

INTERNATIONAL REGIME AND THE ROLE OF THE STATE: TELECOMMUNICATIONS LIBERALISATION IN MALAYSIA – SINGAPORE

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ABSTRACT

This paper explores the role of the state; Malaysia – Singapore in developing communications policy after GATS (General Agreement on Trade and Services). Although there is substantial evidence that the forces of global media and international regime such as GATT/WTO and US structural power threaten the state in relations to communications and information, this paper seeks to examine what states can and cannot do in reference to Malaysia and Singapore. Certainly, states currently face changing and challenging conditions. The remarkable global expansion of media corporations, facilitated by liberalisation and privatisation of media system worldwide and the development of cable and satellite technologies, has reduced states' ability to exercise power and maintain information sovereignty. It would be unwarranted, however to conclude that the state no longer matters. Kenichi Ohmae (1996), however, proposed the idea of the end of the nation state and "nation states are dinosaurs waiting to die." Is that so for Malaysia and Singapore? This paper ultimately highlights how a changing regime in the telecommunications sector alters the way in which telecommunications, as an industry and in terms of policy of individual countries is developed and reshaped.

INTRODUCTION

Since the end of the Cold War, states have been engaged in competing for world market share rather than territory as the surest means to improve their national economies. As a consequence, the internationalisation of economic activity has accelerated interdependence in different areas of economic policy. Trade and financial policies are increasingly interlinked within and among countries (Lim, 1990:24).

International regimes provide a venue for states in the international system to arrange formal and informal agreements around rules, norms and modes of behaviour. They often take on the shape of formal institutions that guide the existence and maintenance of a set of principles. These regimes

institutionalise the norm of free trade with possible sanctions on trade barriers. Since its introduction in international relations literature, the concept of a regime has gained wide acceptance, and has been used by neo-liberals to describe cooperative arrangements between states and international actors ranging from security matters and international environmental problems to (in recent times) telecommunications issues (Finlayson and Zacher, 1983).

In particular, with the inclusion of telecommunications services within the Uruguay Round (UR) of the GATT and WTO, international trade regime and telecommunications issues have become increasingly linked. As a consequence, where in the past the international telecommunications regulatory regime was virtually constant, we witnessed parallel telecommunications negotiations within international organisations such the WTO, the G7 negotiations (Murphy, 1996).

NEW TRADE REGIME AND THE CREATION OF GATT

The trade policies generated by the Great Depression of the early 1930's exacerbated the world financial crisis and increased tensions between the great powers (Kindleberger, 1986). In response, the Bretton Woods institutions and the GATT were created after the end of World War II in the hope of establishing international institutions that would facilitate cooperation between the great powers to prevent a new world financial crisis. The US and the UK led in establishing the new framework of rules and regimes to govern the world economy (Eichengreen, 1996).

The General Agreement on Trade and Tariff (GATT) was first signed in 1947 with the aim of promoting economic co-operation between 23 original CPs (Contracting Parties). GATT 1947¹ was largely based on parts of the Havana Charter.² It was to be effected with minimal institutional arrangements because responsibility for trade liberalisation was expected to be assumed by the International Trade Organisation (ITO). However, the US Congress did not ratify the bill, which would have created the ITO and the GATT, as a more modest treaty-based structure was established. GATT 1947 was, consequently, a treaty without its planned administering organisation and which covered only a part of its original intended scope (Lim, 1999:3).

The GATT basically represented free, non-discriminatory trade and was designed to foster progressive lowering of tariff barriers on a multilateral basis. However, the multilateral trade negotiations in GATT disclosed considerable differences of interest among trading nations. While the developed countries were often adopting restrictive inward-oriented policies in attempts to protect and to modernise their economies (Hufbauer and Kotschwar, 1998).

The differences and resultant conflicts among the trading nations, therefore, led to the transformation of the nature of the GATT regime with numerous compromises. Ruggie (1982) argues that there was a big difference between the 19th century liberal trade regime and the GATT regime. He argues that unlike the laissez-faire liberalism of the gold standard and free

trade, which was designed to be multilateral in nature in the 19th century, the post war GATT regime was a deliberate compromise between the imperatives of domestic interventionism and international liberalism. Under the “compromise of embedded liberalism” inherent in Bretton Woods,³ national states were supposed to pursue Keynesian macroeconomic policies internally without disrupting international stability (Ruggie, 1997:6). Ravenhill (1996; 1999) also argues that the success of the GATT lay in its combination of flexibility and rigidity, saying that GATT was sufficiently flexible, especially in its escape clauses such as its safeguard provisions, to allow governments in the post-war period to undertake trade liberalisation without putting domestic political and economic stability in danger (Ravenhill, 1996; 1999). In other words, the significance of multilateralism in international trade was reduced to mean non-discrimination above all. The reduction of trade barriers also played a role in American thinking, but there was a concern with barriers that were difficult to apply in a non-discriminatory manner. Tariff reduction was subject to much greater domestic constraints. For their part, the British made it clear from the outset that they would not approve dismantling of imperial preferences unless the US agreed to deep and linear tariff cuts. In this process, GATT was transformed by so many safeguards, exemptions, exceptions and restrictions. For instance, the GATT system made the most-favoured-nation rule (MFN) obligatory, but a blanket exception was allowed for all existing preferential arrangements, and countries were permitted to form customs unions and free trade areas (Ruggie, 1983).

Despite all these factors, GATT was the most ambitious trade negotiations ever held. Accordingly, eight rounds of multilateral trade negotiations were held in the GATT system. Table 1 shows a brief overview of the main elements of the negotiations. The first six rounds were largely concerned with mutually negotiated tariff reductions. The first five rounds dealt exclusively with tariffs. From the Kennedy round, attention began to shift towards non-tariff trade restrictions and to the problem of trade in agricultural products. Although the Kennedy round dealt only with non-tariff barriers that were already covered by the GATT, the Tokyo round addressed policies that were not subject to GATT disciplines. This trend was continued in the Uruguay Round (UR), which included trade in services and intellectual property (Hoekman and Kostecki, 1995). Among GATT rounds, therefore, the Uruguay Round trade negotiations were very important in that it was the first round to cover services as well as goods. Its aim was to reduce trade restrictions and to encourage free trade on a multilateral basis and it made considerable progress. Two major trends were “(1) the large number of developing countries that had undertaken the unilateral liberalisation of trade restrictions; and (2) changes in approach to the GATT, in particular the increased participation of developing countries in the UR”⁴ (Hufbauer and Kotschwar, 1998: 15).

