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International Accounting rates, Developing countries and the World Trade Organization: The Dilemma and a Possible Solution.

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In the last few years international accounting rates, the century-old revenue sharing mechanism for the joint provision of international switched telecommunications services,[1] has come under tremendous pressure. Long considered as the cornerstone of international telecommunications and praised for providing a predictable, uniform and easy to manage system for revenue sharing, the international accounting rates regime is at odds with the new telecommunications environment brought about by the liberalization of international trade in telecommunications services under the WTO.[2]

International accounting rates were discussed during the Uruguay Round[3] and more specifically during the negotiations of the agreement on basic telecommunications.[4] The debate

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[1] The international accounting rates system will be described in detail later in the paper. At present suffice it to mention that under this mechanism carriers in the originating countries compensate carriers in the country of destination for matching the international circuits and providing switching capabilities and domestic routing to deliver the call to the recipient. In case there is imbalance in the volume of incoming and outgoing traffic, the operator which originates more traffic should pay a settlement rate (usually half the accounting rate) to compensate the terminating operator.

[2]The World Trade Organization, the successor of GATT, came to life on January 1, 1995. The WTO agreement and the final results of the Uruguay Round can be found in the WTO web site. They are also reproduced at 33 *International Legal Materials* 1125 (1994).

The GATS is the first multilateral agreement to take into account trade in telecommunications services. Liberalization started gradually with the enhanced telecommunications services under the GATS annex before embarking in the liberalization of basic telecommunications service.

Enhanced services, also called value-added services, are services that involve the application of computer - processing capabilities over the basic telephone network. Value added telecommunications services are thus named because they add value to the basic telecommunications services. By contrast, basic telecommunications include all the services that consist in transmitting electronic signals from one point to the other without modifying the signal.

[3] The issue of accounting rate came up during the drafting of the telecommunications annex under the GATS. It is called the User's Bill of Rights because it lays down the rights of users of telecommunications services. The annex applies to access and use of public telecommunications transport networks and services by service providers. The first draft of the telecommunications annex contained a provision that access and use to PTTNS should be cost oriented. This provision triggered a controversy between those arguing that above cost access is a barrier to trade and others who considered that pricing is a commercial matter and should

revealed a disagreement on the need and feasibility to include the issue of accounting rates in a new agreement. The contentiousness of the issue revolved mainly around a North/South controversy.[5] On the one hand developed countries suffering from deficit payments are eager to reform the accounting rates regime and align it with cost.[6] For example, the United States alone paid out 5.6 billion dollars more than it received in international settlement (almost 5% of its trade deficit). On the other hand developing countries (which largely benefit from the current regime) are reluctant to consider any change to the current regime. Developing countries received 70% of all net US payment.[7] The total amount of settlement payments from developed countries is around $10 billion per annum. According to ITU Secretary General, the revenue generated by the settlement payment in developing countries for one year exceeds by far the cumulative sum of the lending programs in telecommunications of all development banks around the world for the first half of the 1990s.[8]

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not be subject to GATS rules. The solution was that the pricing clause was completely deleted from the final version of the annex. See B.K. Zutshi, "GATS-Impact on Developing Countries and Telecom Services" (1994) July- August Transnational Data and Communications Report at 24.

[4] The agreement on basic telecommunications services is the forth protocol attached to the General Agreement on Trade in Services. The protocol contains specific commitments in the field of basic telecommunications from 69 countries representing over 90% of the world's basic telecommunications revenues. In addition to market access and national treatment commitments, the agreement on basic telecommunications contains a negotiated set of pro-competitive regulatory principles contained in a reference paper. The WTO agreement covers basic telecommunications services whether local, long distance or international for public and non-public use provided on an infrastructure basis as well as through resale. It covers telecommunications services provided by any means of technology including cable, wireless and satellites. Market access commitments cover cross border supply of services as well as those provided through commercial presence. "Fourth Protocol to the General agreement on trade in Service" is reprinted in 36 *I. L. M.* 366 (1997).

[5] We should emphasize that the problem with accounting rates is not exclusively a North /South problem. On the contrary in many cases traffic imbalances and difference in rates lead to important flow of payments between developed countries but as we shall see later the North/South controversy is central to the problems facing the reform of accounting rates.

[6] Countries with liberalized markets and which have implemented price cutting in their international services suffer from deficit in settlement payments. Those countries are the US, the UK, New Zealand, Sweden, Australia and Japan. However, those economies do not publish data systematically. The example of the US will be present throughout the paper for the availability and detailed data published by the FCC. The FCC has also published a comparison between accounting rates with the US, the UK and New Zealand. The table is available at the FCC web site.

[7] FCC, Policy statement on International Accounting Rates Reform, January 31, 1996. FCC-96-37. Available in the web http://www.fcc.gov/bureaus/international/orders/1996/fcc 96037.txt.

[8] Pekka Tarjanne, "Reforming the International Accounting Rates System" (1998) 2 ITU News.

The conflict in attitudes was resolved during the basic telecommunications negotiations by an agreement to defer the debate over accounting rates until the new round on negotiations on trade in services is due to start in 2000. The contracting parties concluded a gentleman's agreement waiving their rights to recourse to dispute settlement procedures under WTO. However, the compromise is very fragile as it conceals a critical discrepancy and anomaly in the new liberalized regime for international telecommunication services under the WTO.

The regime as it operates today is indubitably an "unacceptable inheritance"[9] of the old era of telecommunications regime. Efforts should be deployed at the international level to bring the system in conformity with the trade principles extended to the telecommunications sector under the fourth protocol to the GATS. However, focusing mainly on the position of developing countries and pleading for arranging a "soft landing" for developing countries in the new liberalized environment,[10] the paper calls for a differentiation between relations involving developed countries and those involving developing countries. While it is not acceptable that the accounting rates system continues to subsidize the telecommunications sector in countries with well-developed infrastructure**,** it is both necessary and justifiable under the agreement on basic telecommunications that the accounting rates system continues to fund telecommunications development in developing countries.[11] In this context international accounting rates should be singled out as a prime means for telecommunications development under the new liberalized environment for telecommunications services.

This paper undertakes a clinical approach to the accounting rates problem. After a diagnosis of the malaise of the regime, the paper will propose a remedy to the system. The paper is organized in three parts. The first part focuses on the difference in attitudes between developed and developing countries vis a vis accounting rates. The second part demonstrates how the conflict in attitudes described led to a peculiar cohabitation between the accounting rates regime and the new liberalized environment for telecommunications services under GATS and

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[9] The expression is inspired from the title of an article written by H. Ergas and P. Paterson, "International Telecommunications Settlement Arrangements: An Unsustainable Inheritance?" (1991) 15:2 Telecommunications Policy p 29.

[10] The concept of soft landing of developing countries in the new liberalized environment for telecommunications services is coined by the ITU Secretary general on his paper on accounting rates of November 1996. http://www.itu.int/intset/ITUpap/sg_com3.htm.

[11] As mentioned by the ITU in the 1996/1997 Development Report, not all settlement payments go to developing countries. An important portion goes to OECD countries. Canada, Japan and the Republic of Korea received settlement payment in excess of US $ 100 million. ITU, *World Telecommunications Development Report: International trade in telecommunications*, 1996-1997.

the telecommunications Protocol. The last part demonstrates how to accommodate developing countries' concerns through a development inspired interpretation of preferential provisions appearing in GATS. The solution aims to alleviate the conflict in attitudes and avoid the institutional contradiction in the new regime for international telecommunications services.

I: International Accounting Rates at the Heart of a North/South Controversy

To understand the magnitude of the conflict between developed and developing countries over accounting rates reform, this section will start by describing how the system is engineered to favor developing countries with high accounting rates and low outbound traffic.

SECTION 1: Overview of the Regime and Roots of the Problem

The revenue sharing mechanism for international telecommunications resulted from the way international telecommunications were conducted. From the beginning, international telecommunications have been treated as jointly provided services between monopolistic telecommunications operators in two countries. Under this regime of joint provision, the telecommunication operator in the country where the call originated conducts the call over its own facilities to a certain point the international gateway. The telecommunications operator from country of destination takes the call over from the middle point and delivers it to its destination using its own facilities.

The accounting rate is the rate per unit of traffic agreed upon between two countries for the joint provision of service. In case of traffic imbalance, the carrier with more outbound traffic transfers funds to the carries terminating those calls. The payment is called settlement payment. It usually equals half the accounting rates. The settlement payment compensates the terminating carrier for the service of delivering the call to its final destination. The accounting rates regime has thus two important constituents: the applicable rate per unit of traffic and the splitting formula according to which accounting rates are divided between operators. Both elements are at the heart of the developed/developing country controversy over accounting rates.

Different reasons were presented by commentators for the near collapse of the accounting rates system. It is easy to discern distant causes and immediate ones. Distant causes are related to the fact that both technological developments in telecommunications and the unleashing of market forces have tremendously altered the traditional bilateral mode of international telecommunications, which have prevailed for over a century. This paper deals with what we think are the most immediate causes for the shock to the accounting rates system namely the discrepancy between accounting rates and cost as well as the growing imbalance in traffic.

Discrepancy between accounting rates and cost

From the inception of the practice of using accounting rates as revenue sharing mechanism in international telecommunications, the applicable rate per unit of traffic has never been directly connected to cost. The discrepancy between accounting rates and the costs of conducting international telecommunication has grown extremely wide in recent years. Studies show that accounting rates are sometimes 10 times higher than the actual cost of delivering international service. In the last few years, the cost of international links has been dropping by 30% per year[12] due to the decline of the cost of infrastructure as well as the increase in the capacity. This declined has not been mirrored by a decrease in accounting rates. It is the dissociation between international accounting rates and the cost of terminating international services which caused the dissatisfaction of developed countries led by the United States. According to the FCC, settlement payments flying from the US to other countries to compensate for above cost termination services constitute a subsidy paid by US consumers to foreign operators. The campaign against accounting rates led by the US aims at bringing accounting rates closer to cost and abolishing the regime of subsidy embodied in above cost accounting rates.

