedules of Commitments on basic services included four basic sections: service sectors covered, limitations on market access, limitations on national treatment and additional comments.⁹⁹

For example, Mexico committed in its schedule to market access and national treatment for all services except for Mexican satellites in providing

domestic services until 2002; one hundred percent foreign ownership for cellular services;¹⁰⁰ and 49 percent for all other services.¹⁰¹

The United States committed to market access and national treatment for all services except direct-to-home,¹⁰² direct broadcast satellite¹⁰³ and digital auto transmission services,¹⁰⁴ with a limit of 20 percent direct foreign investment in radio licenses.¹⁰⁵ The U.S. also adopted the Reference Paper and MFN exception for one-way satellite transmission of direct-to-home, direct broadcast satellite and digital audio transmission services.¹⁰⁶

C. The Reference Paper

Attached to the WTO Basic Telecommunications Agreement are pro-competitive regulatory principles (referred to as the "Reference Paper").¹⁰⁷ The Negotiating Group on Basic Telecommunications drafted the Reference Paper in order to formulate the core regulatory obligations that would bring significant changes to trade in telecommunication services.¹⁰⁸ Based on the U.S.

Countries Talk: International Trade in Telecommunications Services, 86 (1988). Resale of these services was also included. *Id.*

⁹⁴ WTO Secretariat, *The United States of America, Schedule of Specific Commitments, GATS/SC/90, 94-1088, I.I.C.* (Apr. 15, 1994). Enhanced services are defined as those that "add value" to the consumer's transmission or information by upgrading its form or content or by providing for its storage and retrieval. The United States defines enhanced services as: services, offered over common carrier transmission facilities (that is, public telecommunications transport services) which employ computer processing applications that: act on the format, content code, protocol or similar aspects of the subscriber's transmitted information or; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information. *Id.*

⁹⁵ Kennedy, *supra* note 10, at 36.

⁹⁶ GATS, *supra* note 18, at art. XXIV. The trade ministers for each Member country were given more time and a Decision on Negotiations on Basic Telecommunications was issued at the conclusion of the trading round. The postponement was contained in a Ministerial Decision on Negotiations on Basic Telecommunications, *The Results of the Uruguay Round on Multilateral Trade Negotiations: The Legal Texts* 461 (GATT Secretariat 1994). Decisions were extended until April 30, 1996 with the sponsorship of the Negotiating Group on Basic Telecommunications and later extended again by the Council on Trade in Services until February 15, 1997. The Council for Trade in Services is composed of all WTO Members and is charged with facilitating the operation of the GATS and furthering its objectives. *Id.*

⁹⁷ GATS, *supra* note 18.

⁹⁸ McLarty, *supra* note 12, at 44.

⁹⁹ *Id.* at 46-47.

¹⁰⁰ Laura B. Sherman, "Wildly Enthusiastic" About the First Multilateral Agreement on Trade in Telecommunications Survives, 51 *FED. COMM. L.J.* 61, 106 [hereinafter Sherman].

¹⁰¹ Mexico also adopted the Reference Paper, which will be explained later in Section C of this paper.

¹⁰² Sherman, *supra* note 100, at 110.

¹⁰³ *Id.* As an alternative to cable television, Direct Broadcast Satellite (DBS) is available. It provides cable-like television programming directly from satellites on small satellite dishes. Today, more than one in eight U.S. households subscribes to DBS programming and that number will likely be one in five in the next few years. Richard R. Peterson, *Satellite Television, A Consumer's Guide*, Version 4, at <http://www.dbsforums.com/dbs/a0.html> (July 20, 2000).

¹⁰⁴ Sherman, *supra* note 100, at 110.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See generally Reference Paper, Fourth Protocol to the General Agreement on Trade in Services, 436 (WTO 1997) 36 *I.L.M.* 354, 367 (1997) [hereinafter Reference Paper]. The Reference Paper was never fully issued as a WTO document. *Id.*

¹⁰⁸ Sherman, *supra* note 100, at n.54.

This group was known as the "Room A Group," after the room at the WTO where it first met. Subsequent meetings, informally chaired by the chief Japanese delegate to the NGBT, met at the Japanese Embassy. The hospitality of the Japanese and informal leadership of the Japanese "chair" contributed significantly to the successful drafting of the Reference Paper. Initial participants represented the United States, Australia, New Zealand, Japan, Korea, and the European Union. Later sessions were attended by representatives of Brazil, Singapore, Chile, Mexico, and the Philippines, in addition to the

Telecommunications Act of 1996,¹⁰⁹ this paper aimed at ensuring members put in place policies that allow competition, which would permit trading partners to benefit from the negotiated concessions.¹¹⁰ Member countries believed that a new regulatory approach was desirable because most telecommunication regulations and laws did not foster competitive markets and had been dominated by the state-owned companies.¹¹¹ In all, fifty-five Members agreed to adopt the Reference Paper.¹¹² Ten WTO members committed to adopting either part or all of these principles in the near future.¹¹³ Contained within the Reference Paper are interconnection provisions,¹¹⁴ competition safeguards,¹¹⁵ transparency of licensing criteria,¹¹⁶ universal service policies,¹¹⁷ independence of the regulator principles and allocation of scarce resource principles.¹¹⁸

The Reference Paper includes numerous safeguards aimed at preventing national telecommunication monopolies from exploiting their "dominant position to distort market forces and impede the ability of competitors to supply networks or services for which commitments would be made."¹¹⁹ Furthermore, the agreement requires the establishment of "independent" regulators removed from the purview of the basic telecommu-

nication operators and assigned to a separate body.¹²⁰ The Reference Paper did not decide what entity will carry out the obligations contained within it or how those obligations specifically will be carried out.¹²¹

According to the Reference Paper, Members are required to take appropriate measures in order to prevent suppliers from engaging in or continuing anti-competitive practices. Members are not required to guarantee that this conduct will not occur or to stop such conduct.¹²² The Reference Paper is different from other WTO accords in that failure to adopt measures that would thwart anti-competitive conduct warrants WTO action settlement but failure to enforce these measures does not.¹²³

Negotiators also agreed that the section on interconnection should cover all types of telecommunication services.¹²⁴ Within this section, members are only obligated to make competitive those services for which they have scheduled WTO commitments.¹²⁵ These three obligations are extremely detailed and "will be ensured"¹²⁶ only at a "technically feasible point"¹²⁷ in the network. First, every major supplier must treat other telecommunication services and suppliers as it treats its own services and affiliated service suppliers, as

original participants.

Id.

¹⁰⁹ Sherman, *supra* note 100, at 80; *see generally* 47 U.S.C. §251 (1998).

¹¹⁰ GATS, Negotiating Group on Basic Telecommunications, Review of Outstanding Issues, Note by the Secretariat, TS/NGBT/W/2, para. 15 (July 8, 1994) available at <http://www.wto.org/wto/ddf/ep/public.html>, (last visited July 7, 2001) [hereinafter Secretariat Note].

¹¹¹ Sherman, *supra* note 100, at 71.

¹¹² *See In re* Rules and Policies on Foreign Participation in the U.S. Telecomm. Mkt.; Mkt. Entry and Reg. of Foreign-Affiliated Entities, 12 FCC Rcd. 23,891, 23,903, para. 27 (1997) [hereinafter Foreign Participation Order]. The Reference Paper was never formally issued as a WTO Document. For a description of the Reference Paper *see* Sherman, *supra* note 100, at 71-86.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ GATS, *supra* note 18 at art. VI.

¹¹⁶ *Id.* at art. III.

