

Unilateral liberalisation and WTO GATS commitments: the telecommunications sector in selected countries

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This paper examines how unilateral liberalisation of the telecommunications sector affected WTO Member countries' commitments in the GATS of the WTO. It is argued from observations and interviews that unilateral liberalisation provides a basis for making WTO commitments. The differing objectives of WTO Members, their attitudes towards reform (strong reformer or lukewarm supporter of reforms), and country-specific sensitivities appear to be factors responsible for the observed differences between unilateral reforms and GATS commitments in the telecommunications sector.

Introduction

In the services sector, liberalisation attempts by the World Trade Organisation (WTO) could not deliver much beyond unilateral measures. Unilateral liberalisation (UL) means liberalisation of the trade and investment regimes undertaken by countries under their own steam and not as a binding commitment in an international agreement (bilateral or multilateral). UL is seen as a powerful means for developing countries to promote economic growth (Bosworth and Holmes 2005). Several factors such as the widespread prevalence of regulation of services, the requirements for capital and human movement across borders to supply services, the apprehension of developing countries that their services sector is inefficient and non-competitive (Whalley 2004) and is therefore unable to withstand foreign competition, and the concern that General Agreement on Trade in Services

(GATS) commitments will deprive regulators of the authority to regulate are responsible for the less than expected liberalisation under the WTO (Pattanaik 2006; Hoekman et al. 2007).

The large potential gains from services liberalisation and the demise of natural monopoly arguments for state provision of backbone services drove governments to undertake UL in sectors such as telecommunications and transport. Technological changes have also allowed services to be delivered internationally (Mode 1 of the GATS). The wide ambit of UL in the services sector through foreign direct investment (FDI) and unhindered cross-border trade in services due to technological development leads services firms not to see that market access is a priority (Hoekman et al. 2007).

The GATS is concerned specifically with international trade in services. It seeks commitments from members to remove restrictions on how Foreign Service suppliers can deliver services (Oxley 2004). In contrast to trade in

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goods, GATS-based negotiations take place on both trade and investment concessions (Franco and Wooton 2001:400).

GATS covers services trade that requires no direct proximity (the cross-border Mode, that is Mode 1) and trade that involves proximity (the remaining three modes of services supply: movement of consumers, known as Mode 2; commercial presence, Mode 3, through foreign establishment; and movement of natural persons, popularly known as Mode 4). The GATS distinguishes between these four modes of supplying services, depending on the location of services and the consumer at the time of the transaction (Brown et al. 2008).

GATS applies in principle to all services (the WTO identifies services under 12 broad categories and 155 specific services) except services supplied in the exercise of governmental authority. Under GATS, WTO members are free to choose how many service sectors they want to include in their national schedule of specific commitments (Egger and Lanz 2008). They also enjoy discretion as to which modes of service delivery they will undertake liberalisation commitments, that is the liberalisation content depends on the extent and nature of sector-specific commitments assumed by individual WTO members (Mattoo 2003). Two provisions, Market Access (Article XVI) and National Treatment (Article XVII), apply to sectors specifically included in Members' schedule of commitments. Six types of limitations on Market Access are prohibited unless inscribed in a Member's schedule of commitments.

In scheduled sectors, if a Member wishes to impose any of these limitations, it has to be indicated with respect to each of the four modes of service supply (Mattoo 2003). Undertaking market access commitments allows foreign providers to provide services in the commitment-making country. National treatment commitments signify that foreign providers will be given treatment no less favourable than that accorded to like domestic services or service suppliers in supplying their services.

It is notable that there remains a critical distinction between domestic reforms taken

unilaterally and reforms taken as a binding obligation of negotiations. Domestic reforms include removing all the non-discriminatory regulatory restrictions that affect domestic and foreign firms equally. These reforms are taken in the country's best interests, without giving due consideration to trading partners' interests (Dee 2007).

By contrast, negotiated reforms, such as opening telecommunications markets to foreign competition as an obligation undertaken under the WTO Basic Telecom Agreement, permit entry of foreign providers into domestic markets. In negotiations, countries have to contemplate and implement reforms that are also in their trading partners' best interests (Dee 2007). In particular, negotiated commitments that force commitment-making Members to dismantle behind-the-border measures matter most in the WTO in order to establish a meaningful market access commitment, attract FDI, and reap the expected benefits of foreign competition. Unpredictable domestic regulations and expropriation risks to investors' assets make foreign investors sceptical about investing. Investors call for a safeguard mechanism against regulatory arbitrariness and for full compensation in cases of expropriation.

In the past two decades, a significant degree of unilateral services liberalisation has occurred across the globe. Telecommunications is the sector that perhaps has experienced most UL due to its strong positive effects on the national economy. Although considerable efforts were made by some countries to promote liberalisation of telecommunications and other services sector under the WTO GATS agreement, the basic telecommunications sector was left unresolved by the Uruguay Round. Therefore, WTO members agreed that negotiations over telecommunications and financial services should continue.

A Negotiating Group on Basic Telecommunications (NGBT) was formed to continue negotiations. The NGBT missed its first deadline (30 April 1996) but continued negotiations. Upon resolution of a number of issues,¹ 69

1 These issues include conditioning of market access on spectrum availability, whether the transport of video signals and/or broadcast signals was included in basic services.

Members, who collectively had a global telecommunications market share of more than 91 per cent, finally reached consensus on the liberalisation of trade in basic telecommunications services in February 1997. This agreement took the form of the Fourth Protocol of the GATS—more commonly known as the Agreement on Basic Telecommunications and augments the 1994 Schedule in exacting commitments to open the sector (Cohen 2001; Bhuiyan 2004). The schedules of basic telecommunications commitments and related Most Favoured Nation exemptions (if any) were annexed to the Fourth Protocol (hereafter referred to as ‘GATS commitments’).

