

Emergency Safeguard Measures in the GATS

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Safeguards: Mandate and Deadline



- Article X:1 of the GATS
“ There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.”
- Negotiations extended 5 times. Since March 2004, no specific end-date.

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Rules in the “July Package”



- “Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII and XV in accordance with their respective mandates and deadlines.”

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Rules in the HK Declaration



- “Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII, and XV in accordance with their respective mandates and timelines”
- “Members should engage in more focused discussions in connection with the technical and procedural questions relating to the operation and application of any possible emergency safeguard measures in services.”

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EMS and Merchandise Trade



- Article XIX of GATT 1947 and Agreement on Safeguard
 - “Unforeseen developments” and “imports in such increased quantities”.
 - Serious injury to the domestic industry.
 - Need to establish causal link.
 - Investigation and criteria for determination of serious injury
 - Necessity test
 - Duration and Compensation

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Some Relevant Differences between Goods and Services



- Scheduling of Commitments
- Modes of Supply
- Intangibility, absence of border measures
- Statistics
- Economics

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How would a safeguard mechanism under Article X differ from what is possible under



Articles XII Restrictions to Safeguard the Balance of Payments

Articles XIV General Exceptions

Articles XXI Modification of Schedules?

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Pros and Cons of an ESM



Arguments for an ESM:

- Induces greater liberalizing commitments
- Creates a transparent mechanism for emergency action
- Prevents injury in the event of unforeseen developments

Arguments against an ESM:

- Not necessary: the positive list approach provides sufficient flexibility
- Not desirable: Create uncertainty about the value of commitments
- Not feasible: Conceptual and statistical problems

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ESM: issues under examination



(I)

- Form of an ESM
 - Horizontal mechanism, or
 - Scheduled safeguard
- To what extent is the “goods model” applicable to services?
 - Main differences:
 - Four modes of supply
 - Scheduling flexibility

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ESM: issues under examination



(II)

- Given the modal structure of the GATS,
 - What are “imports of services”?
 - How should “domestic industry” be defined?
 - How should mode 3 be treated?
 - What are “like services”?
 - Which mode(s) should be affected by a safeguard measure?
 - Role of a “necessity test”

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ESM: issues under examination (III)



- Possible forms of a safeguard measure:
 - Suspension of specific commitments under Articles XVI, XVII and/or XVIII
 - Subsidies, quotas and ... ?
- Should compensation be offered to affected Members?

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ESM: issues under examination (IV)



- Indicators and criteria
- Duration and degressivity
- Notification and transparency
- Surveillance mechanism
 - *Ex ante* or *ex post* approval?
- Concrete examples of safeguard-type situations?

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Ways Forward...



- Approaches mentioned:
 - Mechanism similar to that for merchandise trade
 - Surveillance mechanism
 - Safeguards in schedules
 - No mechanism