Growing imbalance in traffic between developed and developing countries:

The relationship between traffic and wealth has been established in some studies. According to ITU Secretary General for the majority of countries, the general rule holds that an increase of GDP per capita of US 1'000 will generate around six minutes of extra traffic per inhabitant per year.[13] Cheong and Mullins went even further to ascertain that US traffic imbalances are strongly correlated with differences between foreign and US per capita incomes. The authors' estimate is that a 1% increase in foreign per capita income translates into 0.55% decrease of the US bilateral deficit.[14] According to ITU, while incoming traffic grew by 20.8 per cent per year, outgoing traffic grew by 20.4 per cent per year. The 1997 Telecommunications indicators show that global outgoing telephone traffic is almost 72 billion minutes. The United

[12] P. Tarjanne, "The 1998 Telecommunications Revolution" Study Group 3, Meeting of 27 May 1997. P. 6

[13] Pekka Tarjanne, "ITU, Trade in Telecommunications: Towards a new World of Telecommunications Development" Key note address by ITU secretary General Tenth anniversary and 11th annual conference and trade exhibition Caribbean Association of National Telecommunications Organizations (Canto) 5th June 1995.

[14] Cheong and Mullins, "International Telephone servicce imbalances: Accounting Rates and Regulatory Policy" (1991) 15:3 at 12

States alone accounts for 35% of the world's total outgoing traffic. At the other end of the spectrum the whole continent of Africa accounts for 1.9% of total outgoing traffic.[15]

Two reasons explain the difference in the pattern of traffic between developed and developing countries: The difference in collection charges and the development of alternative calling procedures

The difference in collection charges is an important element in the determination of the level of demand. Different economic studies demonstrate that demand for international telecommunications services is elastic with respect to prices.[16] The introduction of competition has had a tremendous impact on collection charges for international telecommunications services. According to a study conducted by the FCC in 1992, calls to the USA can exceed by as much as 80% the outbound rate of calls.[17] According to the FCC, there exits a close nexus between collection charges and the balance in traffic flows. “The evidence suggests that telecommunications traffic is reasonably well balanced to countries with collections rate that are comparable to US collection rate”[18]. Countries, which have not introduced competition, do have higher collection rates and trigger less outgoing traffic. The example of the Arab countries is a case in point.[19] The Arab Countries’ telecommunications market is the least open to competition.[20] The public monopolistic structure is still prevalent for political reasons. One result is that call prices in those countries are way above cost and their outgoing traffic is very limited compared to their incoming traffic. The study of telephone traffic between the Arab States and the

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[15] ITU Basic Indicators Database.

[16] See Kenneth Stanley, “Balance of Payments, Deficits, and subsidies in International communications services: A new challenge for regulation” (1991) 3 Administrative Law Review footnote 11.

[17] FCC, Common Carrier Bureau, Calling Prices for International Message Telephone Service between the US and other countries” FCC, Washington D. C. October 1992.

[18] FCC, *International accounting rates and the Balance of Payments Deficit in Telecommunications Services*, Common Carrier Bureau, December 1988 p.45. Cited by Ken Cheong and Mark Mullins, “International Telephone Service imbalances: Accounting Rates and Regulatory Policy” (1991) 15:3 telecommunications Policy 117.

[19] Tim Kelly, “Ten Propositions for Accounting Rates Reform” Paper presented for ITU Asia Telecom 1997, Tariff Workshop, Friday 13, 1997.

[20] The structure of the Arab market is unlikely to change in the recent future. The position of the Arab countries in the basic telecommunications agreement shows a very limited participation and very shy commitments to market opening and to liberalization. See Summary of country commitments under WTO agreement on Basic Telecommunications in ITU, *World Telecommunications Development Report* 1996/1997 Table 6.3 p.103.

United States shows that in the Arab States incoming traffic from the US was almost 4 times the outgoing traffic in 1995. This represents a 100% increase since 1990.[21]

The second phenomenon which further put strain on the accounting rates regime is the appearance and evolution of alternative calling practices. Alternative calling procedures have different forms. They include: calling cards, country direct services, refile, international simple resale, International virtual Private network services, voice over networks and call back.[22] The common denominator between these different procedures is that they depart from the concept of telecommunications services as a jointly provided service and provoke competition in countries that do not permit infrastructure competition. Of these different procedures, call back[23] is the most relevant to the purpose of our investigation for its effect of accounting rates. Call back simply converts ongoing traffic into outgoing traffic and exacerbates the problem of settlement payment.[24] The rationale behind this practice is the ability of call back operators to offer customers in monopolistic markets the possibility to conduct international calls at collection rates offered by the competitive market where the call back provider is located rather than at collection rates charged by the national carriers. The large discrepancy between collection charges at both ends explains to a large extent how call back grew to be an attractive option for consumers in high collection rate markets. The result is that in many instances, the call back provider can offer its customer rates of up to fifty per cent lower than the rate that the customer would have paid under the conventional method.[25]

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[21] For an overview of the Arab Telecommunications market and its recent trends see ITU, *Arab States Telecommunication Indicators* (1996).

[22] For a brief description of each of these forms, ITU, World Telecommunications Development Report 1996/1997 p.92-93.

[23] Call back has developed as a result of two phenomena. First, the development of technology and second, asymmetry in market structures. As to the first point, technology has developed to permit evolution in switching devices. The caller sends uncompleted call signals by dialing a number in the country of destination. The call back operator identifies the caller through computerized switching and places a call- back to him with a foreign dial- tone.

[24] It should be emphasized here that the other alternative calling procedures have different impact on accounting rates. For example virtual private networks and simple resale ignores the accounting rates system. In those procedures, the private operators do not pay accounting rates to the terminating carrier. They pay annual fees for the leased circuit in question irrespective of the actual flow of traffic over the circuit. Of all procedures the calling card based service is the one with the closest effect on accounting rates to call back. It worsens the trade imbalance by allowing subscribers abroad to bypass the local network and have the call conducted by their own carriers and have the calls billed to their home accounts. Country direct services and refile are a form of call re-origination services.

[25] Estimate by Kenneth Propp, "The eroding structure of International telecommunication regulation: The Chal-

The attractive price cut leads to further intensifying the phenomenon of traffic imbalance. The example of India is worth noting here. According to ITU, call back was responsible for 63% of India's outgoing traffic being re-routed to the US by call back providers.

Those reasons culminated to create a situation where developing countries stood to be net importers of international traffic and beneficiaries of substantial sums of settlement payments. Developed countries, led by the United States, become net exporters of international traffic suffering from deficits in settlement payments. This situation created a conflict in positions of each group toward the accounting rate regime and a difference in approaching a satisfactory solution.

Section 2: Opposing concerns and reactions of the different parties involved.

The differing concerns about the current international accounting rates have been nicely summarized by the ITU: " Those that propose reform face one stark problem: those that do well out of the existing system greatly outnumber those that fare badly".[26]

Paragraph 1: The Developed Countries' Positions.

The developed countries led by the United States have fiercely criticized the accounting rate regime. According to US officials, the regime proves a complete anachronism calling for urgent reform. The main concern outlined by developed countries is the discrepancy between cost of delivering international services and the charges under accounting rates. High charges and traffic imbalances culminated to create trade deficits in many developed countries (mainly the Unite States.) Between 1970 and 1997 the US net deficit for settlement payments jumped from 40 million to 5.6 billion.[27]

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lenge of call back services" (1996) 37 Harvard International law Journal 499. The example of Italy demonstrates this idea. A call form Italy to the US costs $ 1.32/1.02 when conducted by the Italian carrier and $ 0.79 when provided by a call back provider. (Example cited by Seth Sibler, The FCC's call back Order: proper respect for international comity" (1996) 30 George Washington Journal of International Law and Economy 90.

[26] ITU, *World Telecommunications Development Report* 1996-1997 p. 93.

[27] Statistics of Common Carrier Bureau, 1997. It should be mentioned here that contrary to the US few countries publish accounting rates data. Most examples in literature focus in the US example. The example remains of particular importance given that the problem of accounting rates is most heavily felt in the US. In addition, the US situation is central to the discussion of accounting rates reform given the large share of international traffic generated by the United States. According to Intelsat estimation, the Unites States terminates or originates over half of traffic carried by Intelsat.

The reaction of the United State is central to our analysis. The focus of the United States was to address the problem within the accounting rate regime by advocating cost based, non-discriminatory, and transparent accounting rates. To this extent, the United States approach to the problem is different from the European Union or OECD, which both advocated solutions that call for the departure form accounting rates altogether in favor of new ways of revenue sharing.

In 1996, the FCC adopted a new order which established benchmarks for settlement rates that US carriers are allowed to pay to foreign carriers for terminating calls originating in the US.[28] The order is by far the most far-reaching step towards putting an end to the above cost accounting regime.[29] The benchmarks proposed by the United States have three different rate 15.4 cents/minutes for upper income countries. 19.1 cent/minutes for middle income countries and 23.4 cents/minutes for lower income countries. The regime took effect in January 1998 and is scheduled to be in operation in 1999 for upper income countries and 2003 for lower income countries.[30]

The United States' position has at least three flaws and is not an acceptable solution to the problem of international accounting rates. The first defect relates to the danger of unilateralism in dealing with the issue of international accounting rates. The US is unilaterally dictating the price of terminating a telephone call in a foreign country, an issue that always has been a matter of bilateral negotiations. The US approach represents a serious attack to the sovereignty of foreign countries. This policy is unduly interfering with national sovereignty of other countries as it directs the other countries to reconsider their national policies.