¹¹⁷ Rebecca Beynon, *The FCC's Implementation of the 1996 Act: Agency Litigation Strategies and Delay*, 53 FED. COMM.L.J. 27, 47 n.51 (2000). "The term 'universal service' describes the policy that all Americans should have access to affordable basic telephone service, regardless of whether they are low-income, and regardless of whether they live in areas that are expensive to serve (such as rural areas)." *Id.*

¹¹⁸ *See* Foreign Participation Order, 12 FCC Rcd. at 24,039 para. 340.

¹¹⁹ Sherman, *supra* note 100, at 71.

¹²⁰ Secretariat Note, *supra* note 110, at para. 16.

¹²¹ Sherman, *supra* note 100, at 73. "Negotiators agreed that the principles needed to be sufficiently flexible to accommodate differences in market structures and regulatory philosophies among various participants. . . The objective was to ensure certain results, a level playing field for entrants, not to determine the means by which the results would be achieved." *Id.*

¹²² Reference Paper, *supra* note 107, at para. 1.1; *see also* GATS, Annex on Telecommunications, para. 2.1 n.15 ("This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers to public telecommunications transport networks and services by whatever measures are necessary."); *see also* North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., ch. 13, art. 1305, 32 I.L.M. 605, 655 (1993).

¹²³ Sherman, *supra* note 100, at 77.

¹²⁴ Reference Paper, *supra* note 107, at para 2.1.

¹²⁵ *Id.* As with the definition of "essential facilities," the interconnection obligation is aimed at providers of "public telecommunications transport networks or services." *Id.*

¹²⁶ *Id.* at para. 2.2.

¹²⁷ *Id.* The interconnection obligations imposed on incumbent local exchange carriers by the Telecommunications Act of 1996 also apply at any technically feasible point within the carrier's network. Telecommunications Act of 1996, 47 U.S.C. §251(c)(2)(B) (1998).

well as treat all nonaffiliated telecommunication services equally and without discrimination.¹²⁸ Second, interconnection must be timely, the terms under which it is provided must be transparent and reasonable, and rates must be cost-oriented,¹²⁹ transparent and reasonable.¹³⁰ Negotiators did not try to define the obligations imposed by this section and felt that the meanings would be determined in WTO dispute settlement proceedings.¹³¹ Finally, interconnection is subject to charges that reflect the cost of construction of additional facilities necessary when such facilities are requested.¹³² Negotiators knew there were customary interconnection points typically available, and as long as service suppliers were willing to pay the supplementary cost, they could obtain interconnection at other points in the network.¹³³

With interconnection dispute settlement at the WTO, negotiators agreed on the need for a domestic enforcement mechanism and a time frame in which interconnection had to be provided by WTO members.¹³⁴ This opportunity is separate from WTO dispute settlement, where governments offer service suppliers an opportunity to appeal administrative decisions made by WTO member governments.¹³⁵ Within the Reference Paper,

a dispute settlement can be accomplished by any "independent domestic body"¹³⁶ (not only a regulator).¹³⁷ The domestic body is charged with resolving disputes¹³⁸ regarding conditions, rates and terms. Disputes can be resolved on facts presented to the domestic body or by reference to terms, conditions or rates already established. This must be done within a "reasonable period of time."¹³⁹

Paragraph five of the Reference Paper addresses regulatory independence and the potential for conflict of interest that might occur when the regulator is also the major telecommunications operator.¹⁴⁰ The Reference Paper requires that the regulator be detached from, and not accountable to, any telecommunications operator.¹⁴¹ In addition, the regulator must be independent of all market participants.

III. THE UNITED STATES V. MEXICO: THE DEBATE

A. The Complaint

On July 28, 2000, the United States Trade Representative ("USTR") announced that the "United

¹²⁸ Reference Paper, *supra* note 107, at para. 2. This paragraph was based on the EU Interconnection Directive, 97/33/EC of the European Parliament and of the Council on Interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision ("ONP"), 1997 O.J. (L 199) 32, arts. 6(a) and 7, para. 2, but was broadened to define nondiscrimination by inserting the references to treatment provided affiliates and non-affiliates. *Id.*

¹²⁹ Reference Paper, *supra* note 107, at para. 2.2(b). Negotiators decided to use "cost-oriented," instead of "cost-based" because of the difficulty of determining actual costs in most countries. United States negotiators also favored "cost-oriented" because it is the term used in section 271 of the Telecommunications Act of 1996. 47 U.S.C. §271 (1998).

¹³⁰ See generally *In re* Implementation of the Local Competition Provisions in the Telecomms. Act of 1996; Interconnection Between Local Exch. Carriers and Commercial Mobile Radio Serv. Providers, *First Report and Order*, 11 FCC Rcd. 15499 (1996). This order established nationwide pricing rules for interconnection between new entrants and incumbent local exchange carriers. *Id.* The scope for interpretation of the interconnection obligations can vary. For one interpretation see Coalition of Service Industries, Statement on the WTO Group on Basic Telecommunications Reference Paper (Oct. 1997), available at http://www.itu.int/intset/indu/csi_stat.htm (last visited July 7, 2001).

¹³¹ Sherman, *supra* note 100, at 80. This wording comes directly from article 7, paragraph 4 of the EU Interconnection Directive and also follows the Telecommunications Act, so negotiators felt that interpretation of the words would be

precedents for interpretation within the WTO context. Directive 97/33/EC of the European Parliament and of the Council on Interconnection in Telecommunications With Regard to Ensuring Universal Service and Interoperability Through Application of the Principles of Open Network Provision (ONP), 1997 O.J. (L 199) 32 [hereinafter EU Interconnection Directive]. *Id.*

¹³² Reference Paper, *supra* note 107, para. 2.2 (c).

¹³³ *Id.*

¹³⁴ EU Interconnection Directive, *supra* note 131, at art. 9, para. 2.

¹³⁵ Kennedy, *supra* note 10, at 11.

¹³⁶ Sherman, *supra* note 100, at 82.

¹³⁷ Reference Paper, *supra* note 107, at para. 2.5.

¹³⁸ *Id.*

¹³⁹ See Reference Paper, *supra* note 107, at para. 2.5(b). As with the term used in paragraph 2.2, there is no definition of a "reasonable" period of time. Some of the negotiators noted, however, that the four years needed to resolve an interconnection dispute between Telecom New Zealand and the new entrant, Clear, was not reasonable. *Id.*

¹⁴⁰ *Id.* at para. 5. The paragraph addresses the potential for conflict of interest that arises when the body regulating the telecommunications industry is also the major telecommunications operator. The text achieves part of the U.S. goal for independence of the regulator. It requires that the regulator be separate from, and not accountable to, any operator. It does not require that the regulator be independent of any government ministry. In fact, paragraph 5 allows the government telecommunications ministry to be the regulator. *Id.*

¹⁴¹ See *id.* at para. 5.

