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

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Abstract

The World Trade Organization (WTO) is seen by international law and international relations scholars alike as an international institution characterized by its high degree of legalization. This term defines that the rules of the WTO set concrete obligations for member states, that these rules are precise, and that settlement of disputes over the actual application of rules is delegated to an independent decision-making body. While this general characterization of the WTO institutional framework is accurate, it is important to note that the specific agreements within the WTO have varying degrees of legalization. The General Agreement on Trade and Services (GATS) has significantly lower degrees of obligation and precision than most other WTO agreements. Only the degree of delegation of the GATS is similar to other the main WTO agreements, such as the General Agreement on Tariffs and Trade (GATT). Thus, the overall degree of legalization of the GATS is characterized by substantial inconsistency when compared with the general WTO framework.

As GATS includes many different issues, I will assess the degree of legalization regarding world trade in services from the standpoint of the Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement), one of the annexes to the Fourth Protocol of GATS. Besides evaluating the telecom agreement according to the general criteria of obligation, precision, and delegation developed by Abbott et al (2000), I will look at four WTO member states and compare their respective obligations and the precision with which these obligations have been addressed as a result of GATS.

The second part of this research paper explores the reasons for the current degree of legalization in the Basic Telecom Agreement. In presenting my argument I will use international relations theories, particularly the neorealist and neoliberal institutionalist approaches, as well as the factor endowment model and interest group theories used by international political economy scholars. This paper presents the position that the Basic Telecom Agreement involves less legalization than most other WTO agreements mainly due to the competition and investment-related issues in the agreement. Of the explanations based on different theories, the interest group-based approach is the most compelling. Attempts to increase the degree of legalization of the Basic Telecom Agreement activate a vast variety of actors with opposing interests. The heterogeneous nature of interests implies that the result is a more heterogeneous regime than is otherwise the case with the WTO agreements. Any attempt to harmonize these issues on the global level runs deep into well-established domestic regulation and, thus, is heavily entrenched in politics. Even with the possibility of powerful global interests supporting the higher degree of legalization of the Basic Telecom Agreement, such efforts are off-set by other vested interests. Ultimately, the heterogeneous nature of interest groups whose business activities are impacted by the agreement makes it very costly to achieve a more legalized agreement.