The second criticism to the benchmark order relates to the method used to calculate the benchmarks. The FCC benchmark order is based on the tariffed prices for the three components of international services: the international transmission facilities, international switching

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[28] The US battle against above cost accounting rates started since 1984. First, the FCC adopted the International Settlement Policy The International Settlement Policy is adopted by the FCC in 1986. Implementation and scope of International Settlement policy for parallel international Communications routes. Docket no 85-204. 50 Federal Register 28418 (1985). Report and order 51, Federal Register 4736 (Feb. 7, 1986). Under the ISP, US carriers are prevented from agreeing on a division other than 50/50 for accounting rates. They are also obliged to follow uniform settlement rate agreements on parallel international routes

[29] FCC, In the matter of International Settlement Rates: IB Docket No 96-261. Report and Order Adopted August 7, 1997 Released August 18, 1997 available at FCC web site.

[30] FCC order and Notice of Proposed rulemaking in the Matter of Rules and Policies on Foreign Participation in the US Telecommunication Market-IB Docket No 97-142.

facilities and the national extension component. For the international transmission facilities, the FCC used a tarrifed component price based on the price of private leased high-speed digital circuits. For international switching, the FCC utilized data published by the ITU on the existing settlement charges among 42 countries of TEUREM. The switching component of these settlements was used by the FCC as a proxy for international switching services in all countries. Finally, the national extension prices are based on the average of different domestic prices as published by national operators. The approach is based on tariffs charged for domestic calls traveling equivalent routes over the national network. According to commentators from the ITU, the method for the calculation of benchmarks is not accurate because it is based on tarrifed prices and not on real costs and because it ignores fixed charges as a tariff element.[31] In addition, the FCC approach neglected the fact that in most developing countries socio-political considerations keep local call prices low to encourage affordability of the service. As to the switching cost the FCC did not take into consideration that switching cost are lower in European Countries (subject to TEUREM) and developing countries.

The last defect is that the benchmark order contained enforcement measures that are in violation with the WTO principles and to US commitments on the basic telecommunications agreement. Under the order, the FCC can prohibit US carriers with foreign affiliates and foreign carriers with US presence from operating in the US market unless the carriers' foreign affiliates settle at the benchmark or below. Furthermore, for foreign carriers not willing to agree to the new benchmarks in the specified time the FCC could order US carriers not to pay settlement rates in excess of the benchmark rate. Both enforcement measures constitute barriers to entry to the US market in contradiction with GATS principles.

In addition to the US initiative to solve the problem of international accounting rates, other efforts were deployed in other fora, although the other initiatives do not solve the problem of accounting rates but rather find new ways to substitute to the current regime. The example of the European Union is worth noting here. In 1998, as part of the liberalization of basic telecommunications services, the European Union has opted for replacing international accounting rates between member countries with cost based interconnection systems. For intra-European calls after January 1, 1998 European countries will eliminate accounting rates and rely

[31] See criticism by Pekka Tarjanne, "The 1998 Telecommunications Revolution" p.6.

See also P. Stern and T. Kelly, "Liberalization and Reform of International Telecommunications Settlement Arrangements, Latin American and Caribbean telecommunications Finance and Trade Colloquium, Brasilia, 14-16 July 1997. Available on the ITU web site. p.20-22 on a system of call termination charges base on domestic interconnection rates. In other words carriers conducting calls from France to the UK will not have to pay the British carriers a settlement rate per minute of international traffic but an interconnection charge to the UK network.

Despite the attractiveness of the European approach it seems that much effort was needed at a regional level to achieve the system.[32] It is not clear whether the world can function with this system. It is mainly for this reason that international accounting rates which proved very successful to provide the interoperability of the networks needs a second chance to be reformed before efforts are made to find and implement an alternative approach.[33]

Paragraph 2: The Developing countries' Position:

[32] The liberalization of trade in telecommunications services in the European Union was a gradual process. Trade in telecommunications services has emerged as an issue of paramount interest for the European policy in the 1980 after the success of the liberalization efforts of the British market. The EC policy on the telecommunications sector is outlined in the famous Green Paper on the development of the common market for telecommunications services and equipment of June 30, 1987. The aim of the liberalization is to strengthen the EU position in the world market for telecommunications and computer services. The aim set in the Green paper is to "establish competitive market structures which will allow the community to match the dynamism developed by the US and Japan" Green Paper COM (87) Communication by the Commission, Towards a dynamic European Community, Green Paper on the Development of the Common Market on Telecommunications services and equipment, Catalogue number CB-CO-87-263-EN-C. COM (87) 290 final. For a discussion of the Green paper, Scherer, J. European Community opens its Telecommunications Networks: Legal Aspects of the Green Paper" (1987) International Computer Law Adviser 4-8

The policy proposals led down in the Green paper has given rise to a vacuum of European legislation in the form of Council directives to liberalize different sectors. Phase one of the liberalization extended to liberalization of telecommunications equipment: Commission Terminal equipment Directive 88/301 and Mutual Recognition terminal Equipment Council directives 91/263 and 93/93. In addition to terminal equipment, the liberalization extended to value added services. Services directives 90/388, 94/96 and 96/2. All these documents can be found in Nexis-Lexis library: Europe, File LEGIS.

In addition to these general directives, the Commission adopted numerous other documents pertaining to specific areas of telecommunications: Satellite Communications Directive 94/46 OJ 1994 L 268/15. Mobile Communications directive 96/2 OJ 1996 L20/59. Cable infrastructure Directive 95/51 OJ 1995 L256/49. For a discussion of the EU telecommunications laws see Joachim Scherer, "Telecommunications Law and Policy of the European Union" in Joachim Scherer, eds. *Telecommunications Laws in Europe* (Third revised edition, Kluwer Law International. The Hague/London/ Boston 1995) at 1.

The last step was the liberalization of Basic telecommunications services in January 1, 1998 and the replacement of accounting rates by interconnection charges in the intra- European market.

[33] It should be mentioned however that different alternative regimes do exist and carriers are free to chose among them. These are Call termination charges, facilities based interconnection payments, and sender keeps all. For descriptions of these methods see ITU, *World Telecommunications Development Report* 1996/1997.

Developing countries receive important amounts of settlement payment each year. According to FCC, approximately 70% of payments from US carriers go to developing countries. The system as it operates today constitutes an important source of telecommunications revenue in many developing countries. If these were reduced to cost level the result would be an enormous drain in foreign currency income of developing countries.

For many countries international settlement constitute a huge portion of their telecommunications revenues. It should be mentioned however that the impact of accounting rates reduction on developing countries depends on the extent operators depend on accounting rates payment. A study conducted by the ITU on the impact of accounting rates on developing countries shows that every individual country fares differently under a reformed accounting rates system.[34] For countries with high dependency on accounting rates like Samoa (40.8% of telecommunications revenue) or Senegal (29.3%) the impact of a reduction on accounting rates will prove to have dramatic results on national operators and on national resources on foreign currency. The study also argues that even for countries which do not depend mostly on revenues from accounting rates like India (12.6%) or Columbia, the effect of a reduction on accounting rates will also have dramatic results given the huge amounts involved. The truth is that even in cases where only small amounts of settlement payments flow to developing countries the amount still can have a significant impact on small economies. This is because foreign exchange is a precondition for network growth. The case of Mauritania is worth noting here. For Mauritania, settlement payments constitute only 3.2% of total telecommunications revenues. Despite the small amount involved, the case study on Mauritania concluded that the amount paid in hard currency remains important for a country whose currency is not convertible.[35]

Indeed, developing countries benefit from high accounting rates at least in two aspects. First, developing countries have for long time opted for keeping international telecommunications services way above cost in order to cross subsidize local telecommunications services as well as network access cost. The reform of international accounting rates inevitably raises concerns about the affordability of telecommunications services in developing countries and universal service. It puts enormous strain on developing countries to restructure their cost

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[34] On his consultation paper on accounting rates reform the Secretary General of ITU emphasized the necessity of conducting case studies on the impact of accounting rates reform on developing countries. 8 studies were conducted by independent consultants. The studies followed an outline provided by ITU. For an overview if the studies and report of consultants visit ITU web site on accounting rates reform.

[35]The study on impact of accounting rates on Mauritania is published at http://www.itu.int/wtdf/cases/Mauritania/index.htm.

strategies. In the case of Senegal for instance, analysis of the income provided by local services and that provided by international services proved that international services yield a surplus of $0.93 per minute which is used to subsidize local telephone service.[36]

Second, settlement payments constitute an important source of hard currency for developing countries. Hard currency payment is a vital source for developing countries to improve their network situation. First, currency payment is in most cases recycled into orders to purchase new telecommunications equipment and to repay old loans. The higher the level of hard currency income in developing countries, the better protection these countries can have against currency fluctuation. In India net settlement payments are an important source of income to subsidize investment in domestic infrastructure. Settlement payments indeed accounted for 17% of telecommunications expenditure in 1997. Settlement payments in India are mainly used to upgrade the domestic telecommunications infrastructure, which requires a significant subsidy.[37]

In the notice and order of the FCC about the benchmarks, the FCC acknowledges the importance of above cost accounting rates as a means to subsidize network development in developing countries. However the commission argues that settlement revenues are no longer a stable source of revenues and that alternative mechanisms (both private and public) exist and others need to be identified. It should be emphasized however that international settlement revenues for developing countries should be stressed especially in the view that other alternatives to fund network growth have come under immense pressure lately. For instance, the most important shortcoming of the bilateral mode is its close relationship with the geopolitical order. This influence is very apparent today with the fall of the communist regime and the decrease in the strategic nature of bilateral aid. In addition in most cases bilateral methods of financing telecommunications development like loans and export credits[38] are not neutral. They are attached with obligations and requirements. According to a recent study on telecommunications in Sub Saharan countries, because the credit is tied with the obligation to purchase the equipment from

[36] Study published at http://www.itu.int/wtdf/Senegal/index.htm

[37] The changing international telecommunications environment: India. Case study prepared by Phillips Tarifica LTD for the ITU, February 1998.p.32 The study engaged a detailed analysis of the revenue sharing arrangement between the VSNL which has monopoly of international telecommunications services and the Department of telecommunications. The arrangement testifies the importance of the sums of settlement revenue used to subsidize the domestic market.

