

APEC



APEC Workshop on  
WTO Rules Negotiation on Trade in Services



Asia-Pacific  
Economic Cooperation

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## Program

### **June 28, 2006**

#### **Opening Ceremony (09:30-09:45)**

- Opening Remarks by Ms. Li Yihong (Director, Ministry of Commerce, China)

#### **Session 1 (09:45-10:45)**

- **The Services Negotiations: State of Play and Challenges Ahead**
- Moderator: Mr. Dale Honeck
- Speaker: Mr. Edward Sulikowski (Australia)
- Q&A

#### **Tea break (10:45-11:00)**

#### **Session 2 (11:00-12:00)**

- **General introduction of current Rules Negotiations on Trade in Services** Moderator:  
Mr. Dale Honeck
- Speaker: Mr. Edward Sulikowski (Australia)
- Q&A

#### **Lunch (12:00-13:30)**

#### **Session 3**

- **Special Features of Rules of GATS**
- Moderator: Mr. Johannes Bernabe

#### **Part 1 (13:30-17:30)**

##### **Domestic Regulation**

**(1)The mandate for disciplines in GATS Article VI:4 and the history of the negotiations to date (13:30-15:00)**

- Speaker: Mr. Dale Honeck (WTO Trade in Services Division)



**Tea break (15:00-15:15)**

**(2) Introduction of the current proposals for regulatory disciplines (15:15-16:45)**

- Speaker: Mr. Dale Honeck (WTO Trade in Services Division)
- Q&A (16:45-17:30)

**Welcome Dinner hosted by Ministry of Commerce, China (18:00-19:30)**

**June 29, 2006**

**Session3 Special Features of Rules of GATS (Continued)**

**Part1 (09:00-10:30)**

- **Disciplines on Domestic Regulation - How to better understand and participate in the negotiations**
- Moderator: Mr. Edward Sulikowski
- Speaker: Ms. Naoko Tsuchida (Japan)
- Q&A
- 

**Tea break (10:30-10:45)**

**Part 2 (10:30-11:15)**

- **Government procurement**
- Moderator: Mr. Edward Sulikowski
- Speaker: Mr. Dale Honeck (WTO Trade in Services Division)
- Q&A

**Part 3 (11:15-12:00)**

- **Subsidies**
- Moderator: Ms. Naoko Tsuchida
- Speaker : Mr. Dale Honeck (WTO Trade in Services Division)

Q&A

**Lunch (12:00-13:30)**

• **Part 4 (13:30-15:00)**

**Emergence Safeguards Measures**

- Moderator: Ms. Naoko Tsuchida
- Speaker: Mr. Johannes Bernabe (Malaysia)

Q&A

**Tea break (15:00-15:30)**

**Session4 (15:30-17:00)**

• **Negotiation skills and lessons from member economies**

- Moderator: Ms. Li Yihong
- Case study from Indonesia (Ms. Nuning Wulandari)
- Case study from Mexico (Mr. Luis Rivera)
- Case study from China (Mr. Wang Zhen)

- Q&A

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**Session5 (17:00-18:00)**

**Discussion and conclusion**

- Moderator: Ms. Li Yihong



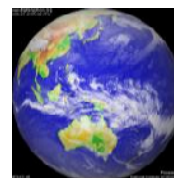
**General Agreement on Trade in Services (GATS)**  
**Negotiations in the Doha Round**

Mr. Edward Sulikowski

## STATE OF PLAY & CHALLENGES AHEAD

### GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) NEGOTIATIONS IN THE DOHA ROUND

**Edward Sulikowski**  
Director, Services Trade and Negotiations  
Department of Foreign Affairs and Trade  
Canberra, Australia



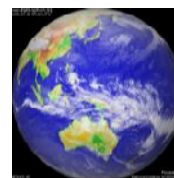
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Kunming, June 2006

## Broader Dynamics of the Round

- WTO created in 1995 – Uruguay Round
- Broader agenda, including agriculture, services and intellectual property
- Membership surge – now 150 Members
- Fundamental change in dynamics of the organisation
- Agriculture is the top priority for most developing country Members
- Progress in services will depend on progress in other areas, especially agriculture