The objective of this study is to examine whether UL of the telecommunications sector promotes Members’ commitments in the WTO. This research question is important because as far as we understand there is no empirical study of how unilateral market opening in a particular services sector influences a Member’s behaviour in making commitments in the WTO. Such studies have been carried out on the relationship between Preferential Trading Agreements (PTA) and the WTO. Some economists view PTAs as inherently undermining the multilateral trading system, while others view them as ‘stepping stones’ toward multilateral liberalisation. Krihna (1998 in Fink 2008) shows trade-diverting PTAs protect vested interests against further multilateral liberalisation. Bhagwati (2003) is of the view that multiplication of PTAs weakens the willingness of countries to invest more resources and effort into pushing multilateral liberalisation. In an earlier work, Bhagwati (2002) termed these agreements as ‘stumbling blocks’ of varying size and shapes. Srinivasan (1999:36) argues: ‘the adverse systemic and other effects of discriminatory PTAs far outweigh any beneficial effects’.

On the other hand, Fink (2008) argues that PTAs promote broader liberalisation through demonstration of its pay-off. Sally (2008) considers PTAs a response to deadlocked multilateral liberalisation. PTAs are indeed seen as insurance against continuing WTO weakness. We believe it would be an advance in knowledge and understanding to establish the role of

unilateral market opening in promoting multilateral commitments in the telecommunications sector.

To address the question, we have examined the GATS schedules of commitments of 11 selected WTO Members and their unilaterally adopted liberalisation in the telecommunications sector. The study is focused mainly on the provisioning of cellular mobile phone services provided through GATS Mode 3 (that is FDI).

These 11 countries (except for China and Vietnam, which only recently acceded to the WTO) were chosen from the signatories to the Fourth Protocol of GATS. Countries from both the developing and the developed world are included. The reason for selecting China and Vietnam was to see whether the relationship between UL and GATS commitments was the same for newer WTO Members as for older Members. The study relied for information on various published and e-sources, including schedules of commitments and summaries of commitments available on the WTO website.

A total of 22 WTO and trade experts as well as policymakers were interviewed. Sixteen experts and policymakers were interviewed face-to-face. Six interviewees were interviewed through e-mail. We asked them to elaborate on the questions: Do you think UL has any role in undertaking multilateral GATS commitments in the telecommunications sector? If so, does UL promote or hinder the undertaking of GATS commitments?

The telecommunications sector has several sub-sectors. The study focused on cellular mobile phone services. We compared the liberalisation measures the WTO Members undertook unilaterally before signing the Fourth Protocol of GATS with their GATS commitments, to see if there were any relationships between UL and GATS commitments.

The remainder of the paper is organized as follows: The second section provides a brief introduction to the telecommunications sectors of the selected countries and their GATS commitments. The third section discusses the role of UL in submitting GATS commitments in the telecommunications

sector. The fourth section summarises the conclusions, while the last section provides policy implications.

The state of the telecommunications sector of the selected countries and GATS commitments

As well as China and Vietnam, the nine countries selected from the signatories to the Fourth Protocol were India, New Zealand, Australia, Singapore, Japan, Malaysia, Sri Lanka, Bangladesh, and South Africa. The present state of liberalisation of the 11 countries and their GATS commitments are as follows.

India

Liberalisation and competition has played a key role in the significant fall in Indian mobile tariffs from US\$0.36 (Rs.16) per minute in 2000 to US\$0.01 (Rs.0.50) per minute in 2008 and the incredible growth in mobile subscriptions in this time. Mobile density has increased more than 23-fold from 0.35 per cent in 2000–01 to 8.1 per cent (90 million subscribers) in 2005–06 (Singh 2008). The inflow of FDI into the Indian telecommunications sector by 2004 was Rs.99,500 million.

In its GATS commitments, India allows 25 per cent foreign ownership in the telecommunications sector. In the cellular mobile phone sector, two operators were permitted in each service area. India undertook Reference Paper (RP) obligations only partially. It has not adopted the RP requirement to justify the denial of a licence upon request by the applicant. The RP is a multilateral obligation on Members to introduce a pro-competitive regulatory regime in the telecommunications sector. It sets out six guiding principles for the Members in redesigning their domestic telecommunications regulatory institutions: competition safeguards, interconnection guarantees, universal service obligations, transparent licensing processes, independent regulators, and non-discriminatory allocation and use of scarce resources (Zhang 2001:466).

Malaysia

The Malaysian government liberalised its cellular phone sector by granting seven licences between 1989 and 1995 (Lee 2002). The mobile phone sector experienced phenomenal growth following liberalisation. The total number of subscribers had increased to 5.1 million by 2000, from only 78,000 in the early 1990s (Lee 2004). Malaysia undertook commitments in basic voice and mobile phone services allowing foreign enterprises to acquire up to 30 per cent equity in existing licensed public telecommunications operators. It also undertook some RP obligations, such as to establish an independent regulator and competitive safeguards in respect of interconnection. However, it did not guarantee interconnection at cost-oriented rates.

Bangladesh

Liberalisation of the mobile phone sector has brought phenomenal growth in that sector. Mobile penetration has increased from a pre-liberalisation level of 0.03 per cent in 1996 to around 34 per cent in 2009 (Bangladesh Telecommunications Regulatory Commission 2009). Total investment in the sector by the operators since 1997 has exceeded more than US\$3,000 million (Shawkat 2009). Bangladesh has opened its telecommunications market unilaterally by granting licences to two new operators in wire-telecommunications services, four licences to cellular service operators, and permitting full competition in voice and data transmission over closed-user groups. Bangladesh translated its domestic policy regime that existed at the time of making commitments in 1997 into GATS commitments but later expanded its liberalisation scope by issuing additional licenses. However, it did not submit improved offers in line with its applied level of openness.

Sri Lanka

Sri Lanka opened its market for cellular phones in 1989. Four mobile phone licences were awarded between 1989 and 1995 (Samarajiva

2006). Liberalisation has had a significant impact on expansion of telecommunications services. Mobile penetration has increased from 0.01 per cent in 1991 to 11.4 per cent in 2004 (TRCSL 2005 in Balasooriya et al. 2006). Investment in the telecommunications sector over the past two decades has amounted to more than US\$1.3 billion (Knight-John and Ellepola 2005). The Sri Lankan government also permitted foreign equity participation of up to 35 per cent for strategic partners in the government-owned Sri Lanka Telecommunications (SLT). For all suppliers other than SLT, foreign equity is limited to 40 per cent, with investments over this limit subject to case-by-case limits. Sri Lanka has fully adopted the regulatory RP (Knight-John and Ellepola 2005).

