

The WTO Telefonos de Mexico, S.A. de C.V. (Telmex) Case: Outcome and Implications

By Dan Sarooshi¹

1. Introduction

The extremely long and complex Telefonos de Mexico, S.A. de C.V. (*Telmex*) case (U.S. v. Mexico) is of potential importance for developing countries. It is the first WTO Panel decision dealing solely with trade in services under the GATS and it is also the first Panel decision that deals with telecommunications services and the associated competition commitments contained in the WTO Telecommunications Reference Paper ('Reference Paper')². This Paper proceeds first by providing a brief legal background to the dispute by examining the competition concerns in the WTO telecommunications regime, followed by an examination of the findings of the Panel in the *Telmex* case, and concludes with a brief discussion on its implications for developing countries.

2. Competition Concerns in the WTO Telecommunications Regime

In addition to market access commitments, it was recognised in the WTO negotiations that domestic regulation promoting competition was needed in the telecommunications sector in order to ensure in particular that new entrants would be able to compete effectively with the incumbent telecommunications operator or other major domestic service suppliers. To that end, a Reference Paper containing pro-competitive principles was adopted as an optional element of the 1997 WTO Telecommunications Agreement. Out of the 29 Commonwealth States who have made GATS commitments in the telecommunications sector, 20 of these have adopted the additional commitments set out in the Reference Paper in its entirety or with minor modifications, a number of these being Commonwealth developing States.³

The purpose of the Reference Paper is to provide the requisite safeguards in domestic law for the market access and foreign investment commitments that States have undertaken to be truly effective in practice. The Reference

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² The WTO Telecommunications Reference Paper can be found at http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm.

³ The following Commonwealth Member States have adopted the Reference Paper as part of their telecommunication commitments: Antigua & Barbuda; Australia; Barbados; Belize; Brunei Darussalam; Canada; Dominica (the schedule containing the Reference Paper commitments will be annexed to the Fourth Protocol as soon as Dominica ratifies it); Ghana; Grenada; India; Jamaica; Kenya; Malaysia; New Zealand; Papua New Guinea (the schedule containing the Reference Paper commitments will be annexed to the Fourth Protocol as soon as Papua New Guinea ratifies it); Singapore; South Africa; Sri Lanka; Trinidad & Tobago; and Uganda.

Paper contains three main obligations to which States can choose to be bound pursuant to their specific commitments as part of the 1997 Telecommunications Agreement. The first is that the State should prevent its incumbent telecommunications operator or other dominant supplier from partaking in anti-competitive practices against a foreign service supplier (Section 1). The second is a set of guarantees in relation to interconnection (Section 2). The third is that there must be established (and maintained) an independent regulator who can ensure these competition and interconnection requirements are enforced as well as providing an impartial forum for the arbitration of disputes between operators (Section 5).

A. Reference Paper and Anti-Competitive Practices

The Reference Paper prohibits a government or the incumbent telecommunications operator within a State from pursuing anti-competitive practices against foreign telecommunication service suppliers. Section 1.2 of the Reference Paper lists three examples of anti-competitive practices:

- The first is cross-subsidisation, which is the use of profits derived from one area of operations in order to finance another, often loss-making, area. This is a common business practice, yet it can become anti-competitive when the operations in the profit-making area are conducted pursuant to exclusive or special rights or when an incumbent telecommunications operator or another major supplier holds a dominant position in the profit-making area.
- The second is a requirement not to use information obtained from competitors. Incumbent telecommunications operators typically operate at many levels. They will, for example, both supply leased lines to data communications providers in order to enable them to complete their network and at the same time offer data telecommunications in competition with those providers. In this example, the telecommunications operator in the course of supplying leased lines to its data communications competitor would likely obtain information from the competitor that is often precise enough to identify the customers of the competitor or to guess the intentions of a competitor. If that information is relayed to the data communications division of the telecommunications operator it can be used for anti-competitive purposes (although the Reference Paper does not specify what anti-competitive purposes could mean). It is arguable, based on the Reference Paper that structural measures such as the legal separation of business divisions operating in different markets are needed to prevent such anti-competitive practices.
- The third anti-competitive practice listed in the Reference Paper is the withholding of technical and commercial information to foreign telecommunication service providers. This anti-competitive practice is defined in absolute terms and not in non-discrimination terms, which means that on the face of the Reference Paper an incumbent telecommunications operator could be forced to disclose technical and commercial information to third parties which want to provide a certain service even if neither the incumbent operator itself nor any other party is already providing that service.