Table 1: A Brief History of GATT

Name of Round	Dates	Subjective and Modalities
1. Geneva	1947	<ul style="list-style-type: none"> • Adoption of GATT (item-by-item negotiations)
2. Annecy	1949	<ul style="list-style-type: none"> • Tariff reduction (item-by-item negotiations)
3. Torquay	1951	<ul style="list-style-type: none"> • Tariff reduction (item-by-item negotiations)
4. Geneva	1956	<ul style="list-style-type: none"> • Tariff reduction (item-by-item negotiations)
5. Dillon	1960-62	<ul style="list-style-type: none"> • Tariff reduction (item-by-item negotiations)
6. Kennedy	1962-67	<ul style="list-style-type: none"> • Tariff reduction (formula approach, supplemented by item-by-item negotiations)· GATT negotiations rules
7. Tokyo	1973-79	<ul style="list-style-type: none"> • Overall reduction of tariffs to an average level of 35% and 5-8% among developed nations (formula approach). Non-tariff barrier codes <ul style="list-style-type: none"> - government procurement - customs valuation - subsidies and countervailing measures - anti-dumping - standards` - import licensing
8. Uruguay	1986-94	<ul style="list-style-type: none"> • Broadening of GATT (combination of item-by-item formula negotiations) <ul style="list-style-type: none"> - limit agricultural subsidies - include services trade - include intellectual property· • Establishment of the WTO

Source: Adapted from Hoekman and Kostecki (1995) and <http://pacific.commerce.ubc.ca>

In addition to tariff reductions on goods, there was the hottest debate on whether or not the services sector should be included in the GATT negotiations. The US strongly insisted that the services sector such as culture, broadcasting and telecommunications be included in the GATT negotiation from the outset of the Uruguay Round in 1986, and pushed for liberalisation of these service markets. Liberalisation of trade in broadcasting and cultural products was among the hottest issues that were discussed until the last moment of the UR. However, due to strong objections from European countries (mainly France), negotiations ended with excluding such products from the GATT agreement. The outcome derived mainly from the European countries' concern about US dominance in international cultural and audio-visual industries (Wasko, 1995: 163). The telecommunications sector also showed a similar story.

However, mainly because the US realised that inclusion of telecommunications into the GATT would not benefit her companies as much as that of their competitors, the US itself withdrew telecommunications services from the final agreement. In other competition, a profits loss would hinder their overseas expansion (Hills, 1994a: 265-269). That was why the US insisted that unless other countries open the entry of foreign companies to all aspects of their networks, she would not sign a GATT agreement on telecommunications (Hills, 1994b: 185).

Despite the exclusion of these services, however, when the member countries of GATT finally reached agreement on the UR on December 15, 1983 they agreed to the completion of negotiations that had progressed concurrent to the UR – the Group of Negotiations in Services (GNS). At their conclusion in April 1994, 125 countries signed the Final Acts of the UR in Marrakech, establishing the World Trade Organisation (WTO), to which the General Agreement on Trade in Services (GATS) was annexed. In the GATS telecommunications played a significant role because of its dual role as a tradable service in its own right and as a mode of delivery of other services and goods (Sherman, 1999).

The GATS covers trade and investment agreements and establishes rules concerning the treatment of government regulation of trade in services, service suppliers and foreign services. Some of these GATS provision apply to all WTO members, while others apply only if that member makes certain Member Commitments. In addition, they do not cover the issue of equitable, reciprocal market access, nor national treatment. However, GATS does require that WTO members provide Most Favoured Nation (MFN) treatment for services and service suppliers from WTO members regardless of their commitments. It means a country cannot discriminate among members once it has agreed to open its markets. In the UR, only a few WTO member countries were open to market access commitments. Some members only made commitments in certain areas or services. In addition, agreements such as those considered in GATS, had typically been made in the area of Enhanced Telecommunications Services, such as value added services, but not in the area of Basic Telecommunication Services (Tuthill, 1997).

THE INTERNATIONAL TRADE REGIME AND ITS RELEVANCE TO THE COMMUNICATIONS SECTOR: THE CASE OF WTO

It has been commonly accepted that the completion of the Uruguay Round and the creation of the WTO have widened the scope of the multilateral trading system. Indeed, the WTO provides a single institutional framework for administering all the agreements on trade embodied in the Marrakesh Agreement⁵, as well as those inherited from the former GATT negotiating process. Thus the agreements, administered by the WTO include the "GATT 1947," and all agreements and Ministerial Decisions resulting from the UR. The agreements have three main objectives: "to help trade flow as freely as possible, to achieve further liberalisation gradually through negotiation, and to set up an impartial means of settling disputes" (Hufbauer and Kotschwar, 1998:6).

In theory, the GATT and WTO are dedicated to advancing multilateral liberalisation in trade. However, there are significant differences which make the WTO a more powerful instrument of liberalisation. First, GATT was little more than a framework for negotiating trade liberalisation, whereas the WTO is a fully-fledged international institution with a permanent secretariat, staff, and status in international law. Second, while GATT only covered trade in goods, WTO rules cover trade in goods and services as well as trade related intellectual property rules. Third, the WTO has a new dispute resolution system, which can quickly and effectively assess complaints and punish violations of WTO rules by member states. Fourth, the WTO includes a surveillance function, which monitors the trade-related policies of member states through its Trade Policy Review Division. In addition, quite unlike IMF, whose primary output is adjustment assistance (advice and loans) to individual countries, or the World Bank, the primary output of the WTO is rule writing and enforcement of an explicit international regime (Lim, 1999:4).