China

The Chinese mobile telecommunications network is now the world's largest. Rapid growth took place following liberalisation and China's accession to the WTO in 2001. Cellular mobile subscribers totalled 14.5 million in 1997; the number increased to 461 million by December 2008. Mobile penetration increased from 0.55 per cent in 1996 to 35.3 per cent in 2008 (Yu and Tan 2005; Lu et al. 2008). Taiwan and South Korea are the major investors in the Chinese telecommunications sector, with some 70 per cent of China's telecom equipment production financed by Taiwanese capital (Kumar and Thomas 2006). Prior to China's WTO accession, China was a closed economy. Upon accession, China promised to become one of the most open economies over a period of six years (Mattoo 2003:299). It committed to having no geographic restrictions on foreign mobile operators by 11 December 2006. As Zhao (2007) has aptly pointed out, the opening up of China's telecommunications market to foreign operators was one of the key conditions powerful WTO Members imposed on China's accession to the WTO.

Vietnam

Vietnam allowed the entry of new firms in mobile telephone services in the early 2000s

(Hwang et al. 2009). At present, six mobile networks provide mobile phone services. The first FDI project in the telecommunications industry was established by VNPT (Vietnam Posts and Telecommunications Corporation) and Telstra (Australia) in 1988 (Nguyen et al. 2004). Foreign firms such as Comvik, Sweden, SLD Ltd of South Korea (S-Phone), and Hutchison Telecom invested in the mobile phone sector through Business Cooperation Contracts (Tran and Obi 2007). Liberalisation resulted in significant growth in the mobile phone sector (79 per cent annual growth over the last ten years). Mobile phone subscribers is reported to have reached more than 113.7 million in August 2009 (Nhan Dhan 2009).

Vietnam committed market access commitments in all telecommunications services subject to the condition that the services must be offered through joint establishment. A number of laws and regulations (including amendments to existing laws/regulations) have been enacted (Tran and Obi 2007).

Australia

The Australian mobile phone market is a growing market and penetration passed 100 per cent in 2005. Demand for mobile phones remains strong (Douglas 2009). Telstra was the monopoly provider for both fixed and mobile services before Optus and Vodafone were licensed in 1991. Liberalisation and competition resulted in significant price reductions for subscribers (Brown and Malbon 2004). Australia had few restrictions on FDI and cross-border trade of telecommunications before its GATS commitments (McGuire and Findlay 2005). Its GATS commitments reflect existing free markets for all basic telecommunications services (including mobile phone service) and existing restrictions (for example, screening projects against the national interest test; foreign ownership restrictions on Telstra) on inward FDI but no foreign equity restrictions on new carriers. The existing anti-trust authority, the Australian Competition and Consumer Commission (ACCC) (prior to the ACCC, AUSTEL was the regulator), appears to have encouraged Australia to adopt the obligations

contained in the RP. SingTel (Singapore Telecommunications) bought the Australian telecommunications firm Optus for US\$15.6 billion in 2001 (Paris et al. 2009).

New Zealand

New Zealand opened the telecommunications sector to competition in April 1989. New Zealand's mobile penetration is one of the highest in the world with 101 per cent penetration. With a view to avoiding over-regulation, New Zealand relied solely on generic anti-trust law and did not institute a sector-specific policymaker and regulator to deter anti-competitive behaviour—known as light-handed regulation—of the incumbent dominant operator Telecom New Zealand (Judith 2004). New Zealand's current mobile phone market is a duopoly of Vodafone New Zealand and Telecommunications Mobile. New Zealand has made a commitment to open markets for all basic telecommunications services for all market segments (local, long-distance, and international). New Zealand had competition law in place before it adopted the RP.

Japan

Japan's mobile phone market is one of the largest in the world. Mobile subscribers totalled 100 million in February 2007 (Xavier and Ypsilanti 2008). Until 1990 there was virtually no FDI in this sector. The removal of all foreign investment restrictions on Type I carriers through WTO negotiations concluded in 1997 helped Japan to attract FDI, which jumped from about US\$27 million in 1997 to approximately US\$6.8 billion in 2000. However, the withdrawal of Cable & Wireless and Vodafone from the Japanese market between 2004 and 2006 resulted in a significant reduction of foreign presence in the Japanese mobile market (Paprzycki and Fukao 2008).

Before the submission of GATS commitments in 1997, there were three operators. Japan agreed to raise foreign equity limits to 100 per

cent for suppliers other than NTT and KDD. Other than these company-specific restrictions, full market access is committed in all market segments for basic telecommunications services. Japan also adopted the obligations of the RP.

Singapore

SingTel enjoyed a monopoly for over a century, until 2007. However, Singapore had made commitments in the WTO to open markets for local fixed voice, mobile data, and cellular telephony services as from April 2000. By committing to the RP, Singapore undertook additional commitments to safeguard competition through establishment of a proper regulatory regime.² Singapore's WTO liberalisation commitments obliged the government to bring forward its liberalisation timetable by seven years (Fink et al. 2001). Between 1997 and 2000, it issued a mobile licence to MobileOne and fixed and mobile licenses to StarHub (Guillen and Suarez 2001). Liberalisation of the mobile sector resulted in incredible growth. Mobile penetration stood at 134.5 per cent as of September 2009 (IDA 2009).

Republic of Korea

SK Telecom was the sole provider in providing mobile phone service before Korea's GATS commitments of 1997. There was incredible growth in mobile services from 7 per cent penetration in 1996 to more than 68 per cent in 2002 (Kim et al. 2004). Korea made market access commitments for all telecommunications services segments, subject to aggregate foreign investment not exceeding 49 per cent. The telecommunications regulator, the Korea Communications Commission (KCC), was established in 1992. Korea adopted the RP obligations.

Regulations in the sample countries

All countries in the sample established an independent telecommunications regulator in

2 Singapore adopted sector-specific competition laws for the telecommunications sector following the liberalisation of the sector in 2000 (Cheng 2007).

accordance with the GATS RP definition since their market opening through the GATS agreement. However, if a more demanding test is applied—that regulators are appointed by the government, are dependent on ministries for their budget, and are appointed to the positions independent of other government agencies, such as ministries responsible for telecommunications policy—then China, Japan, Korea, New Zealand, and Bangladesh do not have an independent body (Findlay et al. 2005:115). To elaborate, in Japan, regulatory functions are still exercised by the sector ministry while the regulatory body is appointed by the government and wholly dependent on the executive for its budget.