B. Interconnections

Interconnection is defined in Section 2.1 of the Reference Paper as the ‘linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier.’ This definition closely resembles the standard United States and European Commission definitions. Section 2.2 of the Reference Paper grants foreign telecommunications providers a number of interconnection guarantees, which include the following:

- Interconnection is to be granted at any technically feasible point;
- The terms, conditions, and rates of interconnection must be non-discriminatory, transparent, and reasonable (Section 2.2(a));
- The rates of interconnection must be cost-oriented (though not necessarily cost-based) (Section 2.2(b));
- The quality of interconnection must be ‘no less favourable’ than that provided to subsidiaries, affiliates or third parties (Section 2.2(a));
- Interconnection must be provided in a timely fashion (Section 2.2(b));

- There must be ‘sufficient’ unbundling so there is no need to ‘pay for network components or facilities’ that are not required. (Section 2.2(b)) Such a provision is difficult to ensure in practice unless the regulatory authority intervenes to provide a classification of network components in order to make the obligation more concrete;
- There must be transparency on licensing procedures for granting interconnection (Section 2.4);⁴ and, finally,
- There must be guidelines for the allocation of scarce resources in relation to interconnection (Section 6).

Both developed and developing States have faced considerable difficulty in ensuring that their incumbent telecommunications operators comply with these obligations. The lack of compliance by a State with its Reference Paper obligations can of course be challenged under the WTO Dispute Settlement Process. The relatively high number of Commonwealth developing countries that have undertaken Reference Paper commitments means that these issues will be of increasing importance as telecommunication service providers from developed countries begin to use these obligations to try and gain a significant domestic market share. The clearest evidence of this is provided by the high profile *Telmex (U.S. v. Mexico)* case where the U.S. claimed that Mexico had not complied with its obligations under the Reference Paper by its alleged failure to constrain the anti-competitive activities of its incumbent telecommunications operator (Telmex).

3. The TELMEX Case

Mexico was one of the early reformers of telecommunications markets in South America. It privatised its monopoly carrier Telmex in 1990, and the government in 1994 passed legislation to permit competition in voice telephone services. The Mexican Government ended Telmex’s monopoly concession for domestic and international long distance telephone services on 1 January 1997, when six entrants initiated service in 60 of Mexico’s largest cities. U.S. corporations MCI and AT&T are part owners of the largest of the new providers, Alestra and Avantel (45 & 49 %, respectively). Local service opened to competition on 29 December 1998. By the end of the first year, new entrants had claimed about 25% of the contestable long-distance market and 18% of the total long-distance market. Long distance prices fell by roughly 30-40%.

Prior to 1997, long-distance and international telecommunications services in Mexico were supplied on a monopoly basis by Telefonos de Mexico, S.A. de C.V. Since 1997, Mexico has authorised multiple Mexican carriers to provide international services over their networks. Under Mexican laws the largest carrier of outgoing calls to a particular international market has the exclusive right to negotiate the terms and conditions for the termination of international calls in Mexico that apply to any carrier between Mexico and that international market. Telmex is presently the largest carrier of outgoing calls for all markets. Currently, there are 27 carriers (‘concessionaires’) allowed to provide long distance services, including two United States – affiliated carriers – Avantel (WorldCom) and Alestra (AT&T). Of these 27 long-distance concessionaires, 11 are authorised to operate international gateways, allowing them to carry incoming and outgoing international calls. Telmex remains the largest supplier of basic telecommunications services in Mexico, including international outbound traffic.

4. The U.S. Complaint

The U.S. Government initiated on 17 August 2000 a formal WTO complaint on behalf of U.S. telecommunication corporations, complaining that Mexico’s Telecommunications Regime has prevented U.S. service suppliers from availing themselves of key GATS commitments - including in particular the Reference Paper commitments - undertaken by Mexico.