States [would] request [WTO] consultations with Mexico regarding barriers to competition in Mexico's \$12 billion telecommunications market."¹⁴² Specifically, the United States sought resolution of three issues of concern regarding commitments Mexico undertook in the WTO under the Basic Telecommunications Agreement.¹⁴³ These issues were: (1) lack of effective disciplines over the former monopoly, Telmex, which uses its dominant market position to thwart competition; (2) failure to ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers for local, long-distance and international services; and (3) failure to permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico.¹⁴⁴

B. Section 1377 Comments

USTR first became concerned about the telecommunications regulatory environment in Mexico after conducting several annual reviews of foreign countries' compliance with telecommunications trade agreements under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988.¹⁴⁵ Section 1377 requires the USTR to review annually the operation and effectiveness of all United States trade agreements regarding telecommunications products and services.¹⁴⁶ The purpose of this review is to determine whether any act, policy or practice of a country that has

entered into a telecommunications trade agreement with the United States: (1) is not in compliance with the terms of such an agreement or (2) otherwise denies (within the context of the terms of such agreement) mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that foreign country. An affirmative determination under Section 1377 is considered a violation of a trade agreement under Section 304(a)(1)(A) of the Trade Act of 1974.¹⁴⁷

WorldCom, AT&T and the Competitive Telecommunications Association ("Comptel") filed comments as part of the Section 1377 annual review by USTR every year from 1998 until 2001 concerning Mexican compliance with telecommunication trade agreements.¹⁴⁸ All of the comments expressed concern about the inability of U.S. carriers to obtain reasonable termination charges for calls to Mexico and how this has caused significant harm to many U.S. consumers.¹⁴⁹

AT&T and WorldCom expressed their concerns about Mexico's failure to allow fully open markets, as required by its WTO commitments, in both international and domestic telecommunication services.¹⁵⁰ As a supplier of cross-border services to Mexico, these companies argued that they were entitled under the WTO Reference Paper to interconnect these services on non-discriminatory terms and at cost-oriented rates at any technically feasible point in Telmex's network.¹⁵¹ Moreover,

¹⁴² Press Release, United States Trade Representative, US To Request WTO Consultations With Mexico Regarding Telecommunications Trade Barriers, at <http://www.ustr.gov> (July 28, 2000) [hereinafter July Press Release].

¹⁴³ *Id.*; see Basic Telecom Agreement, *supra* note 1.

¹⁴⁴ July Press Release, *supra* note 142, at 1. United States Trade Representative Charlene Barshefsky said that "[t]he Mexican government had indicated its hopes to resolve many of the issues over the next few months." *Id.* at 1.

¹⁴⁵ Trade Act of 1974, 19 U.S.C. §2411 (1996); see also Press Release, United States Trade Representative, Annual Review of Telecommunications Trade Agreements Highlights Concerns Regarding Mexico, South Africa and Other Countries, at <http://www.ustr.gov> (Apr. 4, 2000).

¹⁴⁶ Trade Act of 1988, 19 U.S.C. §1377 (1988).

¹⁴⁷ 19 U.S.C. §304(a)(1)(A). Retaliation is mandatory and must be targeted at telecommunications products and services of the foreign country involved, unless actions against other economic sectors would be more effective in achieving compliance with the agreement. *Id.*

¹⁴⁸ Letter from AT&T to USTR regarding Section 1377 Request for Comments Concerning Compliance with Telecommunication Trade Agreements, (Feb. 1, 2000) (on file with USTR) at <http://www.ustr.gov/efoia/1377/att2000.html>

[hereinafter AT&T Letter]. See Letter from Comptel to USTR regarding Section 1377 Request for Comments Review for Mexico (Mar. 29, 1999) (on file with USTR) at <http://www.ustr.gov/enforcement/comp.pdf>. [hereinafter Comptel Letter]. Letter from WorldCom to USTR regarding Section 1377 Request for Comments Concerning Compliance with Telecommunication Trade Agreements, (Jan. 26, 2001) (on file with USTR) at <http://www.ustr.gov/enforcement/worldcom.pdf> [hereinafter WorldCom Letter].

¹⁴⁹ *Id.*; see also AT&T Letter, *supra* note 148, at 2.

¹⁵⁰ WorldCom Letter, *supra* note 148, at 2; AT&T Letter, *supra* note 148, at 2. "Two years after the effective date of the WTO Agreement, Mexico has still failed to implement its WTO Commitments requiring the removal of market access barriers supporting the high settlement rates maintained by Telmex." In addition, "Mexico has failed to establish a level playing field required by its WTO Reference Paper commitments and therefore does not allow the new carriers in Mexico. . . to compete with Telmex on a fair and equal basis." AT&T Letter, *supra* note 148, at 5-6.

¹⁵¹ AT&T Letter, *supra* note 148, at 6. AT&T's affiliate, Alestra, is "unfairly disadvantaged by the longstanding failure of Cofetel, the Mexican regulator, to ensure that Telmex does not abuse its market power in its dealing with its com-

these two companies contended that Mexico's fulfillment of this obligation would substantially reduce the cost of U.S.—Mexico call termination.¹⁵²

The companies expressed great concern about the Mexican regulator, Cofetel's¹⁵³ failure to ensure that Telmex's competitors may interconnect with Telmex's network at any technically feasible point under non-discriminatory terms¹⁵⁴ and at cost-oriented rates.¹⁵⁵

The Section 1377 comments by AT&T and WorldCom also expressed the belief that Telmex's competitors are further disadvantaged by the above-cost domestic interconnection rates they must pay Telmex. Of particular concern were the "so-called 'off-net' interconnection charges that the competitive carriers pay to terminate their customers' calls in geographic areas not yet open to long-distance competition or otherwise

petitors." Most recently, "[Cofetel] has done nothing to stop Telmex denying private lines to its competitors and Cofetel's president has stated that court action by Telmex will prevent Cofetel from undertaking any regulation of Telmex as a dominant carrier. Mexico thus fails to implement and enforce the WTO Reference Paper requirement for safeguards to prevent anti-competitive practices." *Id.*

¹⁵² *Id.*; WorldCom Letter, *supra* note 148, at 2. The regulatory concern for call termination relies on two types of arguments. At one extreme, call termination is defined as a monopoly, therefore requiring regulation independently of market structure and competitive constraints. The second argument put forward is that regulation is necessary because negotiations to set reciprocal interconnection charges may be used as a vehicle for colluding in the retail market, via high interconnection charges. The consequence of adopting this approach is that network competition would not relieve regulators from directly setting terms and conditions for call termination. On the contrary, the emergence of network competition increases manifold the number of reciprocal interconnection relations telecommunications network operators have to negotiate among each other. The implications for regulation would be an increasing effort to monitor and potentially regulate call termination charges to an increasing number of networks. *Id.*

¹⁵³ Aileen A. Pisciotta, *Telecommunications in Mexico: A Market in Transition*, Vol. 1, Issue 8, Oct. 31, 1997.

Mexico's Federal Telecommunications Law (FTL) required the creation of a telecommunications regulatory authority separate from the Secretariat of Communications and Transportation (SCT). On August 9, 1996, Cofetel was created by presidential decree. Similar to the United States Federal Communications Commission (FCC), Cofetel is charged with both implementing FTL and promulgating regulations based upon the FTL. Unlike the FCC, however, Cofetel is located wholly within the executive branch of the government, and must still work closely with SCT on competition policy and licensing matters.

Id.

¹⁵⁴ Ramiro Tovar Landa, *Policy Reform in Networks Infrastructure: The Case of Mexico*, INSTITUTO TECNOLÓGICO

not served by competitive carriers' long-distance networks."¹⁵⁶ The two companies argued additionally that, although the interconnection resolution entails Telmex to provide the breakdown of its lowest retail price by network functions and elements to Cofetel within ten business days of the issuance of the resolution, Telmex had not offered this information.¹⁵⁷ Additionally, Cofetel had taken no action on this matter, even though the interconnection resolution requires Cofetel in such circumstances to establish an off-net interconnection rate on the basis of the best existing information.¹⁵⁸ Therefore, AT&T contended that Cofetel has still failed to establish any rate for off-net interconnection with Telmex, let alone the cost-oriented rate required by the WTO Reference Paper.¹⁵⁹

CompTel objected to two aspects of the Mexi-

AUTÓNOMO DE MÉXICO, at <http://www.vii.org/papers/mextel.htm>.

Mexico has a long history of de jure and de facto government intervention in markets, through direct mechanisms (price controls, public sector firms, concessions and licensing). In later years, changes in the institutional framework as a result of the deregulation of economic activity, together with technological change, created greater opportunities for competition, by enabling existing markets to operate, or creating others that were previously non-existent. In a relatively short time frame Mexico went through an exposure to a global trade competition, profound privatization process which still partial and the implementation of an unprecedented deregulation policy which now struggle to move forward.