Regulators in most of these countries have so far provided a good account of themselves in promoting consumer welfare by providing necessary guidelines on interconnection, pricing, quality of service, and infrastructure sharing. Regulators in Australia, Singapore, India, and Malaysia are very watchful in ensuring interconnectivity and quality standards. Following serious interconnection problems in the initial years after liberalisation, Malaysia made interconnection mandatory (Salazar 2007).

The Telecom Regulatory Authority of India (TRAI) specified quality of service benchmarks and ensures that these are maintained by mechanisms such as conducting quality audits. The TRAI had noted deterioration in the quality of service at points of interconnection and in consequence it issued 'show cause' notices to Bharti Tele-Ventures Ltd (Sutherland 2007).

In Australia, multiple regulatory bodies exercise telecommunications regulations (Fan 2005; Sutherland 2007). These bodies include government regulators, the Australian Communications and Media Authority (ACMA) and the ACCC, and three industry regulatory organisations, the Telecommunications Industry Ombudsman, Communications Alliance, and the Telecommunications Access Forum. Regulation of competition is monitored by the ACCC (Brown and Malbon 2004; Raiche 2009). The ACMA undertakes customer satisfaction surveys to ensure the service quality of mobile operators (Sutherland 2007). The regulatory regime is independent, as none is part of a

ministry or has a direct commercial relationship with an operator, which enables them to implement regulations impartially (Fan 2005:201).

The regulator in Singapore publishes data twice yearly on dropped calls on GSM networks. This forces operators to act from fear of adverse customer reaction (IDA 2005 in Sutherland 2007). The Ministry of Information Industry (MII) is the current regulator overseeing the telecommunications industry in China. As a government ministry, MII is not independent of political intervention (Fan 2005). Regulators in Bangladesh and Sri Lanka are accused of favouring the state-owned telecommunications firms and not being effective in ensuring compliance with licensing conditions to ensure that consumer-welfare provisions are maintained.

With respect to implementing WTO commitments, some regulators do not live up to their obligations. For example, South Africa failed to keep its commitments to end the monopoly position of PSTN (Public Switched Telephone Network) by the end of 2003. Due to delays in granting licences, the fixed network was a monopoly until the second PSTN operator, Neotel, became operational in 2006 (Esselaar et al. 2006). Similarly, MII in China is nominally independent but uses its regulatory authority to disadvantage foreign firms. It has failed in most cases to consider foreign applications for a licence with due speed.

Appendix Table A1 provides a brief description of the status of telecommunications sector liberalisation before the signing of the GATS Fourth Protocol, WTO commitments, the present state of liberalisation, and the 'connect/disconnect' between the actual policy regime and GATS commitments. By connect/disconnect, we mean similarities and differences between UL and GATS commitments.

Does UL promote GATS commitments in the telecommunications sector?

It is found that there exists a relationship between UL and WTO commitments. In the context of developing countries such as Bang-

ladesh, India, Malaysia, and Sri Lanka, unilaterally opening a services sector such as telecommunications seems to have been a necessary condition for a multilateral commitment. Why may this be so? An interpretation that we offer is that UL provides the liberalising country with the early results of liberalisation before it decides to commit in the WTO. The initial experience of UL provides an assessment of the benefits and challenges of liberalisation. For the most part, liberalisation of the telecommunications sector brought beneficial results such as quicker, cheaper, more diversified, and better quality telecommunications services. Such gains can be reaped quickly through unconditional UL as compared with protracted, politicised, and cumbersome multilateral negotiations (Sally 2008:93–4). Once telecommunications users have enjoyed the benefits of telecommunications liberalisation, they would prefer to see liberalisation measures locked-in under GATS. This is because locking in the liberalisation measures under an international treaty should secure the permanence of the telecommunications reforms. In such a scenario, it appears there will be minimal or no resistance from domestic stakeholders if a Member wants to give its telecommunications sector liberalisation permanency by converting its applied liberalisation measures to multilateral commitments.

Oyejide and Bankole (2001:3) have noted that the ease with which multilateral and regional cooperation and agreements are reached when liberal conditions already exist is an important indirect effect. Once a country unilaterally liberalises its trade regime, it becomes politically easier to reduce restrictions (Martin and Messerlin 2007) and bind them under the WTO.

The comparison between unilateral market opening and GATS commitments (that is comparisons between Columns 2 and 3 of Appendix Table A1) suggests that UL was a necessary condition for making multilateral commitments. After unilateral market opening, liberalising countries seem to be better informed about the consequences of liberalisation and willing to bind liberalisation in the WTO, subject to the fulfilment of other conditions. In

particular, the positive liberalisation outcome encourages countries to convert the applied measures (unilaterally adopted) in the WTO.

Their commitment to the WTO hinges on the fulfilment of some other conditions. These may be deemed 'sufficient conditions'. The sufficient conditions that Members may consider in making commitments in the WTO cover the following contingencies: the problems they may face if they backtrack from their commitments; if it is necessary to retreat from commitments, what safeguard measures are in place to enable them to do so without facing consequences. It is necessary to allow for these contingencies because the binding of existing levels of openness provides recourse to foreign investors through the WTO's dispute settlement mechanism (Bressie et al. 2005).

Among the sample countries, no country agreed to GATS commitments without previous UL actions. Even developed countries such as Australia and New Zealand made commitments in the GATS to open their telecommunications markets in line with the UL they had undertaken before the signing of the Fourth Protocol of GATS. Only newly acceding countries such as China and Vietnam had agreed to open their markets and submitted their schedule of GATS commitments without much liberalisation at home. Newly acceding Members are often forced to undertake a higher level of commitments or commitments beyond those on market access and national treatment (that is undertaking the RP obligations) as part of the access conditions to the WTO, even in the absence of necessary conditions. This happened with the countries that became WTO Members after the signing of the Fourth Protocol. All new Members of the WTO have adopted the complete RP, while 63 out of 69 signatories to the Protocol adopted the RP and not all of them adopted the complete RP (Roseman 2003).