There are three main U.S. claims. First, that Mexico has failed to ensure that its major telecommunications supplier (Telmex) provides interconnection ‘on terms, conditions ... and cost oriented rates that are ... reasonable’, in accordance with Section 2 of its Reference Paper commitments. Second, that Mexico has not maintained appropriate measures to prevent Telmex from engaging in ‘anti-competitive practices’, in accordance

⁴ But the Reference Paper does not specify the situations when a license can be required nor the terms and conditions which should or should not be found in a license.

with Section 1 of its Reference Paper commitments. Third, that Mexico has failed to ensure ‘access to and use of its public telecommunications transport networks and services, including private leased circuits, on ‘reasonable and non-discriminatory terms and conditions’, in accordance with its obligations under Section 5 of the GATS Annex on Telecommunications.

5. The Panel Decision

One of the key early issues the Panel had to decide was whether the ‘linking’ of suppliers referred to in Section 2.1 of the Reference Paper covers not only domestic but also international interconnection. The Panel held that the services at issue in the case involved the supply of certain basic public telecommunications – public voice telephony, circuit-switched data transmission, and facsimile – services for which the U.S. suppliers sought to interconnect at the border with Telmex, or other Mexican operators, for termination. A hotly contested issue in the case was whether the services were being supplied on a cross-border basis. The U.S. argument was that these services are being supplied from the U.S. into Mexico, within the meaning of Article 1:2(a) of the GATS. The opposing Mexican argument was that a U.S. operator simply ‘hands off’ caller traffic at the border to a Mexican operator and that this ‘half-circuit’ provision of telecommunications services does not constitute cross-border supply of services within the meaning of Article 1:2(a) of the GATS.

The issue for decision by the Panel was whether the cross-border supply of services between two Members under Article I:2(a) occurs only if the supplier *itself* operates, or is present, on the other side of the border, or if cross-border supply can occur also if a supplier simply ‘hands off’ traffic at the border. The Panel held on this important issue that the definition of a cross-border supply of a service nowhere indicates that a *single* supplier must undertake the transmission of a call from the starting to the point of the call. There were three reasons for this decision by the Panel. First, as the Panel states: ‘It would be unreasonable to assume that the definition of telecommunications services applies only where a telecommunications supplier itself owns or controls a complete global infrastructure allowing it to reach every potential “point” requested by its customers. Had WTO Members intended this to be the case, they surely would have made it explicit in the definition.’⁵ Second, the Panel also found that the 1991 United Nations Provisional Central Product Classification (‘CPC’) references provided support for the view that the supply of a telecoms service involves call completion spanning both operators’ networks.⁶ Finally, the Panel emphasised that basic telecommunications services supplied between Members requires, during the delivery of the service, a high degree of interaction between each other’s networks, and that this results in a seamless service between the originating and terminating segments, which suggests in the Panel’s view that the service is to be considered as a single, cross-border service.

The Panel concluded on this crucially important point that telecommunications services normally involve or require linking with another operator to complete the service, and that the operation, or presence in some way, of the supplier on both ends of the service cannot therefore be a necessary element of the definition of cross-border supply.⁷ In the Panel’s view what is determinative is the service that the supplier offers and has agreed to supply to a customer. In the case of a basic telecommunications service, whether domestic or international, or supplied cross-border or through commercial presence, the supplier offers its customer the service of completing the customer’s communications. Having done so, the supplier is responsible for making any necessary subsidiary arrangements to ensure that the communications are in fact completed. The customer typically pays its supplier the price of the end-to-end service, regardless of whether the supplier contracts with, or uses the assets of, another firm within another State to complete the supply of the service. As such, the Panel found that the U.S. telecommunications services at issue in the case were being supplied ‘cross-border’ within the meaning of Article 1:2(a) of the GATS.

An important related issue was whether the Mexican commitments on interconnection pursuant to Section 2.1 of the Reference Paper included both international interconnection and domestic interconnection. The U.S. argued that call termination is simply a form of interconnection and, as such, even Mexico’s laws and regulations governing the cross-border termination of calls relates to ‘interconnection’ with foreign suppliers for the purposes

⁵ *Telmex* case, para.7.34.

⁶ *Telmex* case, para.7.36.

⁷ *Telmex* case, para.7.40.

of Section 2.1 of the Reference Paper. Moreover, the U.S. argued that the existence of international ‘accounting rate’ regimes which may apply to certain cases of cross-border interconnection does not mean that cross-border interconnection is excluded from the scope of the Reference Paper. The Panel agreed in substance with both of these arguments.

