

MEXICO – TELECOMS¹

(DS204)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	GATS Art I:2(a) GATS Reference Paper under Mexico's GATS Schedule GATS Annex on Telecommunications	Establishment of Panel	17 April 2002
			Circulation of Panel Report	2 April 2004
Respondent	Mexico		Circulation of AB Report	NA
			Adoption	1 June 2004

1. MEASURE AND SERVICE AT ISSUE

- **Measure at issue:** Mexico's domestic laws and regulations that govern the supply of telecommunication services and federal competition laws.
- **Service at issue:** Certain basic public telecommunication services, including voice telephony, circuit switched data transmission and facsimile services, supplied by US suppliers across the border into Mexico.

2. SUMMARY OF KEY PANEL FINDINGS²

- **GATS Art. I:2(a) (cross border supply):** The Panel found that the services at issue whereby US suppliers link their networks at the border with those of Mexican suppliers for termination within Mexico are services supplied cross-border within the meaning of Art. I:2(a), as the provision is silent as regards the place where the supplier operates, or is present, and thus is not directly relevant to the definition of "cross-border supply".
- **Mexico's Reference Paper³, Sections 2.1 and 2.2:** The Panel found that (i) Mexico's commitments under Section 2 of Mexico's Reference Paper applied to the interconnection of cross-border US companies seeking to supply the services at issue into Mexico ; and (ii) Mexico was in violation of its commitments under the provision because the interconnection rates charged by Mexico's major suppliers to US suppliers were not "cost-oriented" as they were in excess of the cost rate for providing the interconnection to the US suppliers.
- **Mexico's Reference Paper, Section 1:** The Panel found that Mexico had failed to maintain appropriate measures to prevent "anti-competitive practices" in violation of Section 1. The Panel observed that the measures had effects tantamount to those of a market sharing arrangement between suppliers and in fact required practices by Mexico's major supplier that limited rivalry and competition among competing suppliers.
- **GATS Annex on Telecommunications – Section 5(a):** The Panel found that the Annex applied to a WTO Member measures that affect the access to and use of public telecommunication transport networks and services by basic telecommunications suppliers of any other Member, and that Mexico was in violation of Section 5(a), by failing to provide US suppliers the said access on "reasonable terms" when it charged US suppliers rates in excess of a cost-oriented rate and when the uniform nature of these rates excluded price competition in the relevant market of the telecommunication services.
- **GATS Annex on Telecommunications – Section 5(b):** The Panel concluded that Mexico violated its commitments under mode 3⁴ (commercial presence) as it had not taken any steps (issuance of any law or regulation) to ensure access to and use of private-leased circuits for the supply of the said service in a manner consistent with Section 5(b). With respect to the supply of non-facilities-based services from Mexico to any other country, the Panel concluded that Mexico was in violation of Section 5(b) because it only authorized international gateway operators, which excluded by definition commercial agencies interconnecting with foreign public telecommunication transport networks and services to supply international telecommunication services.

¹ Mexico – Measures Affecting Telecommunications Services

² Other issues addressed: panel's duties under DSU Art. 12.11 (S&D considerations).

³ Mexico's specific commitments for telecommunications services under GATS Art. XVIII (Additional Commitments) consist of undertakings known as the "Reference Paper," which contains a set of pro-competitive regulatory principles applicable to the telecommunications sector.

⁴ GATS Art. I:2(c) (mode 3 – commercial presence) – supply of a service by a service supplier of one Member, through commercial presence in the territory of any other Member.