It can be argued that there exists congruity between the objectives of unilateral and multilateral liberalisation. Both have the objective of promoting trade and investment among nations. Countries such as the USA, the UK, Chile, Australia, New Zealand, and Malaysia

took bold steps in pushing for multilateral liberalisation of trade-related services after earlier UL. This direction of the relationship (that is UL contributing to a multilateral commitment) seems more applicable for telecommunications services where the benefits of opening markets to foreign investors and technology are obvious in terms of easier accessibility, lower tariffs, and better service (Jha and Majumdar 1999; Cabanda and Ariff 2002; Lee and Findlay 2005; Rossotto et al. 2005; Xavier 2006).

Moreover, binding UL measures under GATS is a win-win situation for the liberalising government and for the operators (Tuthill and Sherman 2008). On the one hand, telecommunications service providers can count on guarantees of market access. On the other, governments can ensure improved and cheaper telecommunications service. In addition, by locking in its UL measures to the WTO, a country gains credibility about the permanence of its already liberalised measures. Locking-in UL measures in the WTO increases the commitment-making country's attractiveness for FDI. These benefits of binding unilateral measures in the WTO have convinced us to argue that UL in the telecommunications sector encourages multilateral commitment.

The early results of telecommunications liberalisation, which in most instances resulted in beneficial impacts such as reduced prices and better quality services seem to have led countries to bind their existing openness under GATS. If we compare the state of liberalisation that existed before the signing of the Fourth Protocol (see Column 2 in Appendix Table A1) with the GATS commitments see Column 3 in Appendix Table A1) of the selected countries, it is evident that the GATS commitments of most of these countries (such as in India, Malaysia, Sri Lanka, Bangladesh, Australia, and New Zealand) have resulted largely from their UL processes driven by their national interests.

However, the commitments made in the WTO are at variation with applied measures at home. Some countries bound at a lower level with at least some aspects of their regimes (such as number of operators, foreign owner-

ship restrictions, and exemptions from national treatment) while others committed at a higher level than their actual policy regime.

To weigh sample countries' commitments with a view to categorising them, we have used criteria such as restrictions on foreign equity, allowing new entry immediately or through phased-in commitments, limitations on the number of operators where applicable, and adoption of regulatory commitments. Appendix Table A2 shows the scores for each criterion and how countries' total scores were calculated. The reasoning in support of assigning a value of -1, 0, and +1 is explained in Table A2, together with associated explanations. Countries scoring between 0 and 1 were classified as countries that have made GATS commitments consistent with their existing level of openness. Countries whose total scores are less than 0 are classified as having committed to less than the *status quo*, while countries whose total scores are more than 1 are classified as having made GATS commitments at a higher level than their existing level of openness.

There are varied reasons for the differences between applied liberalisation undertaken unilaterally and GATS commitments. However, analysing the reasons for disconnects between UL and GATS commitments are beyond the scope of this paper. But we do provide a brief analysis of the reasons for the differences between Members' actual openness and GATS commitments in the telecommunications sector. We classify the review countries into three groups:

GATS commitments at a higher level than applied liberalisation

Japan, Singapore, China, and Vietnam made higher level commitments in the WTO than their actual policy regime in the telecommunications sector. Newly acceding countries, China and Vietnam, also made deeper commitments. One reason for this observed disconnect between GATS commitments and the actual liberalisation was the intention of the governments to use deeper commitments as a signalling device to attract inflows of FDI

(Eschenbach and Hoekman 2006). The Philippines and Malaysia also made higher level commitments than their domestic liberalisation in the hope of attracting FDI (Singh 2005). Three-fifths of the people interviewed observed that binding UL measures in the WTO is essential to enhancing and underpinning the domestic sector reform agenda as well as providing signals to investors that the country is serious in sticking with its liberalisation measures. They expressed the view that this perceived 'additionality'³ encouraged Members to make commitments in the WTO (see also Djiofack-Zebaze and Keck 2008/09).

In some cases, Members take on WTO commitments to push their ongoing reforms. For example, the Chinese leadership was convinced that WTO commitments would be helpful in pushing market-oriented reforms. China allows foreign investors to hold equity in the mobile phone sector of up to 49 per cent in three years (Stoltenberg 2003). China committed in the WTO to future liberalisation in order to prepare domestic operators to operate under competitive conditions. A majority (52 per cent) of the respondents mentioned that such commitments are made where countries think they are not ready and have difficulties in immediate liberalisation.

A second explanation given by two-thirds of the respondents is that the recently much more demanding WTO accession process for new entrants compels acceding countries, such as China and Vietnam, to make deeper commitments than their actual liberalisation measures (see also Eschenbach and Hoekman 2006). Acceding countries also sometimes bind themselves to deeper commitments to enjoy the perceived benefits of WTO membership. In this regard, Henderson et al. (2005) observe that 'the government of China would not have opened up to FDI were it not for the perceived benefits in WTO accession' (p. 216).

GATS commitments are lower than the actual policy regime

India and Bangladesh's GATS commitments are at a lower level than their actual level of openness. For example, Bangladesh's commitment reflected *status quo* liberalisation as of 1997. Subsequently, it expanded its liberalisation measures by awarding two additional cellular mobile phone licences (*The Daily Star* 23 March 2008), which widened the gap between its actual liberalisation regime and its GATS commitments. Bangladesh also established an independent regulator to promote competition in the sector, although it did not accept RP. However, Bangladesh did not submit a revised commitments schedule in the Doha Round to reflect the subsequent liberalisation measures it undertook after the signing of the Fourth Protocol in 1997.

Similarly, India's commitments in the WTO are significantly lower than its domestic policy regime. India has unilaterally raised its equity cap in both terrestrial and mobile communications to 74 per cent, which is well above its 25 per cent cap under its GATS commitment—even its most recent offer of 49 per cent foreign ownership (Hoekman et al. 2007).

The majority (62 per cent) of respondents noted that these countries were conservative in making commitments for three reasons: (i) they consider that they will not be allowed to introduce new welfare-enhancing regulations in the future after a GATS commitment is made; (ii) they lack well-functioning domestic regulatory institutions and, therefore, the potential benefits from telecommunications liberalisation will be difficult to realise; and (iii) they want to preserve some 'policy space'.

