

WORLD TRADE ORGANIZATION

S/C/9/Rev.1
15 June 2000

(00-2392)

Council for Trade in Services

TEXT OF THE PROPOSED "AGREEMENT BETWEEN THE INTERNATIONAL TELECOMMUNICATION UNION AND THE WORLD TRADE ORGANIZATION"

Note by the Secretariat

Revision

On 26 May 2000 the Council for Trade in Services adopted the attached text of the proposed cooperation Agreement between the World Trade Organization and the International Telecommunication Union. The text is a revised version of that circulated as S/C/9 on 31 March 1999. The text will now be submitted to the International Telecommunication Union Council for its approval.

ANNEX I

AGREEMENT BETWEEN THE INTERNATIONAL TELECOMMUNICATION UNION AND THE WORLD TRADE ORGANIZATION

PREAMBLE

CONSIDERING the growing interactions between trade and telecommunications policies pursued by individual countries arising from the globalization of markets and the growing awareness of telecommunications as a traded service;

RECOGNIZING the increasing linkages between the various aspects of telecommunications and trade policy-making that fall within the respective mandates of the International Telecommunication Union ("ITU") and the World Trade Organization ("WTO");

CONSIDERING that the purposes of the ITU are: to maintain and extend international cooperation between its Member States for the improvement and rational use of telecommunications of all kinds, as well as to promote and offer technical assistance to developing countries in the field of telecommunications; to promote the development of technical facilities and their most efficient operation with a view to improving the efficiency of telecommunications services, increasing their usefulness and making them, so far as possible, generally available to the public; to facilitate the worldwide standardization of telecommunications, with a satisfactory quality of service, and to harmonize the actions of Members States in the attainment of those ends;

CONSIDERING FURTHER that the purpose of the ITU is, in particular, to promote at the international level, the adoption of a broader approach to the issues of telecommunications in the global information economy and society, by cooperating with other world and regional organizations;

RECALLING Resolution 71 of the ITU Plenipotentiary Conference (Minneapolis, 1998) relating to the Strategic Plan for the Union 1999-2003, which lays down, among other strategic orientations for the Union, the establishment of partnerships through the conclusion of cooperation agreements with other intergovernmental organizations in cases where such cooperation would further the purposes of the Union;

HAVING REGARD to the General Agreement on Trade in Services (GATS) preamble which expresses the wish to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

HAVING FURTHER REGARD to the WTO Annex on Telecommunications in which WTO Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services and, to this end, endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union and which provides that in cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunication services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector and which recognizes the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and

undertakes to promote such standards through the work of relevant international bodies, including the International Telecommunication Union;

RECOGNIZING the close collaborative relationship existing over the past several decades between the ITU and the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, and the importance of continuing and strengthening such a relationship between the ITU and the WTO;

HAVING REGARD to ARTICLES 8 and 50 of the Constitution of the ITU (Geneva, 1992) which provide for the entering into agreements between the ITU and other international organizations and for cooperation between the ITU and other international organizations;

HAVING REGARD to ARTICLE V of the Agreement Establishing the World Trade Organization, ARTICLE XXVI of the GATS concerning consultations and cooperation between the WTO and specialized agencies of the United Nations and Section 7 of its Annex on Telecommunications recognizing "the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union" and directing that "Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.";

The ITU and the WTO agree as follows:

PARAGRAPH 1

The ITU and the WTO shall cooperate in the discharge of their respective mandates in accordance with the provisions of this Agreement¹

PARAGRAPH 2

The ITU and the WTO shall identify areas of common interest within their respective mandates, with particular emphasis on technical, regulatory and development matters concerning trade in telecommunications, in which cooperation may foster the purposes of both organizations. The WTO Secretariat and the ITU Secretariat shall endeavour to cooperate on matters relating to trade in telecommunications in areas of common interest identified pursuant to this paragraph.

PARAGRAPH 3

The WTO shall invite the ITU Secretariat as an Observer to meetings of the Ministerial Conference and the Council for Trade in Services. The ITU Secretariat shall also be invited as an Observer to meetings of other relevant WTO bodies (excluding the Committee on Budget, Finance and Administration, the Dispute Settlement Body, the Appellate Body and dispute settlement panels)

¹ For the purposes of this Agreement, any reference to the ITU or the WTO as such (and not explicitly to the ITU Secretariat or the WTO Secretariat) or to the institution or the organization, is understood to refer to the decision-making bodies of the ITU (e.g. the Plenipotentiary Conference, the Council, and the World Radiocommunication Conference) and the WTO (e.g. the Ministerial Conference, the General Council, the Council for Trade in Services), respectively.

where that body considers that matters of common interest to both organizations will be under discussion.

PARAGRAPH 4

The ITU shall invite the WTO Secretariat as an Observer to treaty-making Conferences of the Union (subject to the relevant provisions of its Constitution, Convention and procedural Rules). The ITU shall also invite the WTO Secretariat as an Observer to other conferences and meetings of the ITU when it determines that matters of common interest to both organizations will be under discussion.