[38]According to the Development Assistance Committee of the OECD countries, bilateral telecommunications aid from OECD countries amounted to US 1.3 billion in the year 1990. OECD, *Telecommunications outlook*, 1996

a particular country, beneficiary countries are obliged to procure equipment at high costs in spite of the competitive tendering process.[39]

As to the multilateral sources of financing it is easy to come to the conclusion that multilateral development agencies such as the World Bank, the European Bank for Reconstruction and Development, the Inter-American development bank do not rank telecommunications as a high priority in their lending agendas. In 1992, the total funds available from development banks for telecommunications projects were only $2.4 billion. The new philosophy is based less on providing the financial means to develop the telecommunications sector and more towards the promotion of new entry, competition and private participation. This shift has been criticized by commentators as a shift that "links developing country telecommunications development explicitly to the needs of private interest telecommunications companies and financial institutions in industrialized countries".[40] The point here is that settlement payments do constitute an important source of telecommunications financing. They are indeed the most stable source and their importance is today more apparent than ever. To use the words of the ITU, "By shifting resources from developed economies to developing ones, the accounting rate process serves to promote organic or self sustaining network growth".[41]

The antagonistic positions of developed and developing countries vis a vis international accounting rates reform has led to institutional contradiction in the regime of telecommunications services.

II: International Accounting Rates and the Regime under GATS: A peculiar Coexistence

Of all aspects of international telecommunications services, international accounting is the trade question par excellence.[42] The traditional form of international telecommunications

[39] *Telecommunications in Sub-Sahara Africa* Op. Cit. footnote 26.

[40] Gwen Urey "infrastructure for Global Financial Integration: The Role of the World Bank" in B. Mody, J. M. Bauer and J. D. Straubhaar, eds. *Telecommunications Politics, Ownership and Control of the Information Highway in Developing Countries* (New Jersey, Lawrence erlbaun Associates Publishers, 1995).

[41] ITU, *World Telecommunications Development Report: Trade in Telecommunications services*, (1996-1997) p. 94

[42] We recall here how the idea of trade in telecommunications services was difficult to grasp in the beginning and how trade is considered as related mainly to goods not services. It took numerous research and studies to ascertain that trade principles do apply to services in general and that telecommunications services are indeed one of the most important sectors to

shows a service that crosses national borders. The country that makes the call exports a service and the country, which receives the call, import the service. However as mentioned by the ITU, unlike the traditional pattern of trade the country which exports the call must pay the country that imports the call for its part in terminating the service.[43] Being an international trade issue, international accounting rates should have been the first element to be modified to match the multilateral trade liberalization framework under the GATS. However, the issue of accounting rates proved to be one of the most sensitive questions and no compromise was reached about accounting rates. The outcome was that the regime of accounting rates was left in contradiction with the letter and spirit of the GATS and the liberalization philosophy that is guiding sector reform at the international level.

Section 1: The Old inheritance is in conflict with the letter of GATS.

The architectural design of the GATS is based on a distinction between general obligations, which apply to all members, and specific obligations, which are triggered only if a country made specific commitments in its schedule.[44] The current regime of accounting rates in contradiction with the basic general principles of liberalization under the GATS. The case of its contradiction with specific commitments can also be made albeit on more cautious basis.

The international accounting rates regime as it operates today is discriminatory. It is in contradiction with the most favored nation principle under GATS and with the principle of transparency. The principle of Most Favored Nation is the core principle of trade liberalization. Under this principle, members of the GATS are under obligation to treat services and services providers from one member in the same way as services and service providers from any other member. In the current accounting rates regime however, prices charged for the same service

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which trade principles should be extended. For the tradability of services see G. Fetekuty, *International Trade in Services: A blue print for negotiations* (Cambridge: Balling 1988)

For telecommunications services as a traded service. K. P. Sauvant, P. Robinson and V. P. Govitrikar, *Electronic highways for World Trade* (Boulder Colorado: Westview 1989).

[43] ITU, World Telecommunications Development Report 1996/1997 p.91.

[44] For an overview about the GATS see Harry G. Broadman, “GATS: the Uruguay Round Accord on International Trade and Investment in Services (1994) 17:3 The World Economy at 181.

Tuch H. E Stahl, “Liberalizing Trade in Services: The Case for Sidestepping the GATT” (1994) 19:2 The Yale Journal of International Law at 402.

Pierre Sauve, “Assessing the General Agreement on Trade in Services: Half -Full or Half-Empty” (1995) 29:4 Journal of World Trade Law at 125.

namely termination of international calls are different to different users. For example in 1995 the settlement rate to terminate call in Uganda is 1.40 SDR for calls originating from Germany and 1.96 for calls originating from France. This example shows a discriminatory approach to treatment of the same service accordance to its national origin. The case shows an artificial variance not justified with the difference in the cost of terminating a call whether originating from France or from Germany.[45] The problems of discriminatory accounting rates may have deep adverse effects on the flow of traffic and the cost to the consumers. Indeed, this discrimination creates incentives for refile, transit and other routing practices to profit form the least expensive routing.

The accounting rates regime is also in conflict with the transparency requirement under the GATS. The bilateral secret mechanism of negotiating accounting rates lacks transparency and does not provide carriers with a scale of reference to compare accounting rates with a particular country. The latter issue gave rise to intense debate led by the United States during the drafting of the reference Paper. The United States stressed the case that accounting rates should be published for transparency reasons but the other countries heavily rejected the proposition. Many countries argued that accounting rates should be negotiated on a commercially confidential basis.

Assessing the compatibility of accounting rates regime with the second pillar of nondiscrimination (namely the principle of national treatment) is a more delicate task. Data gathered by the FCC in its benchmark order revealed that in many cases foreign carriers are overcharged for the national component element of the network in comparison with domestic calls traveling equivalent routes over the national network. Overcharging this part in the case of international services is a case of discriminatory treatment to foreign carriers in violation of the national treatment principle. It should be noted however that assessing the compatibility between international accounting rates and the national treatment principle under the GATS is not as easy as it looks. The difficulty stems from the fact the principle of national treatment under the GATS is fundamentally different from the principle of national treatment under the GATT.[46] Whereas under the latter national treatment is applied generally to different trade relations, national treatment under GATS is not a general principle. It is rather a specific commit-

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[45] Example derived from a case study by the ITU on Uganda published in ITU web site at http://www.itu.int.intset.

[46] Aaditya Mattoo, “National Treatment in the GATS; Cornerstone or Pandora’s Box?"

(1997) 31:1 Journal of World Trade Law 107.

ment undertaken by countries in their schedule of specific commitment. A study of specific commitments undertaken by developing countries in the basic telecommunications liberalization shows that these countries undertook fewer commitments in the area of market access and national treatment than developed countries.[47]

The same can be said about accounting rates as a barrier to entry. New entrants might be discouraged because of the necessity to negotiate bilateral correspondent agreements with every individual country.[48] It is true however the regime of bilateral negotiations as it operates today creates a burden on the carrier's ability to align accounting rates with the evolution of the market. The bilateral negotiating regime is a rigid mechanism in a liberalized environment. Here again we should be cautious in this judgment, as market access commitments like national treatment demonstrate specific commitments under GATS and not general applications. In other words judging the compatibility of accounting rates regime with those two principles cannot be made in abstracto but rather on a case by case basis.

Whether blatant (in the case of general obligation) or more dubious (in the case of specific obligations), the conflict between the current international accounting rates and the GATS principles is a proven fact which constitutes one of the most important shortcomings of the new agreement on basic telecommunications.

Section 2: The Regime is at odds with the spirit of GATS and the liberalization efforts under WTO:

The problems associated with the current regime of accounting rate beyond a mere conflict with the multilateral trade principles upon which the GATS is based. The regime is at odds with the spirit of the GATS. It should be emphasized here that the goal of trade liberalization revolves around diminishing barrier to entry to achieve freer trade and competition. The ultimate goal is that the new liberalized environment will have beneficial effects worldwide leading to new international markets' growth opportunities that would benefit all countries and translate into lower bills for telecommunications users and consumers. A closer analysis of the accounting rates system as it operates today shows that the system acts as a brake to the above goals.

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[47] For an overview of developing countries commitments see ITU, The World Telecommunications Development Report 1996/1997: International trade in Telecommunications services.

[48] Pekka Tarjanne, "How will the accounting rate system need to be modified in a liberalized market: Liberalization and Privatization of the European Telecommunications sector Preparing for 1998 and Beyond" Rome

The most apparent anomaly with accounting rates is market distortion. Petrazinni reveals the best analysis when he argued that high accounting rates create an odd mix of rewards and punishments. It rewards the inefficient carrier, which originates less traffic and bills high collection rates to its customer, while it punishes active carriers, which originate outbound traffic and charge their customers low rates.[49]

In addition, the way international accounting rates are concluded slows the gradual move witnessed in the telecommunication sector from a bilateral regime to a multilateral regime. The problem with accounting rates is that the levels of rates for international services is determined by arbitrary methods and is not dictated by effective competition. In addition, the second element in the accounting rate: the principle of equal revenue division may prevent the occurrence of full competition since carriers are prevented from offering lower rates in exchange of higher traffic flow. The 50/50 rule limits the scope of competitive negotiation and encourages a "cartelized behavior" which distorts market prices.[50]

Finally, high international accounting rates constitute an impediment to international trade in telecommunications services and a distortion of trade in general. Indeed, excessive accounting rates inflate the prices of international services; they curtail the growth of international services by raising rates to consumers. To the extent that accounting rates exceed the cost of terminating an international call, high accounting rates are today an obstacle which prevents consumers from enjoying cheaper telecommunications services made possible by technological developments in transmission and switching facilities and the unleashing of market forces. Deeper repercussions would be felt on the economy as a whole. As the global economy moves forward to be an information -based economy, high accounting rates curtail trade in services and slow the progress toward global markets.