Id.

¹⁵⁵ *Id.* As shown by a 1998 Ovum report, "Telmex does not offer a double transit termination charge service and new entrants are required to resell a long-distance service in order to provide national termination." AT&T Letter, *supra* note 148, at 6. See Solutions to Promote Competition and Develop the Telecommunications Sector in Mexico, at <http://www2.apii.or.kr/telwg/19tel/report/mexico.html#6>.

¹⁵⁶ AT&T Letter, *supra* note 148, at 6.

Thus, competitive carriers in Mexico may terminate off-net long-distance calls only by resale of Telmex's long-distance services at retail rates of nearly 12 cents per minute plus an interconnection charge. This charge is more than three times higher than the nationwide rates available in most European countries and well over twice the level of the nationwide wholesale rates that are available in the U.S. market.

Id.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* The interconnection resolution issued by Cofetel on October 11, 2000, established that off net termination is interconnection and entailed the establishment of an off-net interconnection rate established by subtracting from the lowest Telmex retail price the cost of network elements not required by competitive carriers purchasing these services. *Id.*

¹⁵⁹ *Id.*; see Arturo Briceno, Fixed-Mobile Interconnection: The Case of Mexico, Strategic Policy Research, The Of-

can government's telecommunication policies as they affect the resale of telecommunication services. First, Mexico reportedly does not permit licensed international private lines, a practice called international simple resale ("ISR").¹⁶⁰ CompTel argued that "[t]he provision of service on an ISR basis expands competitive entry opportunities for small U.S. carriers in foreign markets."¹⁶¹ Secondly, CompTel alleged that Mexico continues to forbid carriers from engaging in so-called "pure" switched resale operations, which would allow carriers to provide service solely through the resale of services and facilities owned by other carriers.¹⁶² "As with ISR, pure switched resale expands the entry opportunities for small U.S. carriers in foreign markets, and Mexico's refusal to license such opportunities constitutes a denial of market access, and an unreasonable restriction on the supply of a service. . . ."¹⁶³

C. Issues In The USTR Complaint

1. *Lack of effective discipline over Telmex*

The first issue raised by the U.S.'s complaint

of the Secretary of the ITU, at http://www.itu.int/osg/sec/spu/ni/fmi/case_studies/mexico_final.pdf. All terms of interconnection, such as points of interconnection, are negotiated between telecommunications carriers under Cofetel's supervision. *Id.*

¹⁶⁰ NEWTON'S TELECOM DICTIONARY 465 (16th ed. 2000). International Simple Resale (ISR) is a "system which allows international carriers to buy transmission capacity in bulk, to plug into the public network at each end, and to resell it, one call at a time. This eliminates the need for settlements between international carriers." *Id.*

¹⁶¹ CompTel Letter, *supra* note 148, at 1.

¹⁶² *Id.*

¹⁶³ *Id.* at 2. These practices are in violation of Mexico's WTO obligations under GATS articles VI and XVI. "Comptel submits that these restrictive policies are particularly harmful on routes, such as the US-Mexico route, where there is an enormous traffic volume between two contiguous countries whose business communities and populations already are inextricably commingled." *Id.*

¹⁶⁴ July Press Release, *supra* note 142, at 2.

¹⁶⁵ *Id.*; Javier Corrales, *Market Reforms in Latin America: Why They Were Done and Why They Were Not So Market-Oriented*, at <http://www.amherst.edu/~jcorrale/market.pdf> (Nov. 2000). After privatizing Telmex in 1990, Mexico waited six years to establish a regulatory agency (Cofetel). And even then, it has been difficult to inject competition: Telmex had enormous clout against Cofetel since it controls 30 percent of the country's entire stock market. *Id.*

¹⁶⁶ *Id.*; NEWTON'S TELECOM DICTIONARY 483 (16th ed. 2000). A Local Area Network ("LAN") is a "geographically localized network consisting of both hardware and software. Devices on a LAN typically transmit data inside buildings or between buildings located near each other. *Id.*

concerns the lack of effective government discipline over Telmex, the dominant Mexican telecommunications carrier. The U.S. charges that Mexico's WTO obligations entail it to implement appropriate regulatory measures to thwart a major telecommunications supplier from engaging in anti-competitive practices.¹⁶⁴ Despite Mexico's telecommunications market being open to competition since 1996 and despite its WTO commitments, Telmex has actually expanded its market share of long-distance customers from 74 to 81 percent¹⁶⁵ and has discouraged competitive carriers' attempts to build out alternative local networks.¹⁶⁶ The USTR also complained that the Mexican government has not yet initiated effective measures to prevent Telmex from engaging in anti-competitive practices ranging from denying competitors phone lines, pricing services at predatory rates, refusing interconnection and refusing to pay competitors fees it owes to them.¹⁶⁷

In its complaint to the WTO, the United States asserted that Cofetel has thus far taken no action to enforce the dominant carrier regulations issued in October 2000.¹⁶⁸ In addition, Cofetel has

¹⁶⁷ July Press Release, *supra* note 142, at 2. In accordance with USTR's view on Mexico concerning its willingness to open its market and subject Telmex to international competition, in January of 2000, the Federal Communications Commission ("FCC") took an unusual step of imposing a \$100,000 fine on Telmex USA. Press Release, Enforcement Bureau, Federal Communications Commission, FCC's Enforcement Bureau Proposes \$100,000 Fine Against Telmex USA For Failure to Provide Lines and Circuits to Competitors, at http://www.fcc.gov/Bureaus/Enforcement/News_Releases/2000/nren0001.txt (Jan. 13, 2000). The FCC imposed the fine for Telmex's failure to provide private circuits and lines to the U.S. subsidiaries in Mexico as it had been asked to do as a condition of its authorization to offer service in the United States. But, the Mexican Federal Telecommunications Commission, Cofetel, has argued that Telmex should fight the decision of the FCC. Regarding the fine, Telmex previously has argued that its decision to stop providing private circuits and lines to the U.S. subsidiaries in question was justified and reasonable because of the refusal of U.S. subsidiaries in Mexico to pay a debt of millions of dollars in interconnection fees. The FCC, however, rejected this argument in its explanation of its fine on Telmex USA for failure of its parent company Telmex to accept any private line or line orders from U.S. telecommunication companies' Mexican subsidiaries. *Id.*

¹⁶⁸ *Telcos Setting the Ground for Increased Competition*, Yahoo International Finance Center, at <http://biz.yahoo.com/ifc/mx/news/11901-1.html> (Jan. 1, 2001) [hereinafter *Telcos*]. Presently, interconnection fees are established by Cofetel and have been the subject of controversy and litigation. In October 2000, the interconnection fees Telmex charged competing long-distance carriers got reduced by Cofetel. Actions like this or the outcome of pending litigation could

taken little enforcement action in response to the numerous complaints filed since 1997 by competitive carriers concerning anti-competitive actions by Telmex.¹⁶⁹ Among the key requirements of the dominant carrier rules that Cofetel has yet to enforce are: the authorization of Telmex's tariffs; ensuring that Telmex does not engage in anti-competitive (below-cost) pricing; establishing cost-based rates for billing and collection, directory services, collect services, operator services and other services provided by Telmex to its competitors; Telmex's adherence to quality and delivery time requirements for services provided to competitors; and Telmex's compliance with accounting separation rules.¹⁷⁰

