



Rule-Making Agenda under the GATS

– Overview and State of Play –



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Rear-view mirror (I): Rule-Making Mandates in GATS

- Domestic Regulation (Art. VI:4)
- Emergency Safeguard Measures (Art. X)
- Government Procurement (Art. XIII)
- Subsidies (Art. XV)

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Rear-view mirror (II): Rule-making in HK Declaration



- **Emergency Safeguards, Government Procurement, Subsidies:**
“Members must intensify their efforts to conclude ... ”
- **Domestic Regulation:**
“Members shall develop disciplines ... before the end of the current round of negotiations. ... text for adoption.”

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GATS Article VI



- (1) Administration of all measures of general application affecting trade in services in a reasonable, objective and impartial manner*
- (2) Mechanisms for the objective and impartial review of administrative decisions affecting trade in services
- (3) Rules on authorizations (information of applicants)*
- (6) Adequate procedures to verify the competence of foreign professionals*

* Applicable only in sectors subject to specific commitments

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Article VI GATS



Paragraph (4)

Services Council shall develop disciplines aimed at ensuring that qualification and licensing requirements and procedures and technical standards are objective, transparent and not more burdensome than necessary to ensure quality.*

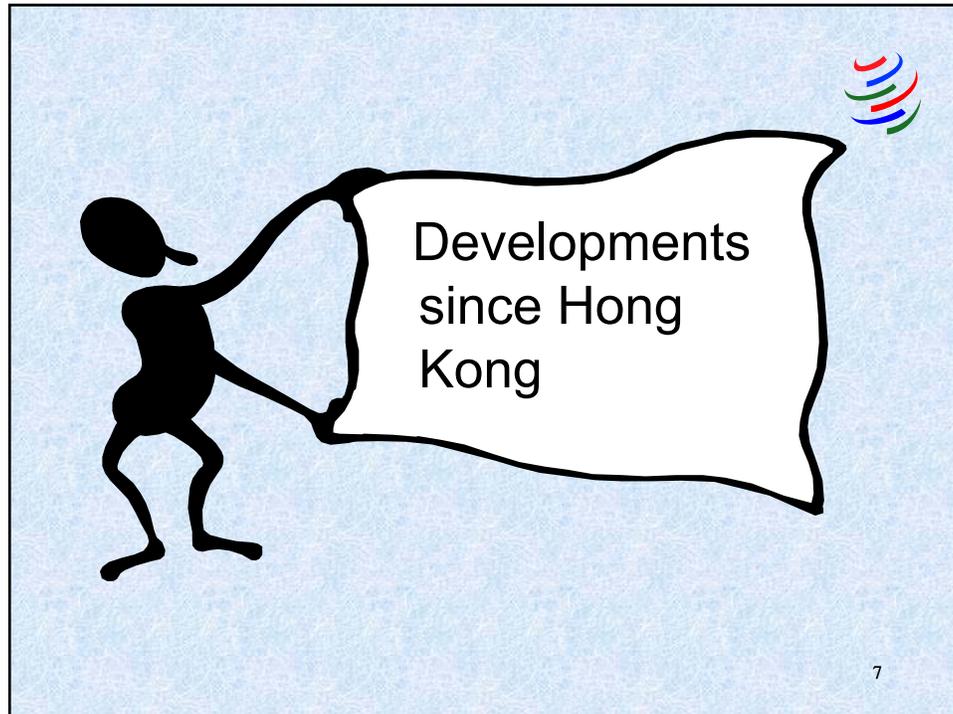
Paragraph (5)

Pending the entry into force of the disciplines, these criteria (objectivity, transparency, and necessity) apply to all new requirements** (excluding those existing in 1995 and those whose adoption could have been foreseen)

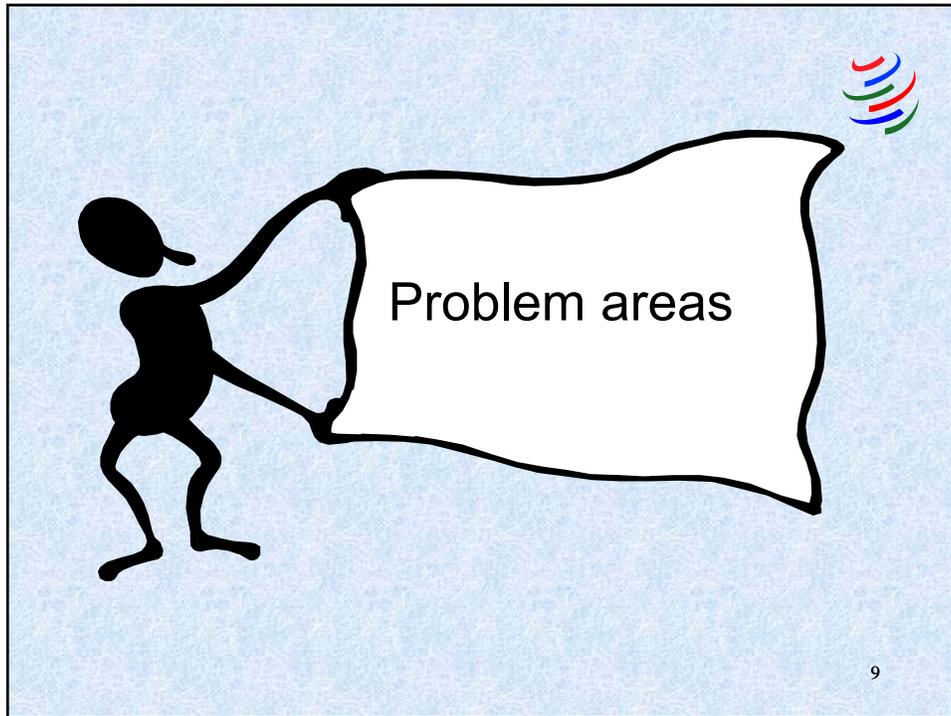
* Open issue: Relationship of the final disciplines with specific commitments.