After revealing the conflicts and contradictions underlying the issue of accounting rates reform, the intellectual challenge of the paper is to propose a compromise to the problem.

III: A Possible Consolation: Applying the Preferential Treatment Theory to Accounting Rates with Developing Countries

March 25, 1996.

[49] B. Petrazzini, *Global Telecom Talks: A Trillion-Dollar Deal* (Institute For International Economics 1996) p.65.

[50] SG paper on 1998 telecom revolution op.cit. p.5)

In dealing with the reform of international accounting rates special attention should be devoted to the needs of developing countries. Soft landing measures can be available through a development-oriented interpretation of preferential treatment under the trade principles.

Section 1: Preferential Treatment.

The institution of preferential treatment can be perfectly adapted to resolve the issue of accounting rates reform. To do so we need first to ascertain that the institution has a legal presence in the new regime for trade in telecommunications services and that beyond the legal consecration of the principle, collateral economic and telecommunications policy arguments uphold the necessity of preferential treatment.

Paragraph 1: Legal basis for preferential treatment:

The preferential approach to trade relations grew after the decolonization movement as a reaction from the developing countries to the inequities of the trading regime. The institution is today a cornerstone in developed/developing country relations and constitutes a well-established principle of international trade and development laws.[51] The thrust of the institution is to provide exception to the Most Favored Nation principle by allowing developing countries a more favorable treatment in trade relations.[52] The same philosophy could be extended to trade in telecommunications services and support a development -oriented approach to international accounting rates reform.

It should be noted from the start that the GATS contrary to GATT, does not contain a special section to address the concerns of developing countries. However despite the absence of a crystal clear sanctification of principle of special and differential treatment in a separate and distinct section in the GATS, the institution of preferential treatment is indirectly embodied in GATS and in the telecommunications annex.

Taking into account the situation of developing countries, the GATS preamble stipulates that the fundamental objective of the new regime for free trade in services is the economic growth of all trading partners and the development of developing countries. The pream-

[51] For an overview of the concept and philosophy of preferential treatment in trade relations see Robert E. Hudec, *Developing Countries in the GATT Legal System* (Gower, Sydney 1988)

[52] During the Tokyo Round, the idea of non-reciprocity found a new illustration in the enabling clause. Under this clause, developing countries are not expected to provide neither reciprocity for concessions made in trade negotiations nor are they expected to make contributions that are inconsistent with their development. Finally, the theory of non-reciprocity was behind the system of generalized preferences GSP adopted by UNCTAD on the basis of part IV and the enabling clause.

ble puts emphasis on the need to increase the participation of developing countries in trade in services and the expansion of their trade exports including the strengthening of their domestic market and efficiency and competitiveness. Although the regime of international trade in telecommunications services as embodied in the basic telecommunications agreement falls short of concretizing the principles in the preamble of the GATS, applying preferential treatment to international accounting rates will prove a good tool to improve the domestic market and efficiency of telecommunications market of developing countries.

The text of the GATS and the telecommunications annex contain different provisions on the situation of developing countries. For example, article 19 of GATS provides that there should be appropriate flexibility for developing countries in opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. Article 4 deals with the increased participation of developing countries. The article conceives their increased participation through specific negotiated commitments relating to the strengthening of their domestic services capacity; its efficiency and competitiveness through access to technology on a commercial basis; the improvement of their access to the distribution channels and information networks; and liberalization of market access in sectors and modes of delivery of export interest to developing countries. The language of this article draws directly from the preamble of the GATS. It embodies important guidelines on matters of specific interest to developing countries.

In addition, the telecommunications annex allows developing countries to impose reasonable conditions on the access to and use of telecommunications networks that they consider necessary to strengthen domestic telecommunications infrastructure and to increase their participation in international trade in telecommunications services. The reasonable conditions can be extended to embrace conditions related to preferential pricing for the access and use of developing countries' networks.

In addition to the provisions of the GATS, special attention was devoted to the least developed countries in the WTO and the ministerial declaration launching the Uruguay round. Those elements can also provide a good foundation for providing least developed countries with extra attention in the problem of accounting rates. The Decision on "Measures in favor of least developed countries" annexed to the final act of the Uruguay Round, stipulated that least developed countries will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs. In addition, the final act of the Uruguay Round incorporated measures for technical and financial assistance for least developed countries. Giving less developed countries extra flexibility in issues related to accounting rates reform will prove to be one important form and modality of international support measures for these countries.[53]

It follows from this overview of legal provisions that the various elements outlined above offer a good basis to treat developing countries on a different scale in issues related to the reform of international accounting rates. To a large extent a preferential treatment in this subject will give a soul to the body of hortatory provisions in the legal documents covering international trade in services.

Paragraph 2: Supporting arguments in favor of preferential approach to accounting rates reform:

The problem with deficit encountered by developed countries in settlement payment is not due exclusively to the accounting rates being set above cost. It is also due to the existence of calling imbalance. Improvement to the network of developing countries through maintenance of certain level of hard currency income is an important element in diminishing the imbalance and reducing the deficit of developed countries interconnecting with developing countries.[54] It is well established today that improvement in telecommunications sector leads to economic development and wealth.[55] This leads to improved use of telecommunications services both for personal reasons and for business and to better connection to the world. Developed countries will undoubtedly witness an improvement in calls originating from developing countries and a decrease in deficit.

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[53] Decision available at WTO web http://www.wto.org/wto/legal/31-dlldc.wp5.

[54] The idea was highlighted by Dawson Walker who argued that the cost based accounting rates may not improve the situation of the United States towards developing countries. It is important according to the author, to dig deeper to gain a truer perspective for casual factors of deficit levels. The traffic imbalances are indeed a major cause of the problem. Dawson emphasizes the case that the continuous flow of hard currency under accounting rates to developing countries is the "Best remedy for narrowing the calling imbalance and ...the quickest way to diminish call and cost imbalances between developed and developing countries". Dawson Walker, "International Accounting Rates: A perspective" (1996) 20:4 Telecommunications Policy 240.

[55] The relation between telecommunications and economic development is well established today. The interaction was neglected in the beginning but studies carried by ITU and the World Bank as well as by other institutions demonstrate the direct relationship between economic advance and the availability of telephone penetration. The first and most comprehensive study is by Robert J. Saunders, Jeremy J. Warford and Bjorn Wellenius, *Telecommunications and economic Development*, A World Bank Publication, 2 ed. (Baltimore: The Johns Hopkins University Press, 1994).

The basic argument here is that the extension of telecommunications infrastructure as widely as possible is in the long-term interest of developed countries. This logic takes the form of network externalities argument. Applied to national setting, the network externality argument means that each additional subscriber increases the value of the entire network because millions of other subscribers have access to the new subscriber.[56] The same rational is perfectly applicable in an international setting. Indeed given the information-based nature of modern economy, the development of the telecommunications industry to be more global in nature, and the independent global environment, the value of the global network grows as more national networks and users are linked together.

Viewed in an economic light, preferential treatment in accounting rates reform (if the outcome is to ensure network development in developing countries) is bestowed not exclusively for the sake of the recipient countries but also (and most importantly) for the sake of the information society as a whole. Given the importance of the telecommunications sector as a key infrastructural component of the emerging information economy the importance of creating a world -wide network should not be underestimated.

In addition, securing continuance flow of foreign currency in form of settlement payment for developing countries does have more immediate benefits to developed countries. As long as developing countries are willing and able to finance telecommunications network development this would translate into larger bills to developed countries in the form of equipment purchase,[57] requests for technical assistance and consultancy. The market of developing countries mostly characterized by low penetration rates; high demand and outdated networks constitute huge opportunities for developed countries.[58] In 1992 for example, developing countries spent

[56] For a description of the theory of economic infrastructure Cristino Antonelli ed., *The Economics of infrastructure Networks* (The Netherlands: North Holland 1992).

[57] Few developing countries have developed indigenous telecommunications equipment sectors. The most important examples are the Asian newly industrialized countries such as south Korea and Taiwan that supported local equipment industries. Most developing countries remain, however dependent on developed countries in this area. Scale considerations and market size make it clear that for most developing countries, local equipment supply is not possible.

[58] W. Ambrose, P. Hennemeyer and J. P. Chapon, *Privatizing Telecommunications Systems: Business Opportunities in Developing Countries*, International Finance Corporation, Discussion Paper No 10 Washington DC, World Bank 1990.

more than 4.6 billion on digital switching. According to Robin Bromby's study of digital switching markets in developing countries, this market will exceed $7 billion by the year 2000.[59]

From the above mentioned considerations, it follows that general trade principles can give rise to a preferential interpretation of accounting rates and that additional arguments support such a vision. It remains to be seen how preferential treatment can be applied to accounting rates reform.

Section 2: Application of preferential treatment to accounting rates Reform.

Applying preferential treatment to accounting rates with developing countries could translate into agreed upon exceptions allowing a departure from uniform, cost-oriented accounting rates for calls terminating in developing countries. To be effective, however, the preferential regime needs strong institutional safeguards.

Paragraph 1: Exegesis of the preferential treatment regime

Defining preferential regime requires first the definition of the beneficiaries, second the determination of constituents of the regime and finally devising implementation measures.