It can be argued that these Members have made lower binding commitments to keep future backtracking options open, without facing any adverse consequences under WTO dispute settlement mechanisms. They also might be concerned that GATS commitments

3 'Additionality' means the perceived need to provide information about the 'type' of government to the market (Eschenbach and Hoekman 2006).

limit their regulatory freedom unduly and that either they do not have regulatory institutions at all or have weak regulatory regimes. Given the present state of the GATS agreement, there is no provision for the regulatory cooperation that is necessary for successful liberalisation.

GATS commitments are consistent with existing levels of openness

Among the selected countries, Sri Lanka, New Zealand, Australia, Malaysia, and Korea's GATS commitments are largely in line with their UL measures. These Members translated their applied level of openness into GATS commitments because they considered it necessary for their socioeconomic development.

Around one-third of the respondents expressed the view that these countries' institutional readiness (regulatory regime) had allowed them to convert actual openness into GATS commitments. Institutional capability is important as Schedules of Commitments have to be able to be implemented (Zhang 2001).

It seems that countries that unilaterally liberalised their telecommunications sector and subsequently locked in those measures fully or partially through the WTO did so to provide assurance to investors that the existing level of openness would not be reversed (see Blouin 2000).

The above observations lead us to believe that UL of the telecommunications sector creates conditions that encourage countries to lock in their *status quo* liberalisation measures in the WTO. Singh (2005:80) has noted: '[M]ostly those countries that had undertaken significant liberalisations of their domestic markets made strong commitments in the WTO. Similarly, correlations can be observed between reasonably strong commitments and reasonably strong liberalisation and weak commitments and weak liberalisation'. Noam and Drake observed that the commitments Members had taken in the Agreement on Basic Telecommunications were 'standstill' commitments, consisting of binding liberalisation measures that had already been adopted at the national or regional level (Noam and Drake 1997 in Blouin 2000).

However, the relationship between UL and multilateral liberalisation is not always as straightforward as we have argued so far. In some cases, UL is not translated into GATS commitments. For instance, although there has been considerable UL in the services area by both developed and developing countries over the past one and a half decades, very little of this has been translated into GATS commitments. The telecommunications sector appears to be an exception. As telecommunications can provide an important engine of growth for national economies, and the early experiences of telecommunications sector liberalisation have been beneficial in most cases, UL seems to have encouraged most of the review countries (except China and Vietnam) to make liberalisation commitments. Indeed, binding liberalisation commitments under GATS in the telecommunications sector is, to a large extent, a logical extension of the domestic policy regime.

Therefore, we argue that UL of the telecommunications sector usually facilitates a country's commitments in the WTO. From its experience with UL, the country has a better appreciation of the problems associated with the opening of the sector, and is able to take an informed decision when deciding to make a multilateral commitment. We are also convinced that unilateral and multilateral liberalisations are complementary in a country becoming more integrated into the world economy (as noted by Sally 2000). However, the depth of commitments and the extent of the difference between unilateral market opening and GATS commitments depend on country-specific sensitivities and leadership attitudes towards trade and investment liberalisation.

The findings of this study indicate that smaller and poorer Members are less inclined towards liberalisation of services trade and investment. We also recognise that when the early outcomes of UL are perceived to be negative, a country may refrain from binding its UL measures in the WTO.

A summary of the reasons for the 'connects' and 'disconnects' between the actual policy regime and GATS commitments is presented in Appendix Table A4.

Conclusions

On the basis of the analysis and interviews, we conclude that UL in the telecommunications sector in most cases provided the grounds for making commitments under GATS. However, this observation does not hold in all cases. The commitments coverage generally varies from economy to economy, depending on country-specific sensitivities and attitudes towards economic reform. Strongly reforming countries (mostly developed countries) generally translated most of their UL measures into GATS commitments, while developing countries were very conservative in making commitments. Unlike existing Members, newly acceding Members committed to opening of telecommunications markets without previous UL. It seems that they had to concede additional commitments as part of their WTO accession commitments.

Our findings also show that most governments have partially locked in their UL measures under GATS. They have been unwilling to commit their full domestic reforms at first instance in the WTO. But they have preferred gradual reform with respect to establishing an independent regulator and introducing competition. It is also found that UL and WTO commitments are not mutually exclusive and one may reinforce the other. While earlier UL makes commitment in the WTO easier, WTO liberalisation commitments force countries to stick to UL measures.

Policy implications

UL offers some flexibility to national policy-makers. It can be tailored to national socioeconomic conditions (rather than being dictated by international organisations and agreements) with a view to maximising national interest. In deciding to what extent a Member will lock in UL measures under GATS or if it will commit at all, WTO Members should

consider what it is they want to achieve from their commitments. If a Member wishes to retain some policy space and to remain unconstrained with respect to policy choices, it may choose not to bind its actual level of openness under GATS. It may also preserve some bargaining leverage by undertaking binding commitments at a lower level than its applied policy regime. In such instances, countries need to understand whether their telecommunications market possesses sufficient potential for growth and profitability to be attractive to other Members and if any interest is shown by trading partners.

In holding back on binding unilateral measures, the WTO Member also needs to consider the potential reciprocal benefits it may gain from the bargaining chips it preserves by not committing to the WTO. It seems there is little scope for a country to benefit from the bargaining chips it may preserve (by not locking in liberalisation) through a request-offer approach if the market of the liberalising country is small and unattractive to investors of other nations. If a Member country seeks to use GATS commitments to attract investment, it seems expedient to bind unilateral measures in the WTO to provide confidence to potential investors about the stability and predictability of the regulatory regime. In that case, the Member should consider imposing minimal restrictions on foreign equity to ensure FDI.

The WTO has a role to play in motivating Members to submit improved services offers or provide new commitments. The WTO may consider providing assistance to developing countries to help them establish or strengthen regulatory regimes needed for implementation of their WTO GATS commitments. Moreover, domestic regulation of the telecommunications sector should be subject to a necessity test to ensure improved market access. The WTO also needs to ensure that no market access and national treatment limitations are in force after the expiry of the exemption period stipulated in the Members' Schedule of Commitments.