In fact, the WTO represents the rules-based regime of the policy of economic internationalisation. The central operating principal of the WTO is that commercial interests should supersede all others. Any obstacles against the operations and expansion of international business must be eliminated. As a consequence, power in the WTO is now concentrated in the hands of large users, such as computer and electronics companies, rather than within households and among rural users (Cowhel, 1990: 195). In particular, MNCs had become eager to use international communication technologies to become "virtual corporations," and to achieve this purpose, they lobbied the GATT/WTO forum to have the US liberalised regime adopted by other nations. Some scholars argue that the GATT/WTO itself is "certainly part of the overall US attempt to find a new equilibrium in a period of structural change in the international economy that includes a decline in its hegemonic position" (Braman, 1990:355)

Furthermore, in the WTO system, governance is theoretically through consensus decision-making by the contracting parties. The reality is that key

decisions are made by the major trading blocks such as the US, EU and Japan, which often reach agreement among themselves, consult with some other big trading countries, and then oblige the majority of parties to sign on.⁶ Developing countries find they have little real influence. Decision-making processes are not publicly transparent. The important countries are heavily influenced by their big corporations, which now successfully play a role in setting the negotiating agenda (Lim, 1999:30).

THE ADVENT OF THE WTO AND ITS NEGOTIATION ON BASIC TELECOMMUNICATIONS

On December 15, 1993, seven years of GATT negotiations ended, with 117 countries approving by consensus the final GATT. Due to the exclusion of cultural and media products and services from the final agreement, however, participants in the UR began to discuss the possibility of extending negotiations on this service. Among them was the liberalisation of basic telecommunications. In fact, basic telecommunications remained an unresolved issue during the UR and was therefore allocated a separate negotiating plan with its own timetable. In many ways this reflected the fact that many governments were in the midst of a paradigm shift in their attitude to the liberalisation of telecommunications markets (Hoekman and Kostecki, 1995).

Early in the UR, GATT representatives formed fifteen negotiating groups, one of which was assigned the topic of trade in services including measures and practices affecting the expansion of trade in services. When the GATT's trade in services group met in 1989, most of the deliberations focused on the telecommunications and construction sectors. Regarding telecommunications, there was a majority view to the effect that GATT policies relating to trade in services should initially apply only to enhanced and not to basic services. Representatives of some countries stressed the security and privacy aspects of telecommunications flows, while several from developing countries emphasised the need for subsidising rural telephone services by excess revenues from more profitable activities (Snow, 1989:18). However, given the dramatic changes under way in certain national regulatory regimes and the likelihood that the US would request an MFN exemption to cover trade in basic telecommunications, negotiators felt that if the negotiations were extended, there was a greater chance of achieving meaningful commitments on basic telecommunications, and of perpetuating negotiations in a multilateral rather than bilateral setting. Accordingly, the WTO was created in Marrakech in April 1994 and the ministerial meeting decided to establish the Negotiating Group on Basic Telecommunications (NGBT) (Fredebeul-Krein and Freytag, 1999).

The NGBT was established in May 1994 under the 'Council on Trade in Services' by the Ministerial Decision on Negotiations on Basic Telecommunications, attached to the Final Act of the Uruguay Round. During the negotiations, the US insisted that in order to ensure an effective implementation of NGBT outcomes, a pro-competitive regulatory framework

would be necessary, and for this to be achieved fair competition between operators, prevention of anti-competitive practices, transparency of regulatory procedure, fair and economical interconnection were crucial (Drake and Noam, 1997). In due course, a reference paper on definitions and principles on the regulatory framework for the basic telecommunications services was adopted by the majority of the participants. The reference paper indicated measures to be taken to ensure fair competition between operators including prevention of anti-competitive practices, transparency of licensing and interconnection procedures (ICO, 1996).

Furthermore, the US strongly demanded that all countries particularly developing countries open international telephone services. Although this assertion was rejected by most participants, an offer list was ultimately submitted in April 1996 by developing countries. It seemed that the negotiations were expected to conclude in early 1996. However, at the final stage of negotiations, the board of directors of the WTO on services concluded that the negotiations should be postponed until February 15, 1997 (Aronson 1997: 15-16). The main reasons were the failure to meet "critical mass" and insufficient offers in international and satellite services sectors. Besides, it was due to the EU's refusal to modifying its offer and some South-East Asian countries' reluctance to submit offers. However, the more realistic reason seemed to be pressure against agreement from the service providers of US international and satellite services industry such as Iridium (backed by TRW).⁷ Consequently the NGBT, which had led negotiations on basic telecommunications since 1994 renamed itself as GBT (A Group on Basic Telecommunications) to deal with negotiations thereafter (Lee and Lie, 1997).

MAIN ISSUES SURROUNDING WTO NEGOTIATIONS

Taken as a whole, there were three essential debating issues to be addressed during the GBT: *critical mass, satellite services and international services*. The logic behind the critical mass concept would appear to be that as long as enough major markets liberalise, the damage that can be done to US carrier interests will be small, so others will be allowed to free ride on the deal (Holmes and Kempton et al., 1996: 763). Lee and Lie (1997) also stressed that critical mass means a quantity as well as quality of offers submitted but the US did not define it clearly, for the sake of its negotiation strategy. According to the US criteria, critical mass included EU, Japan, Canada, other OECD members, Singapore, Korea, Chile, Mexico, Brazil, Argentina, India, Indonesia, Thailand and Malaysia. The US made it clear that if these countries did not offer fully-fledged liberalisation schedules based upon MFN, it would not agree to the conclusion of the negotiations. It is not sure how much the US benefited from "the critical mass" logic. However, with this strategy, the US could suggest the focal point for negotiation, thereby initiating negotiations.