A: Beneficiaries of preferential treatment

Defining the beneficiaries of preferential treatment is an essential preliminary step to define tailored transition paths for developing countries. Working on its mandate to develop "proposals for solutions for transitional arrangements towards cost-orientation beyond 1998," the focus group from the ITU secretariat had to deal first with the issue of how to classify countries for the purpose of transitional paths.[60]

Different classifications were proposed. The proposals focused on two different criteria: socio-economic variables based on GDP, and classifications based on telecommunications specific variables such as teledensity. Using socio-economic criteria, the focus group proposed 6 categories of countries based on GDP in contrast to the World Bank classification.[61] The use of

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[59] Robin Bromby, "Digital Switching Markets in Developing Countries Report" (1993) 27 Telecommunications 16.

[60] See Focus Group Chairman's working Document (rev 2, 25 August 1998) for an overview of the different proposals for classifications of economies. http://www.itu/intset/focus

[61] According to the focus group the classification of countries in four categories does not reflect the real difference between these groups. While the category of middle income countries is homogeneous, both the categories of high and low income countries need to be further subdivided for the transition to cost based accounting rates. Concerning the category of low-income countries the group argues rightly that a distinction should be made between giant countries like China and India and micro least developed countries. While all low- in-

telecommunications variable criteria would amount to a division of countries according to the level of telecommunications development. The most applicable variable is the teledensity. According to the chairman of the focus group on accounting rates reform, teledensity is a widely supported variable for categorization of economies. Using this variable, the report distinguished six groups of countries.[62]

Despite the soundness of both approaches we think that the best method to define beneficiaries of preferential treatment is to use a variety of criteria which mix both socio-economic criteria and telecommunications variables. Indeed the level of economic development of a country is a good indicator of the level of its telecommunications development and provides a reasonable indication of a country's ability to cope with a cost based system of settlement rates.[63] However such a classification does not suffice to determine adequate and differentiated treatment to developing countries for the transition to cost based accounting rates. In its benchmark order, the FCC rightly decided to further divide the category of developing countries and create a new category: "The least telecommunications developed" countries defined as countries with a teledensity of less than 1%. In 1992 the ITU defined the least telecommunications developed countries as economies with teledensity of less than one. The rationale behind this new category is outlined in the Report and order adopted in August 7, 1997. The GNP per capita may not adequately reflect the level of telecommunication network development for the least developed countries. According to FCC, the strong link between the level of economic development and telecommunications development is substantially weaker in poorest countries.[64] Focusing on teledensity to divide developing countries in addition to socio-economic classification for the purpose of applying preferential treatment to developing countries is a more accurate indicator to determine the need and the length of preferential treatment. Indeed

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come countries will be prejudiced by a sudden move to cost based accounting rates; big countries like China and India are expected to react more readily to the move than the least developed countries.

Concerning the category of high-income country, the methodological note argues that a differentiation between OECD countries and other high-income countries is warranted.

[62] Those with teledensity of less than 1(42 countries), those with a teledensity between 1 and 5 (36 countries), those with teledensity between 5 and 10 (28 countries), those with teledensity between 10 and 30 (47 countries), those with teledensity between 30 and 40 (17 countries and finally those countries which teledensity exceeds 40 Focus Group chairman's working document (rev 2, 25 August 1998).

[63] The approach is plausible given the well established and documented relationship between economic development and telecommunication

[64] FCC, in the Matter of International Settlement rates Report and order, IB Docket No 96-261 adopted August 7, 1997. & 189.

the group of developing countries is formed by different categories, which comprise countries with developed telecommunications infrastructure and countries with dramatic situation. A comparison of network development in South Asia and Latin America with the situation of Sub Saharan Africa justifies to a large extent the need to further decompose the heterogeneous group of developing countries for the purpose of application of preferential treatment. Teledensity in Sub Sahara Africa amounts to less than half the density in low income Asia. [65] While Sub Saharan Africa have 1% of the world's telephone lines to serve 12% of the world's population, many countries of the Asia Pacific region have graduated from low to high teledensity category.[66]

Even within the category of low-income countries, the use of telecommunications indicators shows a big difference between LDCs and other low income countries. While the former are expanding their networks by less than 7% per year the latter witness a network growth of 30% per year.[67]

B: Constituents of preferential treatment.

Preferential treatment should have two different components. The first element consists in keeping accounting rates for relations involving developing countries above cost for a certain period of time. The second element involves opting for a more favorable division of accounting rates. The series of studies conducted by the ITU on the issue of international accounting rates and developing countries,[68] showed that each option might be more appropriate depending on the level of dependency on settlement payment and the pattern of international traffic.

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[65] W. L. Guttman, "Telecommunications and Sub-Saharan Africa: The Continuing crisis" (1986) 10:1 Telecommunications Policy 325.

[66] For an overview in achievement in Asia Peter L. Smith and Gregory Staple, *Telecommunications Sector Reform in Asia: Towards a New Pragmatism,* World Bank discussion Paper 232.

[67] Methodological Note Concerning Classification of Economies by Socio-Economic Group, Contribution to the SG3 Focus Group from the ITU Secretariat, 1 July 1998.

[68] The case studies on the new environment of telecommunications and developing countries were requested by the Secretary general when he first considered the issue of accounting rates reform and created a study group on the issue of accounting rates. According to the Secretary General, conducting case studies on the impact of reform of accounting rates on developing countries should be treated as a necessary step to guide the standardization sector in its efforts of reform to the accounting rates regime. ITU, Secretary General's Paper on Accounting Rates Reform (November 1996) available in ITU web Site.

a) Keeping accounting rates above cost for traffic involving developing countries:

This paper calls for the resurrection of a 1984 idea voiced by the Maitland Commission.[69] In its report, the commission proposed that a portion of revenue from calls between developed and developing countries could be used to boost telecommunications infrastructure development. The portion in this context is the amount that exceeds the cost of providing the service. Developed countries would be encouraged to adhere to this program because restructuring the accounting rates system to reflect cost will create greater balance between developed countries and legitimize the concept of transfer of resources to developing countries.

The idea that we are advocating here mirrors a practice very well established in national jurisdictions. A survey of universal service policies of many developed countries revealed that in many jurisdictions interconnection charges include a sum that should be deployed for universal service.[70] There is a wide body of economic literature that treats international accounting rates as a specific form of interconnection.[71]

According to the FCC chairman, international settlement rates are simply a specialized form of interconnection involving services that cross the national borders.[72] The chairman suggested that the same rules of cost-based non-discriminatory interconnection applicable in a national setting should be transferred to the international arena. If we follow that reasoning to the end we will find in the suggested analogy the very foundation of preferential treatment. Applying the same rationale, foreign carriers interconnecting to the national network might be re-

[69] ITU, *The Missing Link: report of the Independent Commission for worldwide Telecommunications Development* (1984). The Commission is created by the 1982 plenipotentiary conference to study network disparity and propose ways and means to remedy it.

[70] For an overview of international experience with universal service's instruments measures and requirements see S. O. Siochru, *Telecommunications and Universal Service: International Experience in the Context of South African Policy Reform* (International Development Research Center 1995).

The use of interconnection charges is one practice used to finance universal service obligations. In liberalized markets (especially in the US and UK) the practice is well established. Incumbent carriers adjust the interconnection fee to raise funds from the interconnecting carriers that will be affected to honor the incumbent's universal service obligations.

[71] For a review of literature and listing of articles see James Alleman and Barbara Sorce, "International Settlement: A Time for Change" From Proceedings of the Global Networking '97 Conference 15-18 June 1997.

[72] Separate statement by Chairman Hundt on International Settlement Rates Report and Order August 7, 1997.

quired to pay a subsidy for network growth of developing countries in addition to the interconnection charge.

This first exception seems clear and easy to define at first glance. Yet it is tricky, as the whole idea is dependent upon setting acceptable rules and methods for determining appropriate cost to use as a basis for revised accounting rates.[73] Different approaches are under investigation at the international level to determine target rates. Such proposals include: determination of price caps,[74] designated target ranges,[75] estimated cost elements[76] and best practice rates. Although each methodology has its inherent defects, we think that the last method is the best suited for accounting rates reform. So far, the focus group on accounting rates reform under the ITU seems to favor this approach. The best practice is defined as the average of the lowest five published settlement rates in each category of countries (determined by the level of teledensity). Moving toward cost based accounting rates would amount to a gradual move toward achieving the level of best practice for each category of countries. The chairman's working document already shows a big difference between the best practice rates of countries in Group 1 (countries with teledensity less than 1%) which amounts to 46 US cents and countries in category 6 (Teledensity more than 40%) which amounts to only 8 cents.[77] Using this approach the group has emphasized the idea that the move to cost based accounting rates should be narrowly tailored for each group of countries. In addition, the group recognizes that exceptional factors should be taken into account for LDCs and whenever the gap between the best practice and current settlement rate is wide. Using this rationale the amount of subsidy would equal the amount that exceeds the level of best practice rates for a given group.

The second practical question is how to determine the amount of the subsidy. One approach would be to keep accounting rates for beneficiary countries at their current level. In a paper on telecommunications revolution the secretary general of the ITU argued that one possible way to provide soft landing for developing countries is that major international carriers

[73] The need to set acceptable methods to determine cost based accounting rates is particularly important taking into account that the transition of the international telecommunications market to a purely market based global industry where cost and prices are determined by market forces is not likely to be in an immediate future..

[74] Methodological Note concerning the Use of cost Proxies: Contribution of the SG3 Focus Group from ITU Secretariat, 7 August 1998 available at http://www.itu.intset.focus.

[75] The method is used in the work of the African Regional Tariff Group (TAF).

[76] Methodological Note on developing "Ranges of Indicative Target Rates" Contribution to the Focus Group on Accounting Rates Reform, from the ITU Secretariat. Available at http://www.itu.intset.focus.