The government of Mexico and Telmex both reject U.S. claims concerning the failure of Cofetel to regulate the market and to implement regulations limiting Telmex's monopoly powers.¹⁷¹ Telmex's owner, Carlos Slim Helu, says the company "wants a strong, autonomous regulator" and he welcomes new regulations unless they unfairly tie Telmex's hands or contradict Mexican laws.¹⁷² In addition, Telmex argues that it has stimulated line growth in Mexico and challenges the USTR's allegation that Mexico has one of the lowest phone penetration rates in Latin America.¹⁷³ Telmex argues that in the last nine years the number of fixed line telephones has grown from 6.4 million installed lines in 1990 to 10.8 million installed lines in the mid-1999.¹⁷⁴

have a material adverse impact on Telmex's business, prospects, financial condition and results of operations. *Id.*

¹⁶⁹ *Mexico's Cofetel to Step Up Regulation Of Telmex After Talks With Competition Fail*, 17 INT'L TRADE REP. (BNA) 530 (Mar. 30, 2000). In 1998, Mexico's Federal Competition Commission (CFC), the Commission Federal de Competencia, declared Telmex a dominant carrier in local telephony, domestic and international long distance and inter-city connections. The CFC delegated to Cofetel the responsibility of applying measures to regulate the dominant carrier, yet their responsibility has failed to become recognized. *Id.*

¹⁷⁰ AT&T Letter, *supra* note 148, at 4.

¹⁷¹ Kim Sunderland, *U.S. Brings Telecom Dispute With Mexico to WTO*, PHONE + INTERNATIONAL, 7 Sept. 9, 2000 at <http://www.phoneplusinternational.com/articles.091new1.html> [hereinafter Sunderland].

¹⁷² *Id.*

¹⁷³ *Id.* Lindsey Michaels, Thunderbird Global Business Forums, Americas Conference 2000, *Thunderbird Contributes To and Benefits From The Miami Herald's Americas Conference*, at <http://www.t-bird.edu/alumni/globalforums/americasconference.asp#telecomm> (2000). Mexico has the lowest telephone per capita density of all Latin American countries. *Id.*

¹⁷⁴ Jorge Nicolín, *Opening the Telecommunications Market: The Mexican Experience*, CONNECT WORLD LATIN AMERICA, (4th

2. Failure to ensure timely interconnection

The U.S. complaint also argues that Mexico's WTO commitments require it to provide "timely, cost-oriented interconnection at any technically feasible point in the network."¹⁷⁵ This obligation requires competitors to access Telmex's customers, which constitute 98% of the fixed-line subscribers.¹⁷⁶ When USTR first publicized the U.S. complaint, Telmex charged an interconnection rate of approximately 4.6 cents per minute to connect long-distance carriers to Telmex customers, representing the single largest cost for any competitive long-distance carrier.¹⁷⁷ This rate is drastically lower than rates of about half-a-cent in the U.S., Canada and Chile and rates of about one cent in Argentina and Peru.¹⁷⁸

3. Charging mechanisms for international calls

The United States complaint to the WTO also claims that Mexico's commitments provide for a broad range of options for terminating international calls to Mexico.¹⁷⁹ Unfortunately however, some of Mexico's options maintain above-cost termination rates, thereby raising the rates that consumers pay for calls made between the United States and Mexico.¹⁸⁰ For example, Mexico's current rate of 19 cents per minute contrasts sharply with rates of roughly 6 cents per minute for calls made to the United Kingdom and Canada.¹⁸¹ Fur-

Quarter 1999) at http://www.cft.gob.mx/html/1_cft/7_disc_nic/art_280400_2.html (Jan. 16, 2001).

¹⁷⁵ July Press Release, *supra* note 142, at 2.

¹⁷⁶ Sunderland, *supra* note 171, at 7.

¹⁷⁷ July Press Release, *supra* note 142, at 2.

¹⁷⁸ *Id.*

¹⁷⁹ Michelle Gabrielle, *Global Business: Taming a Bully U.S. Companies Tackle Mexican Telecommunications Market*, ECOUNTRIES, available at http://www.ecountriescorporate.com/press/presscuttings/28_11_00.htm (Nov. 28, 2000). The 77 countries that have now made commitments comprise the world's growing telecom service market, with 2000 revenues estimated to reach \$900 billion. *Id.*

¹⁸⁰ Sunderland, *supra* note 171, at 8.

¹⁸¹ *Id.* While a few countries maintain settlement rates of one dollar or more per minute, most have reduced significantly as a result of competitive pressures. Mexico's rate of 19 cents per minute is equal to that of the Dominican Republic and compares favorably with Chile (27 cents), Costa Rica (36 cents), Ecuador (50 cents), and El Salvador (31 cents). But it is significantly higher than the lowest rates available for calls to more distant countries such as Brazil (15 cents), Israel (15 cents), Italy (12 cents), Lithuania (10 cents), or New Zealand (9 cents). And it is over three times the rate that applies to traffic across the northern U.S. border, which has a similar if

thermore, under Mexican rules, only the dominant carrier, which has incentive to keep the rate as high as possible, negotiates the international rate.¹⁸² The U.S. argues that real competition in the termination of international calls into Mexico would lead to dramatic reductions in the cost of U.S. to Mexico calls.¹⁸³

Not surprising, Telmex has a different view. Concerning international settlement fees,¹⁸⁴ which phone companies pay each other for long-distance calls across borders, Telmex argues it has decreased its 86 cents per minute fee of 10 years ago to 19 cents per minute.¹⁸⁵ Telmex further argues that these fees are relatively typical between a wealthy nation and a developing nation.¹⁸⁶ In addition, Telmex points out that the U.S. Federal Communications Commission ("FCC") applauded Telmex and AT&T for an agreement in early 2000 to reduce settlement rates ahead of schedule.¹⁸⁷

D. The Importance of Mexico

The issues raised in the U.S. complaint are not mere technical violations of WTO agreements. The U.S. has pursued the telecommunications case because Mexico is one the U.S.'s largest trading partners.¹⁸⁸ The United States feels that failure to resolve the complaints puts the Mexican economy at an immense disadvantage with Mex-

ico having fewer phone lines per capita – currently 11.2 lines per 100 people –¹⁸⁹ than almost every major Latin American country.¹⁹⁰ In addition, Mexico has accumulated fewer new lines in the past four years than that of Chile, Brazil, Guatemala and many other countries in Central and South America.¹⁹¹ The U.S. also believes that obstructions to competition could possibly undermine Mexico's ability to attract investment capital and develop electronic commerce and Internet services, all of which demand a competitive telecommunications marketplace.¹⁹² United States Trade Representative Charlene Barshefsky, stated that "for the sake of Mexico's long-term economic growth, and the vibrant economic partnership we have. . .we urge Mexico to work. . .for a timely resolution of these vital issues."¹⁹³

E. Dispute Timeline

Although the WTO dispute settlement system is designed to work faster than the previous system under the GATT, these disputes often take between one and one and a half years to resolve.¹⁹⁴ The U.S. formally requested consultations in the WTO over U.S. telecommunications firms' access to Mexico's market with a detailed list of complaints on August 17, 2000.¹⁹⁵ The request alleged that since the creation of the GATS, Mexico had adopted regulatory measures that were anti-com-

not identical underlying cost. See Philip Peters, *Old Mexico vs. New Mexico: The Slow Path of Telecom Reform*, LEXINGTON INST., June 1999 at 10 [hereinafter Peters].

¹⁸² Mexico's Federal Law of Economic Competition, Dec. 24, 1992, Article 7. In order to fix maximum prices for products and services essential for the domestic economy or for mass consumption, the following shall apply: . . . II.- Without affecting the powers invested to other agencies, the Secretariat shall set, through founded and motivated intent of resolution, the maximum prices of goods and services determined by the preceding section, pursuant to criteria which shall seek to prevent shortages of supply. Without interpreting the following as a violation of this law, the Secretariat may concert or coordinate with producers or distributors necessary actions in this matter, to minimize the effects on competition and free market participation. *Id.*

¹⁸³ See generally Peters, *supra* note 181.