Satellite was another controversial issue, especially new mobile satellite communications services. Discussion on satellite services centered on the questionnaire provided by the US. However, it fell far short of solving problems in many issue areas: scheduling methods; the legal status of

Intergovernmental Satellite Organisations; the harmonisation of frequency allocation among members for Global Mobile Personal Communications by Satellite (GMPCS);⁸ the differentiation of satellite services from broadcasting services, and so on. As far as GMPCS was concerned, at the initial stage, the US was pledged to open its satellite market, but when the European-initiated Project 21 (or known as, the International Communications Organisation - ICO) was assessed as superior to its American competitors such as Iridium and Globalstar, the US negotiators insisted on withdrawing the satellite service sector at the WTO (Aronson, 1997; Shim, 1999). Aronson (1997) points out that the three main US satellite firms licensed by the FCC became worried that the agreement might allow ICO, not only to enter the US market but also to use its close relationship with Inmarsat and the dominant operators in some developing countries, to hamper the access of the three other satellite service providers around the world.

The last issue was international service. International telephone services represent one of the most profitable telecommunications markets in many countries and prices were kept high by restrictions on entry and a complicated system of accounting and settlement rates for terminating international calls⁹ (Blackman and Cave et al., 1996: 722). In this situation, the US companies and negotiators were concerned that many countries would not open their markets for international telephone services and would enter the US market freely and use resale services¹⁰ to provide an international telephone service. In particular, US operators had strongly criticised the anomaly of the accounting rate. The US, which originates more calls than its partners, thus finds its firms paying out much more than they receive, while developing countries' telephone companies have benefited from this mechanism (Holmes and Kempton, et al., 1996: 762).

Despite clashing interests between the member countries, on the multilateral level, the results of the telecommunications negotiations were to be extended to all WTO members on a non-discriminatory basis through MFN treatment. However, the legal basis for the negotiations made it possible for each WTO member to decide individually whether or not to file an MFN exemption on a measure affecting trade in basic telecommunications services. The WTO negotiations on market access for basic telecommunications had resulted in 34 offers by the time they were originally scheduled to end in April 1996 (WTO, 1997). On 15 February 1997, 69 members¹¹ of the WTO finally entered into the Fourth protocol to the GATS relating to basic telecommunications services and the Annex 1 was the offer lists from major WTO member countries.

INFORMATION AND TECHNOLOGY AGREEMENT (ITA)

Meanwhile, it should be noted that during the GATT/WTO negotiations, the US used another strategy for opening the world information technology market, through Information Technology Agreement (ITA). The ITA is a pluralateral trade agreement that requires participants to eliminate their tariffs on a specific list of information technology (IT) products, such as computer

hardware, peripherals, telecommunications equipment, computer software, semiconductor manufacturing equipment and other electronic components. The agreement covers approximately 95 percent of world trade in defined information technology products (Johnson and Kitzmiller, 1998).

During the Uruguay Round of GATT, the electronics sector was one of the so-called "zero-for-zero" sectors for which US trade negotiators wanted to achieve complete elimination of tariffs by major trading partners. Although this initiative was not realised at that time, the IT industry associations of the US, Europe and Japan since then recommended to the G-7 meeting in Brussels on the Global Information Infrastructure (GII) in January 1995, the elimination of tariffs in the IT industry through the adoption of an information technology agreement. Such an agreement was drafted during a Ministerial meeting of the World Trade Organisation (WTO) in December 1996 in Singapore, and negotiations on the Information Technology Agreement were concluded in Geneva on March 26, 1997. The US implemented the ITA domestically, in July 1997 (Jo, 1999a). For this purpose, the US led ITA negotiations to remove any possible barrier to make information technology product tariff-free. The US later took advantage of APEC in completing ITA negotiations product tariff-free.

US STRUCTURAL POWER AND ITS IMPACT ON THE INTERNATIONAL TRADE REGIME

In the post-war period US trade policy has centered on the creation and perpetuation of liberal trade regime. Although all aspects of the liberal regime were never incorporated into international trade relations, the US has promoted this liberal ideology. With US economic and political power in relative decline, and with American producers facing competition at home as well as abroad, however, some argue that the US should no longer be interested in providing the collective goods necessary to keep international trade liberal (refer Gilpin and Krasner's argument). In fact, today, the US commitment to multilateralism is less clear. Across a wide range of issue areas such as international trade, the US has taken to formulating its national interests narrowly and pursuing its goal unilaterally or bilaterally (Patrick, 2000). In this regard, Goldstein (1986) argued that although there has been a growing contention that the US is reducing protectionism, no empirical evidence validates this contention.¹² In other words, if we look at the trade trends since 1980s, it is not difficult to identify the US trade policy toward protectionism, using on the one hand a multilateral and on the other hand a bilateral strategy.

Firstly, since World War II, the US has promoted free trade by continuous efforts to lower tariffs mostly through the GATT. However, such market liberalisation with major trade partners fell short of US expectations and cheap imported products, such as Korean personal computers rushed into the US market in the 1980s. With ongoing trade deficits deepening, the US government finally started to demand comprehensive sanctions against unfair trade practices of foreign countries and enacted the Trade Act of 1974, which

contains the well-known Section 301. During the 1980s, its protectionist movement gave birth to Omnibus Trade and Competitiveness Act of 1988, which encompasses "Super 301," "Special 301" and "Telecommunications 301". This in turn developed into the Uruguay Round Agreement Act of 1994 for domestic legislation of what had been negotiated in the Uruguay Round (Park, 1999a). Since then the US government has continued to make full use of either Article 301 or the WTO dispute settlement procedure to maximise its national interest. As the unilateral trade measures are retaliatory in nature, they are likely to clash with the norms and the dispute settlement system of the WTO. Regarding this, Noland (2000) argues that the development of the WTO and its improved dispute its old unilateral strategies. He added that although under domestic law the US retained its various trade retaliatory measures (Section 301, Special 301 and so on), the unilateral use of these measures would certainly not withstand a WTO challenge.