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Appendix

Table A1
State of liberalisation before signing the Fourth Protocol, WTO Commitments, and actual practice of selected countries in the telecommunications sector

WTO member	Liberalisation state before signing the Fourth Protocol in 1997	GATS commitments	Actual practice (refers to the state of policies in 2006/07) after unilateral deregulation	Connect/disconnect between actual levels of openness and GATS commitments (comparison between columns 3 and 4)
1. India	Two operators: MTNL for local service; VSNL for international service. First Mobile Licence issued in 1994. Duopoly policy for mobile phones in each telecommunications circle (Sridhar 2006)	<ul style="list-style-type: none"> No mode 1 commitments Foreign ownership limit of 25 per cent Restrictions on number of providers; mobile sector subject to necessity test and duopoly for 10 years, local and long-distance wireline. 	<p>FDI equity cap: foreign firms can own up to 74 per cent of local companies that provide mobile telephone and other long distance services (Singh 2005).</p> <p>No restrictions on number of providers (Hoekman et al. 2007). Independent Regulator (Telecommunications Regulatory Authority of India)</p> <p>Foreign equity in KDDI is higher (than the limits Japan imposed in GATS commitments). Regulatory functions are still exercised by the sector ministry.</p>	<p>India committed to less than <i>status quo</i> with respect to foreign equity participation (e.g. 25 per cent foreign equity in FDI against 74 per cent officially allowed). Partially adopted RP: It excluded the vital commitment to guarantee interconnection at cost-based rates.</p>
2. Japan	Five companies launched mobile phone services before 1997 No regulatory body	<ul style="list-style-type: none"> FDI restrictions: 100 per cent foreign equity except NTT and KDD Full market access and national treatment (in all segments of basic telecommunications services) 	<p>Foreign equity in KDDI is higher (than the limits Japan imposed in GATS commitments). Regulatory functions are still exercised by the sector ministry.</p>	<p>Japan's GATS commitments were at a higher level than the <i>status quo</i> at the time of making GATS commitments in 1997 because:</p> <ul style="list-style-type: none"> It promised to raise foreign equity limits to 100 per cent for operators except for 20 per cent limit for NTT and KDD, and Adopted the RP.
3. Malaysia	Seven cellular mobile operators and one fixed-line operator were in operation (Telecommunications Malaysia) before Fourth Protocol was signed off (Lee 2002); Independent regulator was in place (1987)	<ul style="list-style-type: none"> All basic services subject to 30 per cent foreign equity limit and only through acquisition of existing operator. 	<p>Foreign ownership up to 49 per cent Regulator (Malaysian Communications and Multimedia Commission) was established in 1998.</p>	<p>GATS commitments represented the <i>status quo</i> at the time of the submission of commitments in 1997.</p>

Table A1
(Continued)

	Liberalisation state before signing the Fourth Protocol in 1997	GATS commitments	Actual practice (refers to the state of policies in 2006/07) after unilateral deregulation	Connect/disconnect between actual levels of openness and GATS commitments (comparison between columns 3 and 4)
WTO member				
4. Sri Lanka	Four mobile phone operators and two fixed-line competitors were given market access during 1989-1996 (Samarajiva 2006). Telecommunications Regulator (Telecommunications Regulatory Commission of Sri Lanka) was operational.	<ul style="list-style-type: none"> Market Access and National treatment for data and mobile cellular Foreign ownership in excess of 40 per cent requires government approval Adopted the Reference Paper 	Four mobile operators Fixed telephone: four fixed-line and 32 external gateway operators Restrictions on foreign equity.	Sri Lankan GATS schedules (in Telecommunications) essentially represents the <i>status quo</i> .
5. Bangladesh	Before the signing the Fourth Protocol in 1997, there were four mobile phone operators and a fixed-line service provider. No limits on foreign ownership.	<ul style="list-style-type: none"> Full market access commitment No restrictions on foreign equity Prospective adoption of regulatory principles. 	Full market access for basic voice (including mobile) services. No restrictions on FDI.	More open than commitments. Established independent regulator, and licensing criteria has been made publicly available, although it is not bound to meet RP obligations.
6. New Zealand	Telecommunications sector was liberalised between 1989 and 1993 (Erakovic and Wilson 2006)	<ul style="list-style-type: none"> Market access and national treatment for all services for all market segments. FDI limitation: 49.9 per cent in Telecommunications New Zealand. 	Two mobile operators and one fixed-line operator. No FDI restrictions, except in Zealand.	<ul style="list-style-type: none"> GATS Commitments are in line with applied level of openness.
7. Republic of Korea	Telecommunications sector was government controlled; SK Telecom and KT were the incumbents. Foreign ownership was limited up to 1/3 of the total shares.	<ul style="list-style-type: none"> Market access for all segments. Foreign ownership was limited to 33 per cent until 1/1/2001, then 49 per cent; also limit of 33 per cent for individual ownership; KT 20 per cent until 31/12/2000; 33 per cent from 2001. RP adopted 	Foreign ownership up to 49 per cent from June 1999, KT 33 per cent from September 1998; 49 per cent from April 2001.	GATS commitments are in line with applied level of openness.

Table A1
(Continued)