[77] Focus Group Chairman's Working document (rev 2, 25 August 1998)

from developed countries might undertake to guarantee a certain settlement payment at the actual level for a certain period of time.[78] This approach is unlikely to be welcomed at the international level, as it shows no intent to move towards cost oriented accounting rates.

The studies conducted for the ITU in the situation of 8 cases of developing countries shows a good precedent for determination of the level of accounting rates necessary to keep up with telecommunications development in developing countries. In the case of Senegal for example the study asserted that the use of price cap under the US benchmark would have adverse effect on Senegal which would translate in a net cumulative loss of 42 US million.[79] Keeping international accounting rates at a high level and the gradual reduction by 6% or 10% per year will creates favorable results of a cumulative net gain of 17 million. The estimation takes into account the impact of new policies and accounting rates reduction on outgoing and incoming traffic and price elasticity.[80]

The ongoing work of the focus group on accounting rates has concluded that reduction of accounting rates should be on average of 12% per year until best practice rate is achieved. However exceptions to the 12% reduction are warranted in specific cases. In any case the reduction should not be less than 5% per year. If this approach were endorsed by study group 3 and by members of ITU, the subsidy would be for each country the difference between the actual rate after a reduction of 12 or 5% and the best practice rate in the group of the country concerned.

<u>B) Opting for asymmetric division of accounting rates</u>.

Splitting the accounting rate on equal basis is unfavorable to developing countries which incur a higher cost in providing international services than developed countries. A preferential approach to accounting rates reform should include a more appropriate division of accounting rates. In this case the idea of preferential treatment is very clear. Indeed carriers in liberalized developed markets would agree to offer to terminate incoming calls from certain countries at a cost based rate and waive their right to have reciprocal access to the same market at the same rate.

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[78] It should be mentioned here that the proposition of the secretary-general relates mainly to situation of the least developed countries plus other low-income economies with small population. Pekka Tarjanne, “The 1998 Telecommunications Revolution” study Group 3 Meeting 27, May 1997.p.12.

[79] Study about Senegal http://www.itu.int/wtdf/senegal/index.htm p.36.

[80] ibid. p. 38

A recent study conducted by the ITU ascertained that developing incur higher costs for international services by 2.08 times.[81] Although the reasons for such discrepancy are not well documented, it has been argued that the reason has to do with the cost of building the infrastructure in developing countries. Indeed as mentioned by Tim Kelly,[82] the average cost of installing a new line ranges from a few hundred dollars in economies such as China to several thousands dollars in some parts of Africa.. Figures presented by the World Bank are astonishing; the cost per line in SSA is estimated at $5,600 compared to an average of $1,500 for other developing countries. The study considers that the difference in cost is mainly due to the methods of financing.[83]

Another element worth mentioning here is the cost incurred by the lack of direct links between least developed countries and other parts of the world. Transit traffic represents a high portion of total traffic of many countries in Africa. According to ITU, transit traffic originating in Africa and passing through the United States represents 36% of total telephone traffic to the United States. African operators pay up to one million dollars per year for transiting the international calls through a hub.[84] This practice inevitably has the effect of increasing the cost of terminating a service by a least developed country.

As early as 1985, the International Telegraph and Telephone Consultative Committee recognized that proportions other than 50/50 might be used when the facilities made available by each of the administrations of the terminal countries are not approximately equivalent, or if administrations reach agreement on a different proportion as in the case where the costs differ greatly.[85] At 1994 plenipotentiary conference held in Kyoto, governments adopted resolution 22, the "Apportionment of Revenues in Providing International Telecommunications Services". Under the resolution, governments can divert from the 50/50 split of accounting

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[81] The cost study was commissioned by ITU in response to the request by the Maitland Commission in 1984. ITU, *The Missing Link: report of the Independent Commission for worldwide Telecommunications Development*, Geneva. December 1984.

[82] Tim Kelly, "Ten Propositions for Accounting Rate Reform" Paper prepared for ITU Asia Telecom 1997, Tariff Workshop, Friday 13, 1997.

[83] Telecommunications in Sub-Sahara Africa, World Bank 1995 p. 3

[84] It is only lately that ITU started to throw some light on the issue of transit rates. See Methodological Note on transit Rates: Contribution to the SG3 Focus Group from the ITU secretariat, 12 August 1998.

[85] International Telecommunications Union, General Tariff Principles Charging and accounting in international telecommunications services, recommendations of the D series 1985 at 107.

rates in favor of a different formula. According to ITU, a fairer splitting formula should be 66/33 rather than 50/50.

This second pillar of preferential treatment is best applied in countries like Mauritania with a low dependence on international settlement (International settlement represent 3.2 % of turnover) and high routing costs. A preferential treatment to Mauritania needs to be based on a different apportionment of the accounting rates rather than focusing on the level of accounting rates. The study conducted for the ITU ascertains that the cost of international services in Mauritania is very expensive due mainly to the high cost in the national extension component. The small numbers of subscribers, coupled with the extensive areas to be covered and the high network connection charge culminated to make the cost of routing international calls particularly high.[86] In the case of Mauritania and countries with similar conditions a sound preferential approach would translate into a regime that takes into account the asymmetry in cost and network density.

C: Implementation of Preferential treatment:

It is a delicate task to determine a schedule for the transition period for developing countries. Indeed as mentioned by the ITU "A Soft landing at the end of a transition period may not be very soft and the transition period may not be very long." This paper calls for using an innovative approach that measures the transition period with the achievement yardstick rather than the usual proposed time scale. Instead of choosing 5, instead of 7 or 3 years, a healthier approach and a truly beneficial transition period should be measured against implementation of structural change of the telecommunications sector of developing countries. Developing countries benefiting from a preferential treatment in accounting rates should undertake a commitment to overcome the deficiencies of their system.[87] For the purpose of setting ac-

[86] The cost is estimated 45 to 60 cents/minutes.

[87] This idea had found strong support in the Seventh regulatory colloquium under ITU. The colloquium dealt with the transformation of economic relationships in international telecommunications. The colloquium's conclusion is that the level of international accounting rates and the length of the transition period are not the fundamental problems to be addressed. The real problem is the lack of network development in developing countries. The solutions should be found by linking the restructuring of the international payment system with the restructuring of other international economic relations and broader telecommunications policy of developing countries. International Telecommunications Union, *The Changing Role of Government in an Era of Telecom Deregulation: Transforming economic relationship in International Telecommunications,* Report of the Seventh Regulatory colloquium held at ITU headquarters 5-7 December 1997. (ISBN E 92-61-06751-4). Summary is available at www.itu.int/wtpf/trade/reg-coll/7th/chair-report.htm.

ceptable transition periods, a set of indicators can be used to determine whether a particular developing country is ready to graduate from the exception to the rule:

Those signs include:

1) Improvement of telecommunications penetration through a commitment to affect gains from settlement payment for network growth and expansion. Developed countries have argued that maintaining above cost accounting rates does not by itself promise an improvement in the telecommunications sector in developing countries. In many developing countries income from settlement payment is diverted to other sectors of the economy. We agree that each country has the sovereign right to determine its public spending according to national priorities. However, if above cost accounting rates should continue to flow to developing countries in form of a transparent subsidy, developing countries have to undertake to affect this income to improve their telecommunications sector.

2) Adoption of new pricing policies to gradually reduce dependence on international accounting rates. This issue is politically sensitive as such undertaking might oblige developing countries to rebalance local and international tariff rates. Indeed as outlined above, revenues from international telecommunications services have served for a long time in developing countries to cross subsidize local services and make the service available for consumers. A decrease in revenues from international services will translate in price jump in local services and widen the already apparent tendency in developing countries that telecommunications is a luxurious commodity for the richer class of the society.

The necessary relation between moving to cost based accounting rates and rate rebalancing has been also outlined by many critics to the US benchmark order. For example CANTO argued that a country's transition period should not end until a rate rebalancing plan has been enacted and completed.[88] Telecommunications pricing is a complicated matter. It lies at the heart of policy issues and complex matters related to economics and regulatory structures, which will face developing countries when considering innovative and modern pricing approaches. However regulators in developing countries to set prices should deploy efforts based on cost and demand.

[88] The same position has been defended by GTE and Telefonica of Espana who argued that the transition period should be tied to rate rebalancing. See FCC in the matter of International Settlement Rates. IB Docket No 96-261 Report and Order august 7, 1997.

3) The necessary modernization of traditional forms of ownership and market structure of the telecommunications industry of developing countries. This includes rethinking the public ownership and monopolistic structure of the telecommunications sector. Experience in developed countries over the last decade has demonstrated that both privatization and the introduction of competition have positive effect on network growth and the expansion of services. For developed countries there is ample and undisputed evidence on the benefits of liberalization on teledensity and network quality. A historical overview of the US experience demonstrates to a large extent this observation the same can be found in Japan, New Zealand and the United Kingdom. A study conducted by ITU in 1994 compared lines added in OECD countries competitive markets versus non competitive markets, found that from 1990 to 1994, provision of new lines grew by 21% in competitive markets and dropped 28% in closed markets.[89] The same result can be tested in case of developing countries that have undertaken sector reform in the last few years. Figures collected by the ITU, World Bank and the FCC show similar benefits of liberalization in developing countries. The most widely cited example is that of the Philippines. Since 1990 Philippines has undertaken liberalization strategies. The result is a growth in main line installation from 19,625 main line for the seven years preceding liberalization to 224,500 lines per year between 1993 and 1994. The new policies also led to network modernization of the Philippines where 64% of the network has been digitized.[90] The ITU also cites the example of liberalization in Peru which created a network growth of 336'000 lines more than the previous eight years added together.[91] The FCC in the benchmark order stresses the importance of competition in increasing service and network availability. The FCC cites the example of China where network growth reached 58.9% in one year after the introduction of competition. Indeed the experiences of developing countries show that teledensity in developing countries has grown twice as fast in countries with privatized telecommunications as in countries which have retained a public monopoly.[92]

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[89] See figure 4.3 in B. Petrazzini, *The Telecom Talks a Trillion Dollar Deal* (Institute of International Economics 1996) at 39

[90] See *World Telecommunications Development Report* 1996/1997

[91] The *World Telecommunications Development Report* 1996-1997.