However, unlike Noland's argument, it is not difficult to see how Article 301, which allows the US to impose harsh unilateral sanctions against trade partners, has been used as a valuable tool to position the US on a more advantageous footing in bilateral trade negotiations. The US has been dependent upon the dispute settlement body of the WTO more than any other country since its inception in 1995. Grinols (1999) shows that the US is a major user of the WTO dispute settlement process. In the WTO era the US was complainant in 54.5 percent of completed cases (12 of 22 cases). Since the US was the defendant in another 22.7 percent of the adopted panel reports (5 of 22 cases), the US was involved in fully 77.3 percent of the completed WTO cases (see table 2). Since the US government revived the Super 301 trade law on 26 January 1999, it was expected that the US would step up pressure on the other countries to further open their markets to American goods.

Secondly, there is also concern that US legislation on establishing effective competition in telecommunications markets still allows discrimination against potential foreign competitors. The US still keeps restriction on the provision of one-way satellite transmission of Direct to Home (DTH), Direct Broadcast Satellite (DBS) and digital audio services, following the exemption to the MFN principle taken by the US at the very last moment of the GATS negotiations on basic telecommunications services in 1994 (Satcoms Insider, 2000). Another example of protectionism is the open entry standard implemented by the FCC. To sum up, these examples seem to be parts of the overall trade strategy of the US in which the US government has used its structural power to establish an international economic order that benefits its interests since the Second World War.

Table 2: Participation of the US in the Panel Process (GATT/WTO)

Period Name	Period	Total Reports	US-Complainant % of All Cases	US-Defendant % of All Cases
Pre-Sec 301	1 Jan 1948 – 31 Dec 1975	27	14.8%	18.5%
Post-Sec 301	1 Jan 1975 – 31 Dec 1985	31	41.9%	19.4%
Uruguay Round	1 Jan 1986 – 31 Dec 1994	43	30.2%	39.5%
WTO (Completed Panels)	1 Jan 1995 – 31 Dec 1999	22	54.5%	22.7%
GATT (Totals)	1 Jan 1948 – 31 Dec 1994	101	28 (0.6)	27.7%
WTO (Still-Achieve Panels)	1 Jan 1995 – 31 Dec 1999	22	9 (3.9)	40.9%

Source: Adapted from Grinos, Earl L. (1999), Does the WTO Worsen Trade Disputes? Evidence From US Cases, paper presented at WTO and World Trade Conference, held simultaneously in Seattle at 5.30 pm, 4th December, 1999 and Hong Kong at 9.30am, 5th December 1999, University of Washington, USA, p.9.

MALAYSIA – SINGAPORE: LIBERALISATION OR GOVERNMENT INTERVENTION?

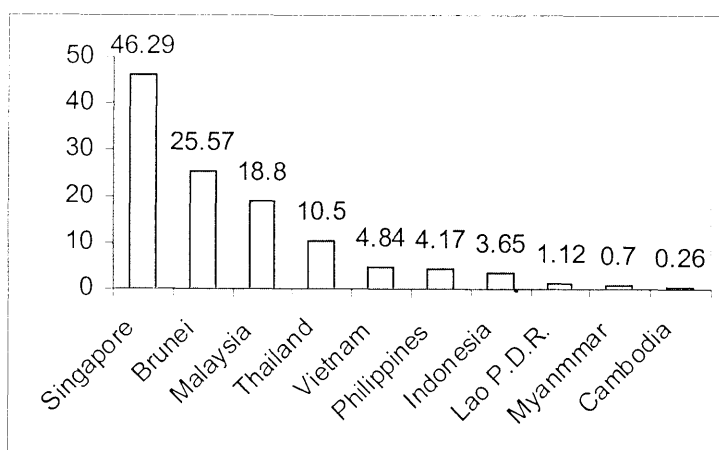
The impact of WTO-GBT agreement towards both countries could be analysed on both states action. GATS Article XVII concerns national treatment, or the obligation to accord foreign services and service suppliers treatment no less favourable than what a country affords its own services and suppliers. This is important in telecommunications, but in truth most governments have not historically had formalised derogations from the national treatment standard on which concessions had to be listed in the GBT. The second major component of the GATS is the annexes. The Annex on Telecommunications establishes for governments to ensure access to use of public telecommunications transport networks and services. In other words, public telecommunications systems must be accessible to foreign service providers via liberalisation.

Table 1 ICT Access Among Developed and Developing, 2003
(Every 1,000 population)

Countries	Telephone Lines	Personal Computer	Numbers of Internet Users
Malaysia	623.6	166.9	344.1
Singapore	1302.8	622	508.8
Indonesia	126.8	11.9	37.6
Thailand	499.1	39.8	110.5
Japan	1150.9	382.2	482.7
United States	1164.3	658.9	551.4
Britain	1431.3	405.7	423.1
Sweden	1624.5	621	573.1

Source: *World Development Report 2003*¹³¹³

Table 2: Basic Indicators: Fixed Line Penetration, Selected ASEAN Countries



Source: International Telecommunications Union (ITU)

On January 21, 2000, the Singaporean government surprised the world with its announcement introducing full market competition in the telecommunications sector by 1 April 2002, which was two years ahead of schedule. Effective from 21 April, all foreign and domestic companies are now eligible to apply for a license to operate either services-based or facilities based telecommunications services. Owners of submarine cable will have landing rights in Singapore and can offer additional bandwidth to users. And finally, the government announced the immediate lifting of both direct

and indirect foreign equity limits for public telecommunications services licenses.

Table 3: Singapore's Telecommunications Equipment Market
(in USD millions)

	1997	1998	1999
Total Market Size	1672	1174	1300
Total Local Production	2289	1882	2000
Total Exports	4079	3223	3500
Total Imports	3462	2515	2800
Imports From the U.S.	508	358	400

Source: U.S. and Foreign Commercial Service

Thus, this announcement ends the duopoly status of Star-Hub and SingTel, the two existing licensees of public basic telecommunications services. Within two months of announcing full liberalisation for the industry, the Singapore government awarded a total 66 licenses plus an expectations for applications from major global carriers over the next six months. Soon after signing the WTO-GBT binding agreement in 1997, Singapore touted herself and others as an Intelligent Island. It has among the world's highest internet penetration rate and it created the world's first broadband network, Singapore ONE (One Network for Everyone). It also promulgated a set of rules that censored internet content (Ang and Nadarajan, 1996, Peng, H.A et. al., 2003).