WTO member	Liberalisation state before signing the Fourth Protocol in 1997	GATS commitments	Actual practice (refers to the state of policies in 2006/07 after unilateral deregulation)	Connect/disconnect between actual levels of openness and GATS commitments (comparison between columns 3 and 4)
8. Vietnam	Three mobile phone operators and one fixed-line operator (Tran and Obi 2007). No independent regulator in place.	<ul style="list-style-type: none"> Market access commitments for all telecommunications services (with some restrictions on wire-based and mobile terrestrial services) Up to 49 per cent foreign ownership for facilities-based services; adopted the RP (WTO 2006). 	Six mobile phone operators (Tran and Obi 2007) and a fixed-line operator.	Vietnam had to undertake ambitious commitments (such as additional commitments of the RP) to gain WTO membership.
9. Australia	Telstra (previously Telecommunications Australia) was the monopoly; Optus and Vodafone licensed by 1992 (More and McGrath 1999). Regulator for the telecommunications sector (previous AUSTEL) was in place.	<ul style="list-style-type: none"> Full market access and national treatment for all services. Limit on number of mobile suppliers; limits on ownership in Optus and Vodafone as well as Telstra. 	Two fixed-line service providers (Telstra and Optus) and six mobile phone operators (Sainsbury 2005). Restrictions on FDI; government assesses projects against a national interest test.	Australia has translated its already liberal telecommunications policies into GATS commitments.
10. China	China's telecommunications market closed to FDI as well as most domestic investors prior to its accession to the WTO in 2001 (Guan 2003).	<ul style="list-style-type: none"> Geographically phased in competition, mobile services 2001–05 and local services 2001–06. FDI limitations: 25 per cent upon accession; 49 per cent after 5–6 years. Adopted the RP (WTO 2002). 	Four mobile phone operators and two fixed-line operators. Previously, both fixed and mobile services were duopoly markets (Roseman 2005). Ownership restrictions	Made ambitious commitments (such as adoption of the RP, dismantling FDI restrictions, giving up the right to offer preferential treatment to domestic firms, and removal of all geographical restrictions by 2006) to expedite its WTO Membership.
11. Singapore	SingTel the monopoly provider. No competition until 1997.	<ul style="list-style-type: none"> Limits on number of operators in each market segment. Foreign ownership limited to 74.99 per cent. Adopted the RP. 	Singapore is a three-player market (Asiamoney 2008) Local services: A duopoly Mobile: competition (3 licences) Telecommunications regulator (InfoComm Development Authority of Singapore, formed in 1999).	Singapore appears to have made higher commitments than existing levels of openness by: <ul style="list-style-type: none"> Adopting the RP and Undertaking pre-commitment to allow three or more licences from April 2000.

Source: Cohen (2001), Fink et al. (2001), Funk (2006), Guillen and Suarez (2001), Handley (2006), Hoekman et al. (2007), Lee (2002), Novak (2008), Samarajiva (2006), Sherman (1998), Tuthill and Sherman (2008), UNCTAD (2006), Zutshi (1999), Spectrum Strategy Consultants (2003), www.wto.org.

Table A2
Points basis for criteria on which countries have been categorised

Criteria	Description of situation	Score
1. Restrictions on foreign equity in allowing FDI	FDI ceiling committed at a higher level than applied ownership percentage	1
	At an equitable level	0
	At a lower level than actual applied level	-1
2. Number of operators to be allowed as per commitment	Higher than actual number of operators/no limitations on number of operators	1
	Number of operators allowed are consistent with applied policy level	0
	Lower than actual number of operators	-1
3. Adoption of Reference Paper (RP)	Yes	1
	No	0
	Partial adoption	0.5
4. Allowing new entry immediately or through phased-in commitments (pre-commitment) [if any]	Yes	1
	No	0

Rationale for points allocation

1. For criteria 1 and 2:
 - When GATS commitments are at the same level as the applied level of openness, a score of zero is assigned.
 - When GATS commitments are at a higher level than the actual level of openness, the criterion is assigned a score of 1. The rationale for assigning a positive value is that the obligation to liberalise is at a higher level than the applied policy.
 - When GATS commitments are at a lower level than the applied level of openness, the criterion is assigned score of -1.
2. For criterion 3, a positive score that is, a score of 1 is assigned when a Member country has made commitments to undertake additional obligations of RP. Conversely, a Member country is assigned a value of zero when the Member country has failed to undertake additional obligations set out in the RP.
3. For allowing new entrants, either immediately or through phased-in commitments, a Member country is assigned a positive score of 1. A Member country is assigned a score of zero for not allowing competition.

Source: The authors

Table A3
Grouping of sample countries

Country	Checklist		Classification	
	FDI ceiling	Points/ Score	Total points/score	Commitments are higher or lower than applied level of openness
Bangladesh	FDI ceiling	0	-1	At a lower level
	No. of operators	-1		
	Adoption of regulatory obligations known as the Reference Paper	0		
India	FDI	-1	-1.5	At a lower level
	No. of operators	-1		
	RP adoption	0.5		
Korea	FDI ceiling	-1	0	Consistent with applied level of openness
	New entry	0		
	RP adoption	1		
China	FDI ceiling	1	3	At a higher level
	New entry	1		
	RP adoption	1		
Vietnam	FDI ceiling	1	3	At a higher level
	New entry	1		
	RP adoption	1		
Singapore	FDI ceiling	1	3	At a higher level
	Phased-in commitments to open mobile and fixed-line services	1		
	Adoption of RP obligations	1		
Sri Lanka	Ceiling on foreign equity	0	1	At an equitable level
	New entry	0		
	Adoption of RP	1		
New Zealand	Ceiling on foreign equity	0	1	Consistent with applied level of openness.
	New entry	0		
	Adoption of RP	1		
Australia	Ceiling on foreign equity	0	1	Consistent with applied level of openness.
	Limitations on operators	0		
	Adoption of RP	1		
Japan	Ceiling on foreign equity	1	2	At a higher level
	Limits on number of operators	0		
	Adoption of RP	1		
Malaysia	Ceiling on foreign equity	0	1	Consistent with applied level of openness.
	Limits of number of operators	0		
	Adoption of RP	1		

Notes: 1. Scores between zero and one = GATS commitments are in line with the country's existing level of openness (that is, GATS commitments represent the status quo).

2. Scores less than zero = GATS commitments are at a lower level than the status quo.

Source: The authors

Table A4
Summary of reasons for connect/disconnect between the policy regime and GATS commitments

Group	Country	GATS commitments versus actual policy regime	Possible reasons for connect/disconnect
1	Singapore, Japan, China, Vietnam	Commitments are at a higher level than the policy regime.	<ul style="list-style-type: none"> a. perceived additionally as pointed out by Eschenbach and Hoekman (2006) b. to accelerate domestic reforms c. newly-acceding countries were forced to make ambitious commitments.
2	India, Bangladesh	GATS commitments are at a lower level than actual policies	<ul style="list-style-type: none"> a. to reserve the right to remain unconstrained with respect to their policy choice or b. they are afraid they would not be allowed to introduce new welfare-enhancing regulations in the future after a GATS commitment is made c. lack proper regulatory institutions at home to implement commitments once GATS commitment is undertaken
3	Sri Lanka, New Zealand, Australia, Malaysia, Korea	GATS commitments are consistent with existing state of liberalisation.	Convincing investors that current reforms will not be reversed (that is lending greater credibility to their reform programs).

Source: Authors' compilation from interviews.