

# **An Introduction to GATS Rules**

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## GATS Rules

- GATS contains mandates for negotiations on rules issues which could not be dealt with in the Uruguay Round
  - Domestic regulation (Article VI.4)
  - Emergency safeguard measures (Article X)
  - Government procurement (Article XIII)
  - Subsidies (Article XV)



## Negotiating Arrangements

- Domestic regulation has its own working party
- The Working Party on GATS Rules handles emergency safeguards, subsidies and government procurement



## GATS Rules Important

- GATS rules ensure certainty in commitments made and offered
- Ensure domestic regulation and rule-making do not undermine specific markets access commitments



## Who is Active on Rules?

- ASEAN (minus Singapore) drive ESM debate
- EC is main proponent of rules on government procurement
- Hong Kong, Chile, Chinese Taipei, Switzerland, active on subsidies
- Developed and developing Members have offensive interest in domestic regulation



## Emergency Safeguard Measures

- Emergency safeguard measures discussed continuously since 1995
- No significant convergence of views on any issue of importance
- Level of ambition displayed by demandeurs not shared by the majority of Members
- Fundamental differences over desirability and feasibility remain unresolved



## ESM (cont)

- 10 years of negotiation, but some very basic questions have not been resolved
  - Whom would an ESM protect?
  - What would be the threat from which such protection is being sought?
  - What would be the objective of providing such protection?
  - Why are existing mechanisms in the GATS insufficient?
  - What could be the forms of an ESM?



## ESM (cont)

- Is it time to explore options other than a mechanism modelled on the goods safeguard in the GATT?
- Australia has ideas that we have informally floated among some delegations in Geneva
- We are willing to explore these in the dedicated session on ESM



## Subsidies

- Negotiations started in May 1996
- Initial focus on technical analysis and conceptual issues
- Negotiations constrained by “chicken and egg” syndrome
- Agreement on definition of subsidies agreed first before notification of subsidy schemes



## Subsidies (cont)

- Discussions picked up around mid-2005
  - most Members give higher priority to other issues (market access, emergency safeguards)
- Hong Kong’s proposal to adopt broad definition of a services subsidy is sensible way forward



## Government Procurement

- Article XIII exempts procurement of services for governmental purposes from
- But provides for 'multilateral negotiations on government procurement in services'



## Government Procurement (cont)

- Negotiations essentially stalled since discussions began in 1995
- Only one strong demandeur (EC)
- Strong opposition from developing countries (Brazil, India, some ASEAN Members)
- Others consider GP may present trade opportunities and don't exclude possibility of negotiating disciplines



## Government Procurement (cont)

- Biggest challenge is to determine degree of ambition for negotiations
- Fundamental disagreement on the Article XIII mandate
  - developing countries insist that Article XIII precludes negotiations on market access and national treatment
  - EC argues that it does not
  - no real progress can be made in the Working Party until this issue is resolved



## Government Procurement (cont)

- EC increasingly active on GP
- Come forward with draft legal text
- Important for sceptical delegations to elaborate on their interpretation of the mandate, and
- On development effects of procurement disciplines under the GATS



## Domestic Regulation

- A 'deliverable' before the end of the Doha Round?
- Since HK Ministerial negotiations have intensified
- Many proposals on the table
- Developing countries have identified offensive interests



## Domestic Regulation (cont)

- Chair given mandate to prepare consolidated legal text before end-July
- Challenge will be to work with Chair's text and undertake necessary domestic consultations
- Domestic regulation disciplines sensitive for many Members (necessity test, qualification requirements, prior comment)



## Conclusion

- Focus on domestic regulation as a deliverable in the Doha Round
- Ball is in the proponents court on ESM
- Difficult to see substantive progress on subsidies and government procurement given unresolved issues