Singapore ONE is a nationwide multimedia broadband infrastructure jointly spearheaded by the Telecommunication Authority of Singapore (TAS), the National Computer Board (NCB), the National Science & Technology Board (NSTB), the Economic Development Board (EDB), and the Singapore Broadcasting Authority (SBA). The composition of the agencies is significant in highlighting the intent of the government. The regulators are present: the TAS regulates the technical aspects of telecommunications; the SBA regulates broadcasting as well as internet content. The technology promoters are present: the NCB and NSTB promote ICT and between them conducted some research as well. The investment promoter is also present: the RDB promotes investment particularly by foreign companies, in the Singapore economy.

It was envisaged that, S-ONE would cover the entire island of almost 1 million households within five years of the launch and attract some 400,000 subscribers by 2001. The island has indeed been wired, but as of January 2001, the number of subscribers was 84,700 (Aizu, 2002). In Singapore case, S-ONE was a bold experiment using the "field of dreams" (Peng,H.A, et al, 2003) approach of building it. Such an approach has worked for such massive infrastructure undertakings as the airport and seaport, both of which are world-class entities in their own right. However, when it came to broadband,

the players did not appear, the handful of test applications emerged were few and far between.

At the same time, S-ONE may have been a victim of the success of the internet. The network uses ATM (asynchronous transfer mode) backbone to provide ATM users with broadband access through high-speed ADSL modem or through cable modem (Singapore ONE 1997). Broadband technology was not mature then in 1997 and using ATM was more costly and complicated than using internet protocol (IP). Aizu (2002) suggests that there were other non-technical reasons. The key reason being the lack of competition in the broadband market. A consortium, 1-NET, was set up to own and operate S-ONE. The company began to offer commercial access to broadband in 1997. The shareholders of 1-NET were the incumbent PTT (then) Singapore Telecom (which held 30% of 1-NET), the monopoly cable television provider Singapore CableVision (30%), the telecommunications regulator TAS (10%) and two internet service providers Pacific Internet and Cyberway (15% each). The ISPs had decided to come in late in the day because it was not clear if 1-NET, by providing broadband access, would be their competitor. The ISPs had therefore joined 1-NET as a defensive move. However, because all of the three major ISPs (including Singapore Telecom's SingNet) were in the same consortium, this meant that in those early days, there was no competition in broadband access in Singapore.

There was no "killer application" on S-ONE to compel subscription. In 2001 as the subscriber target was not met, 1-NET modified its business plan into a multi-service provider including the running of data centers for government sites. Meanwhile, the incumbent Singapore Telecom (SingTel) and the monopoly cable television provider Singapore Cable Vision (SCV) began to provide broadband access. Both of these government-linked companies owned the physical infrastructure.

The duopoly of the two Government-Linked-Companies (GLCs) in the early Singapore broadband market and their monopoly hold on the network left little room for competition. Price is important. In Singapore's case, broadband penetration adoption rose dramatically between 2001 and 2002 because the subscription rate dropped from S\$80 a month in 2001 to S\$48 a month a year later (Chellam, 2003).

In July 2000, SingTel did open its ADSL (asynchronous digital subscriber line) network to competition, and in September 2000, the SingTel subsidiary SingNet launched its public broadband service. By that time, however, it was too late for SingTel; the government saw the impact of the lack of liberalisation on the Singaporean telecommunications market.

On April 1, 2002, the Singaporean government announced the introduction of full market competition in the telecommunication sector. The direct and indirect foreign equity limits for all public telecommunications services licenses would be lifted ("Singapore Rushes" 2000). As part of the liberalisation of the telecommunications market in April 2002, and to attract more international broadband players into Singapore, the Information-Communication Development Authorities (a new entity formed through the merger of the National Computer Board and the Telecommunications

Authority of Singapore) introduced the Open Access Policy. This policy enabled other ISPs using SingTel’s ADSL network or SCVs cable network to provide broadband service to customers. The Singaporean government felt that this policy would help to promote competition in broadband Internet access services, thus affording consumers with wider choice of Internet service providers (“Government may open SingTel”, 2000).

In Singapore’s case, government intervention does appear to play a part in the initially slow uptake of broadband. Operators complain of regulatory and administrative burdens, and these regulations also reduce the flexibility of operators to develop targeted service packages. As of January 2003, Singapore had 129,000 ADSL subscribers and 102,000 cable modem subscribers (IDA 2002a), and by contrast, there were around 600,000 dial-up subscribers in 2002 (Chellam, 2003).

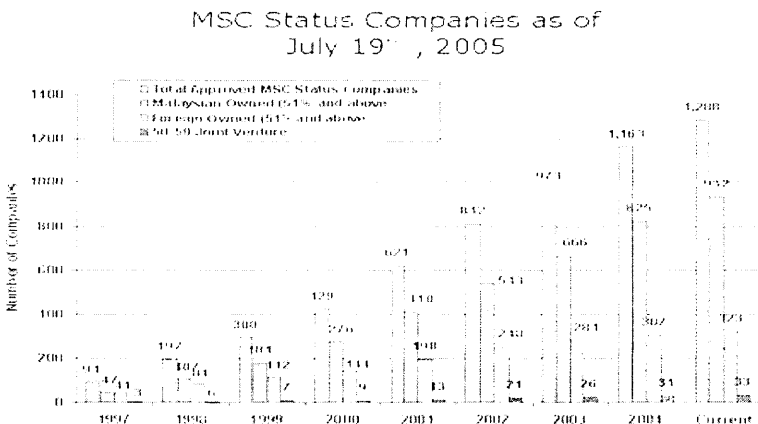
The Malaysian government have the same wish to ‘jump’ to the information technology era and envisioned for the country to be a regional hub. In order to approach the objective, the government formed the *National Information Technology Council*. The Council is to ensure the acceptance of information technology by the people to access knowledge and second, the use of information technology to accelerate productivity.