The Panel found that the interconnection obligation contained in Section 2 of the Reference Paper relates to ensuring the ‘linking’ with suppliers of basic telecommunications services that are required to be offered to the public generally, but that the interconnection obligation is not circumscribed in its scope, geographic or otherwise, in terms of the basic telecommunications suppliers who have a right to be linked.⁸ This approach led the Panel to conclude that ‘the term “interconnection” in Section 2 of Mexico’s Reference Paper does not justify a restricted interpretation of interconnection, or of the term “linking”, which would exclude international interconnection, including accounting rate regimes, from the scope of Section 2 of the Reference Paper.’⁹

The Panel did consider the influence of the non-binding Understanding contained in a Report by the Group on Basic Telecommunications made on 15 February 1997 [which sought to exempt temporarily the accounting rate regimes from WTO dispute settlement proceedings] had on the interpretation of whether interconnection is to include international interconnection. The main issue relating to the Understanding was whether the non-binding decision to exclude from the scope of WTO dispute settlement ‘differential’ accounting rates established under International Telecommunications [ITU] Regulations for the purposes of the Most Favoured Nation (‘MFN’) obligation, implies also an intent to exclude international interconnection from the substantive scope of the Reference Paper – *in casu*, the international linking of the networks of Mexican and US suppliers.¹⁰ The Panel did not accept this approach when it held that the Understanding was directed at shielding a certain type of cross-border interconnection from dispute settlement, because of *possible* MFN inconsistencies (with respect to differential rates), and that it does not follow that the Understanding was ‘to shield all forms of cross-border interconnection from dispute settlement. The clear intention to do so is not expressed in the Understanding. This suggests that the content and purpose of the Understanding is of limited assistance in interpreting the scope of application of the term “interconnection” in Section 2.1 of Mexico’s Reference Paper.’

Having found that Section 2 of Mexico’s Reference Paper applies also to the interconnection of cross-border suppliers of telecommunications services (including of course *in casu* U.S. service suppliers), the Panel went on to consider whether Mexico has fulfilled the commitment contained in Section 2.2 of its Reference Paper to ensure cost-oriented interconnection with a major supplier.

The Panel had no difficulty in finding that Telmex was a major supplier within Mexico pointing in particular that under Mexican International Long Distance [ILD] Rule 13 the long-distance licensee with the highest volume of outgoing traffic on a particular international market has the sole right to negotiate settlement rates which, under Rule 10, all other operators must apply. And that since Telmex has always had the largest share of outgoing traffic in every international market, including to the U.S., it is, and has consistently been under the Rules, the ‘licensee authorised to negotiate settlement rates’; thus fulfilling the definition of a ‘major supplier’ in Mexico’s Reference Paper that it have ‘the ability to materially affect the terms of participation’, particularly ‘having regard to price’.

On the issue whether Telmex interconnection rates are ‘cost-oriented’, the Panel made the important preliminary determination that the term ‘cost-oriented’ suggests ‘rates that are *brought into a defined relation to known costs or cost principles*. Rates that are “cost-oriented” would not need to equate exactly to cost, but should be founded on cost. The degree of flexibility inherent in the term “cost-oriented” suggests, moreover, that more than one costing methodology could be used to calculate “cost-oriented” rates.’¹¹ Mexico’s ‘incremental cost’ methodology which aims at recovering at least the long run average incremental cost of maintaining the public telecommunications network was found by the Panel to be within the meaning of cost-oriented since it was a cost incurred in ensuring the supply of the service.¹²

⁸ *Telmex* case, para.7.105.

⁹ *Telmex* case, para.7.117.

¹⁰ *Telmex* case, para.7.128.

¹¹ *Telmex* case, Para.7.168.

¹² *Telmex* case, para.7.177.