** Only to the extent that a specific commitment is nullified or impaired.

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- **Step 1: Chairman's text JOB(06)/225 (mid-2006)**
 - A tool for negotiations and domestic consultations, based on text proposals by Members
 - **Step 2: Chairman's draft, April 2007**
 - (informal) mandate from Members to draft text
 - Text accepted by all Members as basis for negotiation
 - Intensive paragraph-by-paragraph consultations in July and September 2007
 - **Step 3: revised Chairman's draft, January 2008**
 - Overall modest changes to first draft, no change in level of ambition.
 - **Step 4: second revised draft, March 2009**
 - Changes only in a handful of issues for which there was wide support in preceding discussions.
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► “Necessity test” and “disguised restrictions”

- Necessity test unacceptable to some Members, while others see need to balance right to regulate with avoiding barriers to trade in services (notion of “disguised restrictions” in Introduction)

► Definitions

- Coverage of voluntary technical standards?

► General provisions

- Scope of disciplines
- “pre-established”

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- ▶ **Transparency**
 - Existence and content of an illustrative list
 - Prior comment procedure
- ▶ **Licensing Procedures**
 - Single window approach
 - Scope of disciplines on licensing fees
- ▶ **Qualification requirements and procedures**
 - Wide divergences in Members' substantive and procedural requirements
 - Due consideration of experience as complement to qualification

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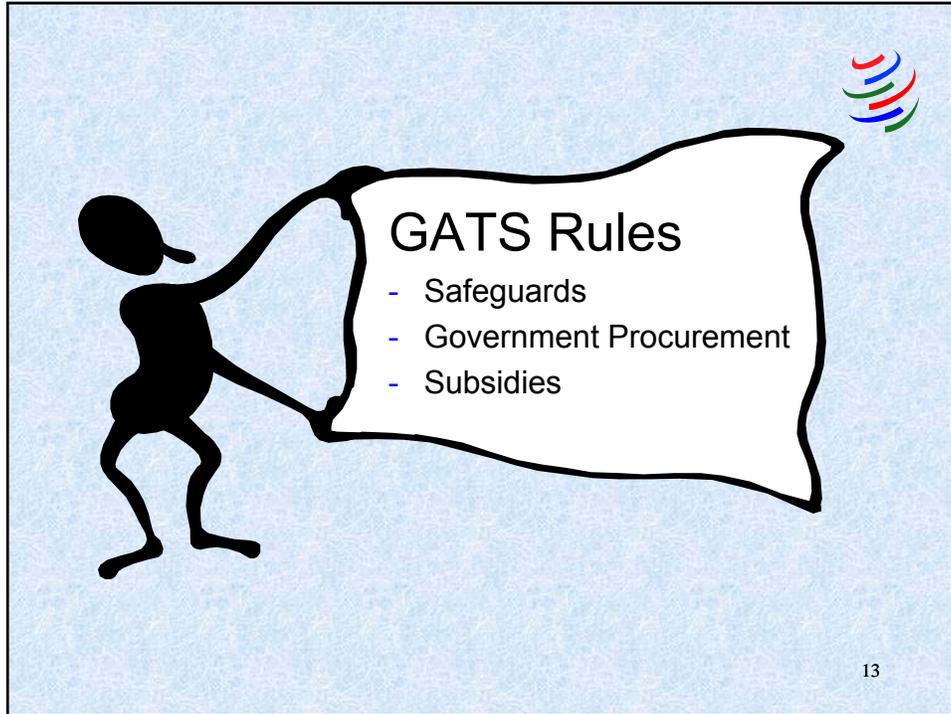


DR Disciplines

– Possible Legal Form

- **Annex to the GATS**
 - Applicable only to sectors subject to specific commitments
 - Uniformity of application
 - Requires consensus
 - Requires amendment of GATS
- **Decision**
 - Ease of implementation
 - How binding compared to Article VI:4 and VI:5?
 - Not subject to the DSU
- **Reference Paper**
 - Non-uniform application
 - Does not require consensus
 - Does not require amendment of GATS