IT is agreed as an agent that can be used to move the economic strategically and to support the Malaysian economic development and to improve the quality of life of the citizen.

RM7 (1996:477)

Info-communications is recognised as a high value-added growth industry, offering attractive new business opportunities and value-added services. The Malaysian government predicts that the use of info-communications will boost the competitiveness of all other sectors of its economy as well (Ref. Table 4)

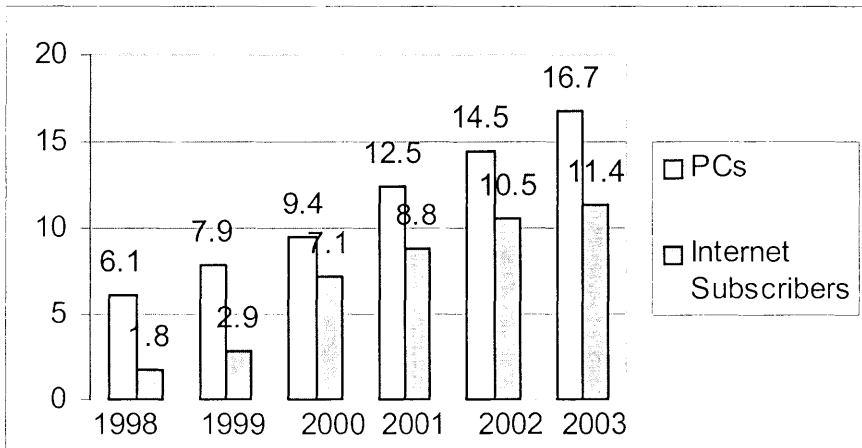
Table 4: MSC Status Companies, 2005



Source: <http://www.mdc.com.my>

In order to become the leading info-communications hub in the Asia-Pacific, the Malaysian government insists that its telecommunications market be globally competitive, with many players offering innovative, high quality and cost effective services. The government invested RM1.3 billion in 1990 and RM3.8 billion in 1995 (Malaysia, 1996) in order to achieve the country's vision and spent more than RM5 billion in 2000 – 2005. In 1996 Malaysia established the Multimedia Super Corridor (MSC) in order to attract leading ICT companies of the world to locate their industries in the MSC and undertake research, develop new products and technologies and export from this base. The MSC vision is to spur a growth environment for Malaysian ICT SMEs and transform themselves into world-class companies. The MSC welcomes countries to use its highly advanced infrastructural facilities as a global testbed for ICT applications and a hub for their regional operations in Asia.

Table 5 Malaysia: PCs and Internet Subscribers



Source: ITU

Broadband penetration rate remains at 0.44 subscribers per 100 inhabitants or 1.98 subscribers per 100 households and 98 per cent of broadband connections are over xDSL. Despite liberalisation effort, there are still areas underserved and internet penetration is encouraging but remain rather low (Table 5). In terms of regulatory framework, Malaysia adopted an independent regulatory model with the formation of Malaysian Multimedia and Communications Commission (MCMC) through the Communications and Multimedia Act, 1998. Thus the communication sectors are governed by several bodies after the Act. The Public Broadcasting System (PBS) remains with the Ministry of Information while their power being reduced. The private television station and satellite TV and new technologies are governed by the Ministry of Energy, Communications and Multimedia, the print media is governed by the Ministry of Home Affairs while the film industry is governed by the Ministry of Arts, Culture and Heritage.

Liberalisation increased United States (US) exports to Singapore in telecommunications equipment and it remains high and reached highest peak in 1997 - during the regional financial crisis. US telecom equipment exports to Singapore grew steadily between the years 1989 and 1995 just before the WTO-GBT binding agreement. Exports increased dramatically in 1995, peaking in 1997. However, in 1999 onwards, exports remain at much lower levels than earlier years due to US trade deficit with Singapore telecom equipment. In fact, pre-WTO agreement, US factory sales of telecommunications equipment reached US\$63.7 billion (TIA, 1997). In 1996, just a year before the WTO-GBT agreement, Malaysia remains the 5th import source for U.S telecommunications equipment. So, with a continued and increasing impact expected from a deregulated US Telecommunications market created by the 1996 US Telecommunications Act and the WTO-GBT binding rules – market liberalisation throughout the world – should benefit US tremendously.

CONCLUSION

In the wake of the establishment of the WTO multilateral trading system, the international market now embraces liberalisation and deregulation. As a result, we are witnessing the demise of the old regime of inter-national telecommunications based on national sovereignty. Generally speaking, the GATT/WTO is often referred to as a prominent example of an international regime. Although GATT was only an interim agreement in the 1947 Geneva meeting, it became a *de facto* international organisation and took over its function from the WTO.

In this context, this article posed a crucial question whether international regimes such as the GATT/WTO affect the behaviour of states or vice versa. As some scholars admit that the value of regimes on the condition that the international regime is an intervening variable between basic causal factors, and outcomes and behaviour. However, this article found that the international regimes can easily change in accordance with the perceived interests of the hegemonic power. Furthermore, although it is argued that the US has taken the leading role of provider of public goods to the international economic system, the reality is that the US has continually tried to change the rules or regimes governing international economic order to benefit itself disproportionately with respect to other trade partners.

As far as telecommunications is concerned, over the past two decades, the US has dominated some areas, such as equipment, information services, computing and databases. In this vein, today's overarching policy goals towards increased liberalisation and deregulation within telecommunications are fuelled by US critical interests within the GATT/WTO framework. Accordingly, the WTO basic telecommunications agreement and the US-led ITA to make information technology products duty-free seem to rapidly accelerate unification of international telecommunications markets through elimination of artificial trade barriers. In fact, the theoretical premise for placing telecommunications on the bargaining table at the GATT/WTO was

a belief that liberalised telecommunications could ultimately contribute to a nation state's economy. However, not all countries agreed with this purpose. Therefore, in spite of the likely positive outcomes of the WTO agreement, some participants were concerned that their commitments under the WTO framework would have a negative aspect. These concerns included the possibility of a decline in telecommunications revenue and loss of national sovereignty in the domestic telecommunications sector.