PARAGRAPH 5

The WTO Secretariat shall make available to the ITU Secretariat the agenda of any WTO meeting to which it is an observer at the time of its circulation in the WTO, and for other meetings (other than those of the Committee on Budget, Finance and Administration, the Dispute Settlement Body, the Appellate Body and dispute settlement panels) if the agenda includes a telecommunications matter that may be of interest to the ITU. The ITU Secretariat shall make available to the WTO Secretariat the agenda of any Conferences or Meetings of the Union, subject to paragraph 4, at the time of its circulation in the ITU, if the agenda includes a telecommunications matter that may be of interest to the WTO. The ITU and the WTO Secretariats shall make available to each other in advance the relevant documents for the meetings to which they are invited pursuant to the terms of this Agreement. The ITU and WTO secretariats shall further make available to each other in advance information about any symposia, conferences, forums, seminars and workshops they are called upon to organize on matters which are of common interest to both organizations.

PARAGRAPH 6

The ITU Secretariat and the WTO Secretariat shall endeavour to cooperate in technical assistance and technical cooperation activities, within their respective mandates, for developing countries and shall provide information on regulatory matters relevant to trade in telecommunications, so as to maximize the usefulness of those activities to their respective Member States and Members and ensure their mutually supportive nature. For this purpose, the ITU Secretariat and the WTO Secretariat shall keep in regular contact and shall inform each other of relevant technical cooperation that each of the Parties is called upon to provide. Any project that either the ITU or WTO is called upon to undertake within its field of competence and which has specific elements coming within the scope of the other Party, will be brought to the attention of the other for consideration of possible joint implementation or partial participation.

PARAGRAPH 7

For the purpose of this Agreement, the Secretary-General of the ITU and the Director-General of the WTO shall ensure cooperation between the staffs of the two institutions on their respective activities and, to that end, shall agree on appropriate procedures for collaboration, and regular exchanges of information on technical, regulatory and policy issues related to trade in telecommunications.

PARAGRAPH 8

The ITU and the WTO recognize the importance of incurring no additional budgetary costs for the implementation of such cooperation activities as referred to in paragraphs 6 and 7 that they may identify and agree to undertake jointly. If necessary, other appropriate sources of funding shall be determined by the Secretariats.

PARAGRAPH 9

Subject to such limitations as may be necessary for safeguarding confidential material and in accordance with the rules of each institution, respectively, regarding restriction of circulation of documents, the ITU and the WTO shall arrange for the timely exchange of information, reports and other documents of mutual interest, including access to databases. The reports of WTO dispute settlement panels and the Appellate Body shall be made available to the ITU at the time of their circulation to all WTO Members. The ITU and the WTO shall ensure that any information communicated under this Agreement shall be used only within the limits specified by the other.

PARAGRAPH 10

The Secretary-General of the ITU and the Director-General of the WTO shall be responsible for the implementation of this Agreement and, to that effect, shall make such practical arrangements as they deem appropriate.

PARAGRAPH 11

This Agreement shall be reviewed upon the request of either the ITU or the WTO and may be amended by mutual written agreement. Any dispute which may arise between ITU and WTO concerning the interpretation or application of the Agreement shall be settled by negotiation between the Parties.

PARAGRAPH 12

This Agreement may be terminated by either the ITU or the WTO by written notice to the other and, unless otherwise agreed, shall terminate six months after receipt of such notice. *Notwithstanding its termination, the provisions of this Agreement shall survive to ensure that ongoing projects are completed.*

PARAGRAPH 13

This Agreement shall enter into force on the day following the exchange between the Parties of the instruments relating to the acts of formal confirmation by the ITU and WTO and in accordance with the terms stipulated in those instruments. It shall remain in force until it is terminated by one of the Parties in accordance with Paragraph 12 above,

IN WITNESS THEREOF, the undersigned, being duly authorized, have signed the present Agreement, in duplicate, in English, on the dates and at the places indicated below.

For the International Telecommunication Union

Y. UTSUMI
Secretary-General

For the World Trade Organization

M. Moore
Director-General

Place: _____

Date: _____

Place: _____

Date: _____

ANNEX II

Agreed Commentary on the

AGREEMENT BETWEEN THE INTERNATIONAL TELECOMMUNICATION UNION AND THE WORLD TRADE ORGANIZATION

(No Commentary on the Preamble)

PARAGRAPH 1

Comment: This paragraph provides the basis for cooperation between the ITU and the WTO.

PARAGRAPH 2

Comment: This paragraph provides for the ITU and the WTO jointly to identify areas of common interest with a view to ensuring that their activities are mutually supportive and serve to maximize the benefits of trade in telecommunications within the context of their respective mandates. This paragraph would not authorize either the ITU or the WTO to undertake activities outside the scope of their respective mandates.

