



Exploring the Limits of Legalization in the WTO:
The Case of the Basic Telecom Agreement

Meelis Kitsing
University of Massachusetts Amherst
mkitsing@polsci.umass.edu



What are the research questions?

- What is the degree of legalization in the WTO Basic Telecom Agreement?
 - In comparison with general WTO framework and main agreements.
- What does explain the different outcome in the Basic Telecom agreement?
 - In comparison with general WTO framework and main agreements.



Why study the WTO Basic Telecom Agreement

- Relevance in the context of academic literature.
 - The role of telecommunication infrastructure and regulations in explaining the rates of Internet diffusion.
 - Learning from other models and transfer of best practices (e.g. independence of regulator).
 - Regulatory governance and “regulatory state”.
 - IR/IL perspectives on nature and effectiveness of international organizations.
 - International and comparative political economy approaches (systems v. domestic).
 - “Varieties of capitalism” in comparative political economy.
- Policy implications



How do I approach the questions?

- First descriptive part.
 - The legalization of the Basic Telecom Agreement.
 - Commitments of four CEE countries.
- Second part - positive theorizing.
 - Rationalist IR/IPE theories.
 - Secondary sources.
 - Some empirical examples.



The Concept of Legalization (Abbott et al 2000)

- More legalized implies less political.
 - Constrains political discretion of states
 - E.g. “lock-in” for domestic interests
- Obligation
 - Legal rule-boundness
 - Not changed because of political reasons
- Precision
 - Exactness and specificity of rules
- Delegation
 - Third part dispute settlement system for implementing, interpretation and application of the rules.



The telecom agreement - obligation

- Deviation from the general principle of reciprocity and single-undertaking.
- Variations in time and areas of telecom services covered.
- Unclear relations between national commitments and general obligations.
- Allows withdrawing after three years when commitment has been made



The telecom agreement – precision and delegation

- Precision – deviation
 - Architecture of the agreement is highly complex and obligations differ greatly which makes it difficult to discuss precision in a general manner.
 - The wording of reference paper.
 - Interconnection – terms like “economically feasible”, “sufficiently unbundled” et al
 - Universal service obligations, licensing, regulatory independence are even more imprecise.
- Delegation – no deviation
 - Disputes are solved under the WTO dispute settlement mechanism and under special GATS agreement.



The commitments of four CEE countries

- All small, middle-income countries
- Joined the EU in 2004
- EU Telecommunications Acquis
- Expect homogeneous obligations but find significant variations instead.
- From no commitments to concrete commitments under the telecom agreement.



Possible explanations – domestic interests

- Investment and competition-related provisions in the agreement reach deeply into domestic politics.
- Regulatory regimes differ significantly.
 - Not just developing v. developed.
 - But among the developed countries as well.
 - Tenbuecken (2006) on the EU-level regulations.
 - Contrary to factor-endowment theories which would suggest that we would observe quite homogeneous telecom regulations in the countries with the same level of development.



Possible explanations – diversity of interests

- Corporate interests.
 - Telecom businesses
 - Take many different forms.
 - Incumbent telcos, small start-ups, more or less technology-intensive et al
 - Non-telecom businesses (e.g. American Express et al).
 - Different national characteristics
 - Firms differ in their preferences for regulation (Murphy 2004).
 - Not just race to the top or to the bottom
 - Heterogeneous regime in the telecom agreement
 - Structure of industry and specificity of assets in the domestic market determine these preferences.