However, the Panel found that Telmex was charging U.S. carriers in the order of 77% more than the cost ceiling being charged for domestic interconnection and that this was not “cost-oriented” rates within the meaning of Section 2.2(b) of Mexico’s Reference Paper since it is substantially higher than the costs which are actually incurred in providing the interconnection.¹³

The Panel rejected Mexico’s argument that commitments made by developing country WTO Members have to be interpreted in the light of paragraph 5 of the preamble to the GATS, and GATS Article IV which recognize that these Members ‘need to strengthen their domestic services capacity and efficiency and competitiveness’, since, in the Panel’s own words, ‘these provisions describe the types of commitments that Members should make with respect to developing country Members; they do not provide an interpretation of commitments already made by those developing country Members.’ The obvious difficulty with this interpretation is that in substance it negates any preferential treatment these provisions may have been intended to confer on developing country Members. The reason for this negation is that it is developed country Members who will be investing in developing country Members, as opposed to investment flowing the other way, and as such to strengthen the capacity, efficiency, and competitiveness of the service sectors of developing country Members requires a more favourable interpretative approach being made of the GATS and a developing country Members schedule of commitments rather than simply taking the formalistic position that these preferential treatment provisions were intended simply to encourage developed country Members to give developing countries preferential access to their services markets, in practice a meaningless gesture.

The last set of decisions by the Panel relate to the competition commitments undertaken by Mexico in its Reference Paper.

The Panel when examining the term ‘anti-competitive practices’ as it appears in Section 1(2) of the Reference Paper stated that all three illustrative examples contained in the provision – engaging in anti-competitive cross-subsidization, misuse of competitor information with anti-competitive results, and withholding of relevant technical and commercially relevant information necessary for competitors to provide services – may include action, pricing or otherwise, by a major supplier without collusion or agreement with other suppliers. The Panel held that in addition to the practices expressly listed in Section 1.2 of the Mexican Reference Paper, that the term ‘anti-competitive practices’ include horizontal practices related to price-fixing and market-sharing agreements.¹⁴ This is also the case, according to the Panel, where such practices are required of Telmex under Mexican law.¹⁵ This finding was of importance to the Mexican International Long Distance (‘ILD’) Rules which require Telmex to negotiate a price (known as the ‘uniform settlement rate’) that is then approved by Mexican authorities and applied by Telmex and the other Mexican suppliers to the termination of all the services at issue. The Panel agreed with the U.S. that the removal of price competition by the Mexican authorities by use of this uniform settlement rate system, combined with the setting of the uniform price by the major supplier, had effects that were tantamount to those of a price-fixing cartel. Accordingly, the Panel held that the uniform settlement rate system under the ILD Rules requires practices by a major supplier, Telmex, that are ‘anti-competitive’ within the meaning of Section 1 of Mexico’s Reference Paper.

Mexico’s ILD Rules also required international gateway operators to apply a system of ‘proportionate return’, and distribute among themselves incoming calls from a country in proportion to the outgoing calls the operator sends to that country. This requires Telmex to accept traffic from, or give up traffic to, other suppliers depending on whether the proportion of incoming traffic surpasses, or falls short of, its proportion of outgoing traffic. To this end, Telmex may enter into ‘financial compensation agreements’ with other operators, which are to be approved by Mexican authorities. The Panel had no hesitation in finding this ‘proportionate return’ system under the ILD Rules as anti-competitive since it requires practices by a major supplier, Telmex, that limit rivalry and competition among competing suppliers by the allocation centrally of market share between Mexican service suppliers.¹⁶

¹³ *Telmex* case, Paras.7.203 & 7.216.

¹⁴ *Telmex* case, Para.7.238.

¹⁵ *Telmex* case, Para.7.245.

¹⁶ *Telmex* case, para.7.264.

¹⁷ *Telmex* case, Para.7.326.

These findings that Mexico's ILD Rules require practices by Telmex that are anti-competitive meant that the Panel had no difficulty in finding that Mexico was also in violation of the provision of Section 1.1 of the Reference Paper that requires the Mexican government to maintain 'appropriate measures' to prevent anti-competitive practices by a major supplier.

Finally, the U.S. claimed that Mexico had not met its obligations under Section 5 of the GATS Annex on Telecommunications – in particular, that Mexico does not permit interconnection of U.S. suppliers on reasonable terms and conditions, contrary to Section 5(a), and prohibits altogether access to private leased circuits, contrary to Section 5(b).

The Panel held that what constitutes 'reasonable terms and conditions' for access to and use of public telecommunications transport networks and services in Section 5(a) cannot be given meaning in isolation from the question of whether or not a particular condition may be imposed, an issue that is addressed in paragraph (e). However, while paragraph (a) speaks of 'terms and conditions', paragraph (e) refers only to 'conditions'. This has the consequence, according to the Panel, that if the rates are terms, they would have to meet the 'reasonable' standard in Section (a); while if they are 'conditions', they would, in addition, have to meet the 'necessary' standard in Section (e).