[92] For an overview of developing countries' experience with privatization see

B. Mody, J. M. Bauer and J. D. Straubhaar, *Telecommunications Politics, Ownership and Control of the Information Highway in Developing Countries* (New Jersey, Lawrence erlbaun Associates Publishers, 1995).

Our proposal of measuring the transition period using the achievement yardstick might prove to be difficult to manage without institutional safeguards.

Paragraph 2: Institutional Safeguards to a successful implementation of preferential treatment.

Two safeguards are necessary to a successful implementation of preferential treatment: transparency, and, a multilateral supervision of the regime.

A: The requirement of transparency:

To be acceptable the system should single out the portion of accounting rates that represents a subsidy in a transparent fashion. The subsidy portion should be exclusively affected for telecommunications development and ensure investment in new infrastructure during the full transition period to cost based accounting rates. An explicit, transparent subsidy mechanism targeted to network infrastructure to promote universal service is a more acceptable arrangement than the current system based on non transparent and poorly targeted transfer of resources. The system of explicit subsidy (in addition to being in conformity with preferential treatment under WTO) also conforms to the principles embodied in the reference paper about universal service.[93] Under the reference paper, countries are allowed to impose universal service obligations on foreign carriers serving in their market. This possibility is only restricted by the conditions under which the obligation is imposed. A universal service obligation in a competitive environment should be administered in a transparent, non-discriminatory and competitively neutral manner.

For transparency reasons the yearly amount should be well identified and properly used for the purpose of telecommunications development rather than diverted to other causes. This mechanism answers a concern voiced by the ITU Secretary General when he asked whether it is possible to envisage an alternative, transparent subsidy mechanism from developed to developing economies which could substitute for settlement payments in the short to medium term.

B: The requirement of institutional supervision:

The successful implementation of preferential treatment in accounting rates reform requires that the whole mechanism be supervised by an international institution. The reason for

[93] The reference paper contains a set of procompetitive safeguards for the basic telecommunications agreement. It is appended to the basic telecom agreement for adoption by the countries as additional commitments to their obligations in the basic telecom sector. 55 countries adopted the reference paper. See reference paper to the Fourth Protocol to the General Agreement on Trade in Services, 36 I. L. M367 (1997).

insisting on this point is that very little has been achieved by developing countries to upgrade their infrastructure even though accounting rates have always been set above cost. An institutional mechanism to supervise the affectation of the surplus in the telecommunications sector will prove to be a worthwhile endeavor. The second reason for insisting on institutional intervention is inspired by the problems faced by developing countries in the issue of graduation in the GATT context.[94] The GATT's preferential treatment arrangements proved to be of very limited importance. The regime was inherently defective as it was based on unilateral concessions. Developed countries were free to set their own rules for preferential treatment in determining the beneficiaries and the quantities of imports subject to preferential treatment. In addition because of lack of multilateral discipline, criteria for revoking the privileges are set by individual donor countries for reasons related to other priorities such as human rights violation in the recipient countries.[95]

The ITU is the institution best suited to supervise the transition period and the preferential treatment. Indeed the ITU has long focused on issues of telecommunications and development. Since 1959, the need for cooperation and coordination related to development assistance has occupied an important place in the ITU agenda.[96] The 1959 International telecommunications convention required the CCIR and CCITT to pay due attention to the formulation of recommendations directly connected with the establishment, development and improvement of telecommunications in new and developing countries in both regional and international fields. The idea of telecommunications cooperation for development has come up in most of the plenipotentiary conferences and ideas for cooperation were put by developing

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[94] Lunt, "Graduation and The GATT: The Problems of NIC" (1994) 31:3 Columbia Journal of Transnational Law 611-643.

See also Robert Hudec, *Developing Countries in the GATT Legal System* (Gower, 1986).

Valerie J. Dellegrini, "GSP: A System of Preference not a bargaining Level" (1985) 17:4 Law and Policy in International Business 879-906.

[95] The US GSP scheme is a good example of the wide discretion that an individual country can have to determine GSP recipients, product coverage and criteria for unilaterally excluding or graduating countries. In the last few years the regime of GSP was extensively used by the USA as a tool to promote US foreign policy goals in the areas of workers rights, intellectual property or other practices. The cases reported in literature of US revocation of GSP for the above reasons are numerous. We recall the revocation of the system from Sudan, Syria, Liberia, and Mauritania for inadequate protection of workers rights and the revocation of the system from India and Thailand for lack of intellectual property protection.

The US law of GSP is embodied in Title V of the Trade Act of 1974. Codified at 19 U.S.C.A & 2461-2466.

[96] F. Lyall, "The International Telecommunications Union and development" (1994) 22 Journal of Space Law 22.

countries on the negotiating table.[97] The 1989 plenipotentiary conference went a step further in telecommunications development by the creation of a special sector in the ITU: the development sector in addition to the radiocommunication and standardization sectors. The roles of the sector are oriented towards encouraging technical cooperation. The ITU constitution stipulates that the Telecommunications development bureau is "To facilitate and enhance telecommunications development by offering, organizing and coordinating technical cooperation and assistance activities".[98] The institutional structure of the ITU, and its long tradition in telecommunications development makes it a good institution to supervise the preferential arrangement. [99]

Different mechanisms can be discerned to supervise the implementation of the preferential treatment. One possible approach could be inspired from the Trade Policy Review mechanism under the WTO.[100] Under TPRM, a special body the trade Policy Review Body carries out trade policy reviews. The objective of the procedure is to review the overall trade policies of each member on regular basis. Applying a similar mechanism to the context of accounting rates would enable the ITU to undertake regular collective appreciation and evaluation of achievements of beneficiaries of preferential treatment and their readiness to graduate to cost based accounting rates.

Despite the attractiveness of this idea we must be aware that establishing such a mechanism will not prove to be an easy task. Different contentions might be presented. Chief among them is that a telecommunication policy review mechanism might be a breach to the principle of state sovereignty to choose and implement telecommunications policy at the national level without international scrutiny. The issue is indeed very sensitive. Even though the object of the review mechanism is not to impose new policy commitments to Members, the indirect impact would certainly amount to an indirect overseeing of national policies in pricing,

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[97] The suggestion that reappeared every time is the need to finance telecommunications development from the ITU budget and the creation of a special ITU development fund. (See negotiations at the plenipotentiary conference of 1965, 1973). In 1982, the idea was reshaped by developed countries towards the creation of a special voluntary program for cooperation instead of financing telecommunications development from the ITU budget.

[98] B. Harris, "The New Telecommunications Development Bureau of the International Telecommunications Union" (1991) 7 Am. U. J. Int'l. L. 88

[99] It should be mentioned also that ITU voting rules are friendly to developing countries. ITU functions on the one-nation one vote system which enhances the power of the developing countries numerically a majority. The voting power proved very helpful to developing countries through the years as they succeeded to bring the attention of ITU to their specific demands.

[100] Trade Review Policy Mechanism, Annex 3 to the WTO agreement see http://www.org/legal/29-tprm.wp5.

industrial structure, affectation of telecommunications revenues, etc. However, countries should be aware of the fact that a multilateral framework based on agreed upon procedures and criteria is more transparent and predictable than a system of bilateral negotiations in which weaker parties are not protected form unilateral revocation of privileges from donor countries. Furthermore, the mechanism that we are advocating here would only apply to the subsidy part of the above cost accounting rates. Countries, which refuse the mechanism, can still opt for cost oriented accounting rates and face different challenges.

Finally, the idea falls within recent trends in the international telecommunications regime initiated by the basic telecommunications agreement. The reference paper embodies principles that go deeper into the telecommunications policymaking of sovereign countries. The conclusion of the reference paper and its adoption by most parties to the basic telecommunications protocol has already set a precedent on the international telecommunications regime, which legitimizes international oversight over national telecommunication policies. The reference paper provides guidelines that domestic regulators should incorporate in their domestic rules in order to guarantee effective market access and investment commitments to foreign carriers. The proposal here does not go that far since the oversight will be conducted by an international organization on a narrowly defined matter.

Conclusion:

The international accounting rate regime is today the most heavily debated theme of international telecommunications policy in national, regional and international fora. This paper tried to come up with propositions to accommodate developing countries' concerns in the new liberalized environment for telecommunications services. It defended the idea to fund telecommunications development from the current regime of accounting rates. Our proposal is mainly motivated by the importance of accounting rates for network development of developing countries and the importance of ensuring global universal access to telecommunications services. The issue of universal access is a very important element, which should be considered when addressing international telecommunications issues. Access to universal service is considered a fundamental principle given the importance of communications for economic growth in the new information driven society. Indeed as powerfully stated by the ITU Secretary General, "The right to communicate understood as the access to universal service has to be viewed as a basic human right failing which the information age would have bypassed the majority of humankind".[101]

[101] "The Right to Communicate: A New Declaration is Born" ITU News No. 6/97. The right to communicate

However despite the importance of preferential treatment in the area of accounting rates and its contribution to telecommunications development, one should not lose sight of the fact that many developing countries will remain intact by the reform. According to the ITU many developing countries in Africa make settlement payments to developed countries. This is to say that the goal of universal access to basic telecommunications services cannot be reached without additional international commitments alongside the preferential approach to accounting rates reform.

understood as defined by ITU secretary General in the above quoted statement has been endorsed by the United Nations' General Assembly in December 1997.

For an Overview of universal access at a global level see ITU's latest world Telecommunications Development Report. ITU, *World Telecommunications Development Report: Universal Access* (1998).