Contrary to the above concerns from other countries, the US has used its structural power to maximise her national interest. The US has actively used the dispute settlement mechanism in the WTO through the application of US trade laws – such as Section 301, “Super 301,” “Special 301,” Title VII and Section 1377. With this trade weapon, the US government has effectively opened foreign markets to US goods and services. Also, unlike the strong proponents for the value of international regimes, the process of the GATT/WTO negotiations show that the regime can easily change with the interests of hegemonic power, as seen in the above mentioned US withdrawals of the negotiation at the GATT/WTO negotiation.

Thus, is that the end of the nation state and are nation states dinosaurs waiting to die as mentioned by Kenichi Ohmae? By far, nation states regardless developed or developing will adopt, absorb and play the regime game for survival. For the Malaysian state, commonly regarded as one of the major beneficiaries from the multilateral trading system, it is true that the GATT regime has provided the favourable environment essential for its outward oriented economic development. Since the 1990s, however, Malaysia and Singapore morphed the deregulatory environment in order to continue to enjoy the benefits of the GATT/WTO not without reciprocal concessions though. In many ways GATT/WTO regime has demonstrated influential impact towards Malaysian and Singapore telecommunications policy and in many ways reflects on how the US exercised its hegemonic power in bilateral form on the Malaysian and Singapore state in order to open its telecommunications market.

ENDNOTES

¹ The objectives of the GATT 1947 were a stable and predictable basis for trade and step-by-step reduction in trade barriers.

² The Havana Charter was a comprehensive code governing the conduct of world trade. It contained both general statements of principle and specific commitments of national policy dealing primarily with national barriers to trade (Lim, 1999:3).

³ The negotiating process of ITO Chart, which was designed to establish the post-war international economic order between the US and the UK, started to show the embedded liberalism. Throughout the discussions there was a basic conflict between those who cared most for free trade and those who were most concerned with the need to preserve national discretion in relation to policies to maintain full employment. Therefore, the ITO charter which emerged at the Havana Conference was inevitably a compromise. The US tended to strongly adhere to the principle of multilateralism, whereas the UK stressed the importance of the full employment

and protecting the balance of payments. As a result, the International Trade Organisation (ITO) failed to survive a US Congressional veto; the regulation of commodity markets, restrictive business practices, and international investments were the most important areas thereby excluded. But within this smaller domain, consisting of the more traditional subjects of commercial policy, the conjunction of multilateralism and safeguarding domestic stability that had evolved over the course of the ITO negotiations remained intact (Macbean and Snowden, 1981).

⁴ For example, 170 out of 400 proposals to date have been put forward by developing countries. Measures undertaken by South Korea, for example, included a commitment to reduce tariffs at an annual rate of 8 percent through 1993, and a three-year plan to free all manufactured goods and many agricultural products from discretionary import licensing.

⁵ Towards the end of 1983, the United States and Japan made a joint declaration in Tokyo that serious thought should be given to preparing a new round of multilateral trade negotiations in the General Agreement on Tariffs and Trade (GATT). Though initially the European Economic Community was not enthusiastic, as it was apprehensive that the negotiations would focus on the liberalisation in agriculture, it finally gave its support to the proposal. The matter was intensely followed up by the major industrialised countries. The developing countries did not support the launch of a new round of negotiations in GATT mainly because of the fear on three counts; (i) they would be the main targets for extracting concessions in any new round, (ii) new subjects of interest to developed countries in which the developing countries themselves had no particular interest would be taken up for negotiations, and (iii) the subjects which had been of interest to them for a long time would get ignored, as the focus in GATT would shift to the new issues initiated in the round. A new round of Multilateral Trade Negotiations (MTNs), called the Uruguay Round was launched in Punta del Este, a sea resort in Uruguay, towards the end of 1986. It was finally concluded in the middle of 1994 with a Ministerial Meeting in Marrakesh which established the World Trade Organisation (WTO) and finalised the WTO Agreements which finally came into effect on 1 January 1995 (Das, B.L., 1998)

⁶ In this respect, the WTO and Bretton Woods do not make any difference. The governance of the Bretton Woods institutions follows the one-dollar-one vote principle. As such, decision-making control is by the Northern countries that own a majority of the equity, with developing countries having a minor role. These institutions have been widely criticised for designing their stabilisation-structural adjustment plans in Washington without adequate consultation with or participation of the loan recipient countries (Lim, 1999:30)

⁷ Originally, the US strongly called for the opening of satellite telecommunications services market.

⁸ Global Mobile Personal Communications by Satellite (GMPCS) is any satellite system (i.e. fixed and mobile, broadband and narrowband, global and regional, existing and planned) providing telecommunication services directly to end users from a constellation of satellites (ITU definition: <http://www.itu.org>).

⁹ The way international call charges are settled is that the phone service providers of both countries pay half of the surplus from the larger amount of charges minus the small amount collected in the two nations.

¹⁰ The service is the right of a buyer of basic telecommunications services, such as private lines, foreign exchange, or WATS, to resell and/or share with others the unused capacity.

¹¹ 63% of the 69 governments submitting to the Reference Paper in whole or with a few modifications.

¹² In evidence, he identified 3 factors: “1) the tariff schedule is at an historically low level. 2) the last piece of liberal trade legislation, the Trade Act of 1979, passed Congress with agreement with minimal objections 3) in the 1980s the executive office has not only dismantled programs to help industries adjust to import competition, but has withdrawn a number of orderly marketing agreements (OMAs) on the grounds they constrain trade (Goldstein 1986: 162).”

¹³ *World Development Report*: <http://www.worldbank.org/data/countrydata/countrydata.html> (Accessed on 13 June 2005)

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