¹⁸⁴ See Brendan Case, *U.S. Official Says Telmex Deal May Not Do Enough*, THE DALLAS MORNING NEWS, Jan. 4, 2001, at 4D, available at http://www.dallasmorningnews.com/business/253104_telmex_04bus.A.html [hereinafter Case]. Settlement fees are what U.S. telephone companies must pay to Mexican counterparts that carry an international call from the U.S. border to Mexico's interior. Mexican companies must also pay U.S. companies to handle calls to the United States, but most such calls originate north of the border. *Id.*

¹⁸⁵ Sunderland, *supra* note 171, at 8.

¹⁸⁶ *Id.*

¹⁸⁷ Office of Chairman William E. Kennard, Federal Communications Commission, Chairman Kennard Statement on Alternative Settlement Arrangements with Mexico, at <http://www.fcc.gov/Speeches/Kennard/Statements/stwek922.html> (Apr. 14, 1999).

¹⁸⁸ Kenneth MacKay Special Envoy for the Americas to the U.S., Brazil Business Council Speech, at <http://www.embaixada-americana.org.br/macksp.htm> (Sept. 19, 2000). We export more to Mexico than to Britain, France and Germany combined. Together, Canada and Mexico purchase more than 40% of all US exports. *Id.*

¹⁸⁹ *U.S. Taking Mexican Interconnection Concerns to WTO*, COMM. DAILY, 1, July 31, 2000.

¹⁹⁰ July Press Release, *supra* note 142, at 1.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ See *Trading Into the Future: The Introduction to the WTO, Settling Disputes, The Panel Process*, at http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm (last visited Jan. 17, 2001).

¹⁹⁵ WORLD TRADE ORGANIZATION, REQUEST FOR CONSULTATIONS, WT/DS204/1/S/L/88 (Aug. 29, 2000).

petitive and, in fact, tolerated privately established market access barriers.¹⁹⁶ The letter cited specific examples of how Mexico had failed to live up to its commitments under Article XVI of the GATS.¹⁹⁷ Overall, the United States considered the action and inaction by Mexico to be incompatible with its GATS commitments and obligations, including Articles VI, XVI and XVII; Mexico's additional commitments under Article XVIII as set forth in the Reference Paper inscribed in Mexico's Schedule of Specific Commitments, including sections 1, 2, 3 and 5, and the GATS Annex on Telecommunications sections 4 and 5.¹⁹⁸

On October 10, 2000, the United States and Mexico held WTO consultations in Guadalajara, Mexico that failed to resolve overall U.S. concerns.¹⁹⁹ On October 20, the United States sent a letter to the Government of Mexico, acknowledging areas of progress and suggesting areas where immediate steps would be necessary to ensure Mexico's compliance with its WTO obligations.²⁰⁰ The candid letter displayed a shift in tone from earlier signals that the U.S. might explore a variety of avenues for dispute settlement before resorting to a WTO panel.²⁰¹ One of the key demands highlighted in the letter was the transformation of Mexico's current rules on cross-border telecommunications traffic.²⁰²

In response to the U.S. letter, Mexico issued rules to regulate the anti-competitive practices of Telmex and announced significant reductions in long-distance interconnection rates for 2001.²⁰³ Despite Mexico's positive steps, on November 8, 2000, USTR announced that the United States

would request the establishment of a WTO dispute settlement panel in order to consider U.S. claims that Mexico had failed to comply with its WTO commitments in the telecommunication services sector.²⁰⁴ The request filed by the U.S. at the meeting of the WTO Dispute Settlement Body was blocked by Mexico. The U.S. again requested a dispute settlement panel in January 2001 and a panel was created. USTR said the panel was necessary because Telmex had subsequently filed legal challenges against both measures undertaken by the Mexican government.²⁰⁵ In addition, the Government of Mexico appeared reluctant to enforce new rules against Telmex.²⁰⁶

IV. ISSUES DECIDED

While the U.S. and Mexico were skirmishing about the creation of the WTO arbitration panel, a voluntary industry agreement was reached on December 29, 2000 between Telmex, Alestra and Avantel and then ratified by Mexico's new Communications and Transportation Secretary Pedro Cerisola on January 2, 2001.²⁰⁷ The agreement resolves several controversies among the parties including the usage of certain assets, the settlement of outstanding debts and disagreements on interconnection rates, local interconnection, resale tariffs, quality standards and international traffic, among other subjects.²⁰⁸ The industry agreement, however, left some key aspects of the complaint unresolved, including Mexico's failure to provide a system of competition for international calls and its failure to curb Telmex's anti-competitive prac-

¹⁹⁶ Letter from Rita Hayes, U.S. Ambassador to the WTO and Deputy USTR, to Alejandro de la Pena, Mexican Ambassador to the WTO on Telecom, (Aug. 17, 2000) (on file with USTR).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 2; see also GATS Annex, *supra* note 38.

¹⁹⁹ See generally Pablo Garibian, *Mexico, U.S. To Start WTO Telecoms Negotiations*, RUETERS, at <http://www.kagan.com/archive/reuters/2000/10/09/2000100922tcm.shtml> (Oct. 9, 2000).

²⁰⁰ Letter from Richard Fisher, USTR, to Luise Fernando de la Calle Pardo, SECOFI, (Oct. 20, 2000) (on file with USTR).

²⁰¹ *Id.* In the letter, USTR Deputy Richard Fisher expresses the need for Mexico to understand that the issues raised are central to USTR's decision regarding the need for arbitration by a WTO panel.

²⁰² *Id.*

²⁰³ *Mexico, US Discuss Telecoms Market Dispute*, TIMESOFINDIA.COM, at <http://www.timesofindia.com/121000/12info12.htm> (Oct. 12, 2000). Since the complaint

was filed in July 2000, Mexico's telecom regulatory agency, Cofetel, published long-awaited regulations meant to curb Telmex's monopolistic powers and to level the playing field for competitors. Cofetel has also published new, lower interconnection fees for long-distance competitors of Telmex. Telmex and Cofetel have been battling in the courts for three years over competition issues, and Cofetel's new moves seem destined to ignite yet another round of legal battles. *Id.*

²⁰⁴ Press Release, United States Trade Representative, United States to Request WTO Panel on Mexico Telecommunications, at <http://www.ustr.gov/releases/2000/11/00-78.html> (Nov. 8, 2000).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Industry Telecom Pact Narrows Issues In U.S.-Mexico Dispute*, INSIDE U.S. TRADE, (Jan. 5, 2001) [hereinafter *Pact*].

²⁰⁸ Press Release, Telefonos de Mexico, DA de CV, Agreement between Telmex and Long Distance Operators Alestra and Avantel, at http://www.telmex.com.mx/internos/prensa/comunicados/recientes/010102i_2.html (Jan. 2, 2001).

tices.²⁰⁹

The most significant aspect of the industry agreement was Telmex's decision to drop its challenge to a resolution by Cofetel to significantly reduce the fees Telmex charges competitors to complete calls from their customers via Telmex's networks, as well as its long-distance interconnection fees.²¹⁰ During the year 2001, Telmex will abide by the 1.25 cent per minute interconnection fee set by Cofetel.²¹¹ In addition, Telmex agreed to reduce the amount it charges competitors for access to its networks in remote areas, known as "off-net" charges.²¹² Competitors will "now be charged 75 percent of the lowest retail rate Telmex offers to customers for access to those networks."²¹³

Alestra and Avantel approved a compensation scheme to reimburse Telmex for money it had invested as special project fees to improve its networks to make interconnection feasible.²¹⁴ This agreement includes a lump-sum fee by the two companies of about \$140 million. But as much as 85 percent of the money to be paid to Telmex will be paid back through a five cent per minute long distance surcharge to be functional through 2004 or until the full amount is compensated.²¹⁵

The industry agreement includes a set of basic criteria for resolution of the issues surrounding international calls.²¹⁶ These criteria could pave the way for an agreement, perhaps in separate negotiations between Telmex and U.S. carriers, on a new settlement rate.²¹⁷ The existing 19-cent rate was negotiated only until the end of 2000.²¹⁸

²⁰⁹ *See id.*

²¹⁰ Press Release, Telefonos de Mexico, DA de CV, Telmex Signs Landmark Industry Agreement to Spur Competition And Bring Benefits to Mexican Consumers, at biz.yahoo.com/prnews/010103/telmex_ind.html (Jan. 3, 2001).