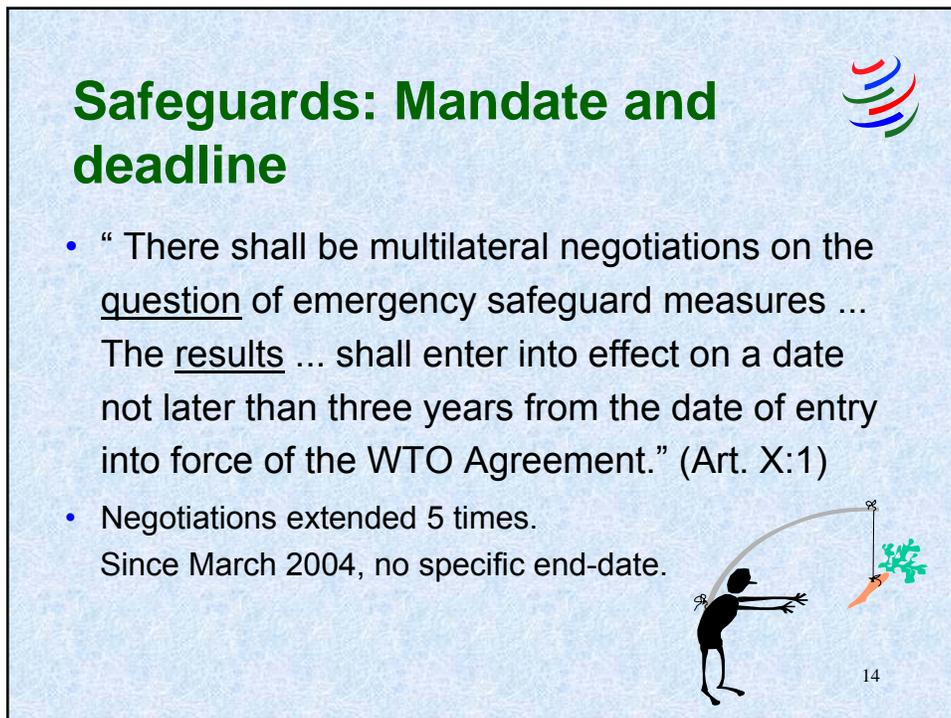
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GATS Rules

- Safeguards
- Government Procurement
- Subsidies

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Safeguards: Mandate and deadline

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

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ESM 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 differences between goods and services

- Scheduling of commitments
- Intangibility of services and absence of border measures
- Lack of reliable statistics
- Existence of four modes of supply including mode 3 / investment (► overlap with BITs)
- Scope for import-displacing subsidies (modes 1 and 2!)

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Ways forward...



Approaches mentioned:

- **Mechanism similar to the one for merchandise trade**
- Surveillance or waiver-type mechanism
- Safeguards in schedules
- Temporary ‘safety valve’
- **No mechanism**

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Article XIII Government Procurement



“1. Article II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by **governmental agencies** of services purchased for **governmental purposes** and **not with a view to commercial resale** or ... use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO.”

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Current situation in the WTO

The Agreement on Government Procurement

Plurilateral Agreement
National Treatment, MFN
Procedural and enforcement rules

The Singapore Ministerial Mandate on **Transparency in Government Procurement**

- July Package: “no work towards negotiations on any of these issues will take place within the WTO during the Doha Round”.

Understanding on Commitments in Financial Services

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Some issues raised

- Scope of the negotiating mandate
- Link with GPA
- MFN issues
 - Application to all services, whether GP commitments are taken or not?
 - Compatibility with reciprocity and non-application provisions of GPA?
 - Relationship between commitments and MFN derogations
- Scheduling approach: relevance of modal distinctions, types of limitations
- Scope and definition, e.g., contracts covering goods
- Status of ‘concessions’
- Procedural rules

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Article XV Subsidies



"1. Members recognise that, in certain circumstances, subsidies may have **distortive effects** on trade in services. Members shall enter into negotiations with a view to developing **the necessary multilateral disciplines** ... The negotiations shall also address the appropriateness of countervailing procedures.

Such negotiations shall recognize the role of subsidies in relation to the **development programmes** of developing countries and take into account the needs ... for flexibility in this area.

For the purpose of such negotiations, Members shall **exchange information** concerning all subsidies related to trade in services"

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Current situation under the GATS



- Relevant obligations for subsidies: MFN and, in committed sectors, National Treatment
- Subsidies in negotiating proposals
 - E.g. audiovisual services, construction services
- Subsidy-related entries in schedules
 - 35 Members; 32 horizontal entries (sector-specific: AV, education, recreational)
 - Most involve Mode 3; a minority involve Mode 1; many limited to R&D

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Relevant questions



- Definition of subsidy (based on ASCM?)
- Calculation of benefits
- Categorization ('traffic-light' approach?)
- Special and differential treatment
- Modes of supply
- Feasibility of countervailing measures
- Next steps: Identify subsidy-related distortions before starting rule-making exercise?

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A HAPPY END (???)

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Reading Material

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