PARAGRAPH 3

Comment: This paragraph deals with attendance by a representative of the ITU Secretariat, as an observer, at meetings of the specified bodies of the WTO. It also provides for the possibility of observer status for the ITU in other WTO bodies, where the body concerned agrees that matters of common interest to both organizations will be under discussion.

PARAGRAPH 4

Comment: This paragraph deals with attendance by a representative of the WTO Secretariat, as an observer, at conferences and meetings of ITU, which includes its Study Groups. Under the present ITU Convention and Rules of Procedure of the Council, only specialized agencies of the United Nations are listed among the organizations that are or may be invited to such meetings, but the practice followed at the ITU has been to informally consider the WTO as part of this category and to invite the WTO to the Plenipotentiary Conference and to other treaty-making conferences, as well as to other conferences and meetings where matters of common interest are discussed.

PARAGRAPH 5

Comment: For meetings to which representatives of either institution are invited, each institution will make available the agenda and relevant documents in advance of the meeting and when they are formally circulated in each institution. These measures should permit each institution to be adequately informed of the activities of the other in a timely manner. They will invite each other to participate in symposia, conferences, forums seminars and workshops under conditions to be agreed in advance.

PARAGRAPH 6

Comment: This paragraph provides for cooperation among the ITU and WTO Secretariats on technical assistance and cooperation with respect to developing countries. This paragraph does not commit the WTO to provide technical assistance to Member States of the ITU that are neither Members of the WTO nor negotiating accession thereto.

The cooperation envisaged may include continuing and expanding information programmes and seminars for developing countries on the GATS as it relates to and impacts on telecommunications, collaboration on technical studies, fostering the exchange of information on methods to promote competitive markets and other work to fulfill the objectives set forth in Opinions A and B adopted by the second World Telecommunication Policy Forum (March 1998).

PARAGRAPH 7

Comment: This general provision affirms the practice of cooperation between the staffs of the two institutions. The details of staff contacts can be determined by the Secretary General of the ITU and the Director-General of the WTO pursuant to their authority to implement the Agreement (see paragraph 10 below). It provides for a regular exchange of documentation between the two institutions and also provides for consultations as appropriate at the staff level and for the possibility to develop joint research, seminars and workshops, and technical assistance projects in areas of mutual interest.

The ITU Secretariat will continue to provide the WTO Secretariat access to the Telecommunications Indicators Database, as well as complimentary copies in appropriate form (print, diskette or CD-ROM) of ITU publications of common interest. The ITU staff will give sympathetic consideration to requests by the WTO Secretariat for other information and statistics. Any material provided to the WTO will be on the understanding that it is the copyrighted work of the ITU and redistribution beyond the WTO Secretariat is prohibited.

The WTO Secretariat will provide the ITU staff access to the Services Database of the WTO and to final schedules of commitments of WTO Members, as well as complementary copies in appropriate form (print, diskette or CD-ROM) of WTO publications of common interest on the understanding that the material provided is the copyrighted work of the WTO and that its redistribution beyond the ITU staff is prohibited. The WTO staff will give sympathetic consideration to requests by the ITU Secretariat for access to other information, statistics or databases.

It is understood that any information provided under this paragraph may be subject to a confidentiality constraint under paragraph 9.

PARAGRAPH 8

Comment: The two institutions are conscious of budgetary constraints and the importance of avoiding increases in overall costs to Members. Both organizations have, in the past, cooperated with other international and non-governmental organizations to obtain funding of technical studies and technical assistance projects for developing countries and would anticipate continuing to do so in the future to ensure, where necessary, adequate funding for worthwhile joint activities of this nature.

PARAGRAPH 9

Comment: This paragraph commits each institution to preserve the confidentiality of material received from the other organization. The general wording of the paragraph entails the possibility that restrictions may be placed on the use of the information either inside or outside the institution.

PARAGRAPH 10

Comment: The Secretary General of the ITU and the Director-General of the WTO are charged with implementing the Agreement. They are authorized to make supplementary arrangements within the terms of the Agreement.

PARAGRAPH 11

Comment: This provision requires the two institutions to review the Agreement if either one requests reconsideration of any matter in the Agreement; while there is no obligation to agree to amendments, any request for review would have to be examined in good faith. An amendment would require the consent of both parties. It also requires the institutions to resolve differences, if any, on its interpretation or application by means of negotiation.

PARAGRAPH 12

Comment: It is standard practice to include a paragraph on termination and its consequences in international agreements.

PARAGRAPH 13

Comment: Following approval by the Council of the ITU and the General Council of the WTO, this Agreement shall be provisionally applied from the date of its signature. Its entry into force shall take effect from the day following the date on which the WTO receives the instrument of formal confirmation from the ITU following approval of this Agreement by the ITU Plenipotentiary Conference.