²¹¹ *Id.*

²¹² *U.S. Serves Mexico With Demands, Deadline to Resolve Telecom Dispute*, INSIDE US TRADE, 1, Oct. 27, 2000 [hereinafter *Demands*].

²¹³ *Pact*, *supra* note 207, at 1.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Telcos*, *supra* note 168, at 1. "Debt Settlement: Companies acknowledged their commitments to the "one-time investments" made by Telmex for interconnection services. A compensation system for settlement was established and became effective immediately. Telmex will receive \$180 million from interconnection and special projects. One-hundred thirty seven million dollars will be transferred immediately (\$70 million from Alestra and \$67 million from Avantel) while the remaining \$43 million will be paid over five years. Interconnection Rate: Parties accepted the fee for switched interconnection service set by Cofetel at \$0.0125 per minute.

The companies also reached agreement on a compensation scheme for local interconnection when Telmex completes local calls to competitors' customers or vice versa.²¹⁹ This would work in keeping with a "bill-and-keep" system,²²⁰ where carriers will pocket fees collected from their own customers and anticipate that their competitors will do the same with fees owed to them, instead of shifting interconnection fees collected to the carrier that is owed the fee.²²¹ Additionally, Telmex decided to appoint an independent auditor to guarantee the quality of service it provides to its competitors.²²² It also arranged to provide private lines, which will also be observed by an independent auditor, for sale to competitors' customers.²²³

Many industry insiders said that the willingness to negotiate on the part of Telmex was a result of a combination of political pressure from the U.S. through its WTO case and the new Mexican presidential administration of the reform-minded Vicente Fox.²²⁴ These factors will continue to affect the outstanding issues when the case is decided by the WTO.

V. REMAINING ISSUES TO BE DECIDED BY THE WTO, IF THE CASE MOVES FORWARD

Despite the industry agreement in January 2000, USTR has not amended its complaint against the government of Mexico. But in June

The fee is valid for the period between January 1, 2001 and December 31, 2001 and applies to local and DLD traffic. LD and local circuits. Telmex will make available collocation, local and long-distance interconnection resources. Tariffs are to be discounted by 30% from the current "best registered" tariff for competing operators to enjoy wholesale prices. Inter-urban transport: From October 1, 2000 to December 31, 2001, the new tariff will be equivalent to 75% of the best per-minute tariff registered, billed or applied by Telmex in the market. International traffic: The termination fees for international calls will be negotiated jointly by the three operators as opposed to previous practices in which Telmex was the only Mexican operator involved." *Id.*

²¹⁷ *Telcos*, *supra* note 168, at 3.

²¹⁸ *Pact*, *supra* note 207, at 2.

²¹⁹ Information Statement, Telefonos de Mexico, DA de CV, Mexico's Long Distance Operators Agreement, at <http://www.telmex.com.mx/internos/prensa/comunicados/recientes/001227i.html> (Dec. 27, 2000).

²²⁰ *Pact*, *supra* note 207, at 2.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Case*, *supra* note 184, at 1.

2001, the USTR backed away significantly from a threat to bring Mexico before a WTO dispute settlement panel.²²⁵ The U.S. had threatened to move to a panel in the absence of progress from Mexico by June 1, 2001, but WorldCom struck a deal with Telmex that was said to reduce a key rate charged for international calls.²²⁶ Despite the fact that USTR is not formally dropping its WTO complaint, USTR feels secure that WorldCom and Telmex "support regulatory reforms that would boost competition."²²⁷

Under the deal, beginning January 1, 2001 the settlement rate was reduced from 19 cents per minute to 15.5 cents per minute.²²⁸ In addition, the rate would drop again beginning in 2002 to 13.5 cents per minute and to ten cents per minute in 2003.²²⁹ Starting in 2004, WorldCom would be able to negotiate the settlement rates on a competitive basis with Mexican providers, whereas under the current system, it may only negotiate one rate with Telmex that applies to all cross-border traffic.²³⁰ WorldCom and Telmex agreed to urge Mexico and the U.S. government to make necessary regulatory changes to allow increased competition by 2004.²³¹

AT&T is not in agreement with WorldCom on its deal with Telmex and will seek to have USTR push the dispute settlement process forward. AT&T maintains that the rates negotiated by WorldCom's deal are far too high to be consistent with Mexico's WTO commitments to charge for interconnection based on costs of providing the service.²³²

While AT&T was not a party to the WorldCom/Telmex negotiations, under U.S. telecommunications law they are entitled to sign on under the same terms as WorldCom received. AT&T is still in separate, corresponding talks with Telmex on the issue. AT&T said it will oppose the approval of the WorldCom/Telmex deal by the FCC on the

grounds that the rates negotiated by the companies are still not in the public's interest.²³³ AT&T asserts that the proposed rates are well above the four cent cost of providing the service and the settlement rates that prevail in competitive countries and do not conform with Mexico's prior WTO commitments.²³⁴ Critics of the agreement, however, argue that the pact does not represent a commitment from governments to make these changes and "charge that there is no guarantee that the Mexican government will allow those changes to take effect in 2004."²³⁵

In the agreement, one important change from the U.S. standpoint includes Mexico putting an end to a requirement that only the carrier with the greatest market share (Telmex) be allowed to negotiate settlement rates.²³⁶ This means that U.S. companies have the option of negotiating more favorable rates with Telmex's competitors and Telmex's affiliates.²³⁷ In addition, the pact entails removing U.S. and Mexican regulations that enforce a "proportionate return" requirement, an arrangement under which companies service incoming international calls in proportion to the outgoing calls that originate with them.²³⁸ On the U.S. side, the FCC has to certify that competition conditions existed in Mexico such that its international settlement policy, including the proportionate return requirement, need no longer apply.²³⁹

One vital difference in the WorldCom deal and the U.S. original demands is that the U.S. has pressed Mexico for open competition in international calls beginning in 2003, while the WorldCom deal would hold off until 2004.²⁴⁰ While the agreement would progressively reduce the settlement rate companies on either side of the border charge each other to complete, there are still issues between the United States and Mexico that are not resolved. These issues include

²²⁵ USTR Postpones WTO Action On Mexican Telecom Regulation, CORPORATE MEXICO: REFORMA (MEXICO), available at 2001 WL3332555, (June 4, 2001).

²²⁶ USTR Backs Off Mexico WTO Threat In Wake Of Telecom Company Deal, INSIDE U.S. TRADE, (June 1, 2001) at http://www.insidetrade.com/sec-cgi/as_web.exe?SEC_current+BTMrade01226 [hereinafter USTR Backs Off].

²²⁷ *Id.*

²²⁸ AT&T To Oppose WorldCom-Telmex Settlement Rates Agreement At FCC, WASHINGTON TELECOM NEWSWIRE, May 31, 2001, at 4, available at 2001 WL7162130.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ AT&T Balks At WorldCom-Telmex Settlement Rates Pact, 21 COMM. DAILY, 1, June 1, 2001 [hereinafter AT&T Balks].