The Panel found that pricing elements such as access rates do not constitute a 'condition' since Section 5(f) does not list it as a condition and that, given the importance of pricing measures for access to and use of public telecommunications transport networks and services, it would have been expressly listed if it was to be considered as a condition.¹⁷ Nonetheless, the Panel stated that with respect to access to and use of public telecommunications transport networks and services supplied on a commercial basis, it is evident that some type of charge will be levied. As such, the Panel held that rates charged for the access to and use of public telecommunications transport networks and services are 'terms' within the meaning of Section 5(a), but not conditions within the meaning of Section 5(e).

As such, the Panel went on to consider whether the rates being charged to U.S. suppliers for access to and use of Mexican public telecommunications transport networks and services constitute 'reasonable' terms. The Panel recalled its earlier findings that the rates charged to interconnect U.S. suppliers to Mexican public telecommunications transport networks and services exceed cost-oriented rates by a substantial margin, and this in the view of the Panel was sufficient to conclude that Mexico has failed to accord access to and use of its telecommunications transport networks and services on 'reasonable terms'. The problem, however, with this approach is that it conflates 'cost-oriented' interconnection with 'reasonable terms' of access to and use of its public telecoms networks and services. This may be appropriate in the present case where the price differential between cost and what was being charged was so great (more than 70%), but it may well be problematic in cases where the price differential is not as great.

Finally, the U.S. government sought to ensure that its companies could operate within Mexico (pursuant to Mode 3 of the GATS) and compete within the Mexican telecommunications market for the supply of telecommunications services internationally. The Panel agreed with the U.S. contention that the supply of services permitted to be carried out by a service supplier established through commercial presence in Mexico (Mode 3) included the supply of services from Mexico to the U.S.,¹⁸ and that the failure by Mexico to ensure access to and use of private leased circuits for the supply of the committed services represents a violation of Section 5(b) of the Annex on Telecommunications. Moreover, the Panel found that Mexican ILD Rule 3 – which prohibits commercial agencies from interconnecting 'directly with the public telecommunications networks of other countries' operators for the purpose of carrying international traffic¹⁹ – was inconsistent with Mexico's obligation to ensure that commercially present commercial agencies have access to and use of private leased circuits and that they be permitted to interconnect these circuits to public telecommunications transport networks and services or with circuits of other service suppliers as required by Section 5(b) of the Telecommunications Annex. This finding is particularly important for the Mexican telecommunications industry since it allows U.S. companies to compete with Telmex and other Mexican operators within Mexico for the supply of the covered telecommunications services from Mexico to the large U.S. market.

¹⁸ *Telmex* case, Para.7.378.

¹⁹ ILD Rule 3, as quoted in *Telmex* case, *ibid.*, para.7.384.

6. Implications for the future

The *Telmex* case sounds a clear warning to Commonwealth developing States and others that multinational telecommunications corporations will increasingly rely on a State's telecommunications commitments to hold a government responsible for ensuring in effect that they can achieve a significant share of a State's telecommunications market.

Several aspects of the *Telmex* case are of particular concern to developing States. The first is the broad interpretation by the Panel of what is meant by the cross-border supply of services and international interconnection. A number of developing States may have signed up to commitments under the WTO telecommunications regime without realising until this Panel decision that they have made commitments in relation to all telecommunications services that originate in other States that terminate in their territory. Second, the Panel rather surprisingly, and certainly controversially, limited very considerably the exemption relating to differential 'accounting rates' from the purview of the WTO dispute settlement system only to those cases of possible MFN inconsistency. Finally, the Panel's interpretation of the preferential treatment provisions for developing States contained in the GATS has in practice deprived these provisions of any substantive value for developing States.

This Panel decision will require, in a number of cases, Commonwealth developing States to re-assess the implementation of their obligations under the Telecommunications Reference Paper. Of immediate concern will be the Panel's finding in relation to differential accounting rates. The importance of this matter to developing States should see a co-ordinated response formulated to ensure that the scope of the original Understanding on Accounting Rates is at the least broadened to cover other non-MFN rates. If this does not occur, a very large number of developing States may well in future cases be held to be in breach of their Reference Paper obligations.

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