²³² *Id.*

²³³ WorldCom filed the deal with the FCC on May 30, 2001. Interested parties had twenty-one days in which to comment. *Id.*

²³⁴ AT&T Balks, *supra* note 231, at 2.

²³⁵ USTR Backs Off, *supra* note 226, at 1.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ AT&T Balks, *supra* note 231, at 2.

²⁴⁰ USTR Backs Off, *supra* note 226, at 2.

Mexico's failure to provide a system of competition for international calls and its failure to "curb Telmex's anti-competitive practices in the market."²⁴¹

With the additional agreement between Telmex and WorldCom much of what was originally part of USTR's complaint has been resolved.²⁴² As a result, the U.S. government may be reluctant for the World Trade Organization Dispute Panel to decide the remaining issues because they are narrower and the Basic Telecom Agreement is not explicit with regard to these issues. Nevertheless, the United States should proceed with the remaining issues even if the Dispute Settlement Body persists in resolving in the United State's favor. A rule could provide helpful guidelines to all countries and their telecommunications industries.

If the WTO Dispute Settlement Body does have the opportunity to decide these issues, it should require the Government of Mexico to live up to its old commitments under the Basic Telecom Agreement along with Telmex's new commitments under the WorldCom agreement. This case, if ever presented, includes issues of commercial and legal significance for the future of the telecommunications industry.²⁴³ The Dispute Settlement Body can clear up the ambiguities in the Agreement, thereby setting a precedent for future cases.

Real competition in the termination of international calls into Mexico would lead to dramatic reductions in the cost of U.S.-Mexico calls, greatly enhancing the ability of the 20 million Mexicans and Mexican-Americans living in the United States to stay in touch with families and friends in Mexico.²⁴⁴ The current system denies the majority of Mexican and U.S. consumers the benefits of better services and lower prices.²⁴⁵ The Dispute Settlement Body should bear in mind that the main objectives of the Basic Telecom Agreement were to increase coverage of telecommunications services and to make sure that the entire popula-

tion received more and better services.²⁴⁶ The liberalization and competition policies within the Agreement are only means to achieve such goals.²⁴⁷ A consumer-driven environment where consumers have real choice requires a wide range of suppliers of telecommunications services.²⁴⁸ This is why fostering competition is so important. The WTO should find that the Government of Mexico has violated the Basic Telecom Agreement and should require Mexico to remedy its violations.

VI. CONCLUSION

The U.S.-Mexico case is likely to be a prototype for future telecommunication disputes before the WTO, if USTR decides to push forward with the case in the future. First, the same telecommunication issues that are involved in this case will likely arise with other countries. Even though telecommunications issues and facts tend to be very specific, the issues of interconnection fees, the determination of fair costs between domestic and international providers and the willingness of the domestic regulator to actually regulate the national monopoly are just a few of the issues that are common to many markets. Second, while it is true that the U.S. was motivated to challenge Mexico's policies because Mexico is one of the U.S.'s largest trading partners, there are many other markets around the world that possess potential for U.S. companies. Moreover, other countries with well-developed telecom industries may perceive the U.S. challenge as a template for their own challenges. The U.S. shares a border with Mexico, and considering the cross border interactions and the numerous phone calls between the two countries, the Mexican telecommunications industry is not well developed. The same could be said for Western Europe and the emerging telecom markets in Eastern Europe. Even if the U.S.-Mexico dispute sets no precedent, the importance of the Mexican market has been enough to convince the USTR as

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Press Release, United States Trade Representative, *Year 2000 Foreign Trade Barriers Report* (March 31, 2000). Mexico has exceeded Japan to become the United States' second largest single country trading partner and has the fastest growing major U.S. export market over the last six years. Since the NAFTA was enacted on January 1, 1994, U.S. exports to Mexico have increased by 109 percent, larger growth than to any other major single-country market. *Id.*

²⁴⁴ July Press Release, *supra* note 142 at 30.

²⁴⁵ *See Case, supra* note 184, at 2.

²⁴⁶ *See* Statement of Ambassador Charlene Barshefsky, *Basic Telecom Negotiations*, Feb. 15, 1997, at <http://www.ustr.gov/html/barshefsky.html> [hereinafter Barshefsky Statement]; *see* WTO Agreement, *supra* note 2.

²⁴⁷ Barshefsky Statement, *supra* note 246, at 1.

²⁴⁸ Doris Benavides, *Telmex Agrees To Lower Tariff Prices*, IDG NEWS SERVICE, Jan. 3, 2001, at www.e-business-world.com/english/crd_telmex_342328.html.

well as WorldCom and AT&T to dedicate a significant amount of resources to fighting this case.

Any dispute that is brought to the WTO has a political element. To be sure, the U.S. needed not just a good case on the merits of the Basic Telecom Agreement, but the political determination to bring an ally and trading partner before the WTO. Not surprising, that political will is supplemented by the economic interests of the U.S. companies involved in the dispute. Conversely, Mexico has its own political and economic interests to address as well.

The elections in both the U.S. and Mexico in the past year have changed the political environment. Neither the Bush Administration in the U.S. nor the Fox Administration in Mexico was responsible for the dispute being brought to the WTO. It is possible that they will attempt once again to settle the case. Having said that, it is difficult to predict the impact that the presidential administration of Vicente Fox may have on the Mexican telecommunications regulatory environment. The Fox administration has announced its intention to stimulate investment in the telecommunications sector with reforms to the federal communications law, including plans to provide universal telephone service by doubling the current number of phone lines in five years. One cannot predict whether or when such new plans may be implemented and their effects on U.S. business.

Similarly, it is difficult to predict the impact that the Bush administration will have on the pending case. While the Clinton administration put a lot of time and resources into the case, it remains to be seen if the Bush administration will do the same even after the WorldCom pact. Presumably, the same political and economic calculations that caused the Clinton Administration to bring the case still prevail, but given the multitude of trade issues between the United States and Mexico, there is no certainty that the telecom case will retain the same priority.

One of the lessons of the U.S.-Mexico case so

far is that the Basic Telecom Agreement is written broadly, yet the problems in the telecommunications industry are specific and that the WTO is a dull instrument at best. Likewise, the Agreement is not self-executing. What matters in the long run is how countries choose to implement the text. If countries are faithful to the text and purpose of the Basic Telecom Agreement there will be few disputes.

Of course, even if national governments attempt to faithfully implement the Telecom Agreement, there can be complications arising from the local judicial and regulatory systems. In Mexico, for example, Cofetel is not the ultimate authority on Telmex since any of the regulator's decisions can be overturned by Mexican courts. And, at this point, it appears that Telmex has no intention of dropping its legal actions against Cofetel.

Without a WTO ruling, the rights of future U.S. carriers in the Mexican market will remain unprotected. Avantel and Alestra might have benefited from an agreement with Telmex, but there are no guarantees that the incumbent's generosity will extend to future entrants or that Telmex will not change its mind.

There is no doubt that much attention will be directed at the WTO Dispute Settlement Body if it decides its first telecommunications case. While the effects of non-compliance concerning the Basic Telecom Act have been unclear, the WTO has a chance to clarify its position on these issues. First, the WTO should find that there is not a system of competition for international calls that actually exists in Mexico. Second, the WTO should make it clear it will not tolerate Telmex's anti-competitive practices under the Basic Telecom Agreement. The WTO should direct Mexico to remedy these problems and come into compliance with its obligations under the Basic Telecom Agreement. Such actions by the WTO will help to ensure the effectiveness of the Agreement and provide an incentive for other countries to adhere to their obligations.