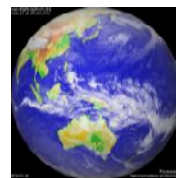
– the “third train in the carriage”



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## Services Negotiations

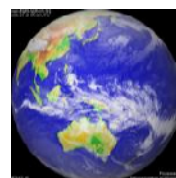
- Market access negotiations carried out through a request/offer process
- GATS commitments generally less than “standstill”
- Services liberalisation traditionally driven by developed countries, but developing country Members have strong offensive interests in Mode 1 (BPO) and Mode 4 (including professional services)
- Ongoing rule-making work on such issues as domestic regulation and safeguards



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## Requests and Offers

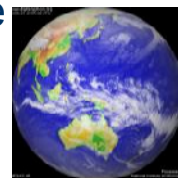
- Liberalisation not formulaic, as in Agriculture and NAMA
- 74 Members have made initial offers, including over 55 developing country Members
- 29 Members have made revised offers
- Quality of offers varies considerably



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## Doha Round: Latest Developments

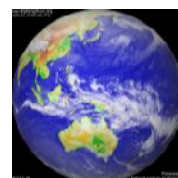
- Critical point in WTO negotiations reached
- Ministers meeting in Geneva this week
- Challenge is to complete the Round in 2006
- Failure of the Round would be a major setback for the WTO system
- Agricultural market access remains the key stumbling block



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## Services: Next Steps

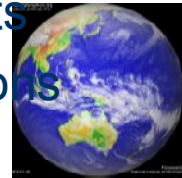
- Ministerial stocktake on 1 July
- Second revised services offers lodged by July 31
- Next round of bilateral market access negotiations scheduled for 10-14 July
- Future engagement in plurilateral negotiations?



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## Major challenges of GATS negotiations

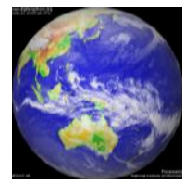
1. Finish the Round
2. Work with a Diverse Membership
3. Reform of GATS Architecture ?
4. Progress in Rules Negotiations
5. Impact of Free Trade Agreements
6. Difficulty of Domestic Consultations



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## Major challenges of GATS negotiations # 1: Finish the Round

- Speculation that the Round is dead or dying
- Still can do a deal but Members need to act with utmost urgency and resolve
- Historic opportunity to resolve world trade for the better

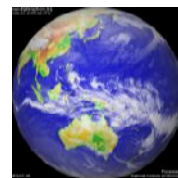


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## Major challenges of GATS negotiations # 2: Diverse membership

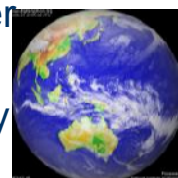
- Size and composition
  - 150 very diverse members
    - Developing, Developed, LDC
    - Resource constraints
- Blocks/alliances in WTO (G6, G20, G33, Cairns Group, ACP Group, LDCs)
- More complex issues



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## Major challenges # 3: GATS Architecture

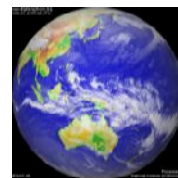
- Services share of global trade increasing rapidly
- Credibility of GATS architecture undermined if we fail to keep pace with these changes
- To date, services offers poor on all counts – participation, coverage and depth of commitments
- 10 years of the GATS is enough time to explore possibilities to undertake broader and deeper commitments in Doha Round
- But still large gap between current regulatory practice and current offers



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## Major challenges # 2: GATS Architecture - Questions

- Can the request-offer negotiations and plurilateral processes deliver commercially meaningful offers?
- Are the negotiations fragmented in the absence of an overall level of ambition, target or reference point?
- Are there better options to the negotiations than leaving the process without structure and guidance?



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## Major challenges # 4: Rules Negotiations

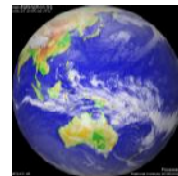
- Focus of this workshop
- More than 10 years of inconclusive negotiation on domestic regulation, ESM, subsidies and government procurement of services
- Slow progress on rules affecting negotiations on market access
- Focus on domestic regulation and emergency safeguard mechanism



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## Major challenges # 5: Free Trade Agreements (FTAs)

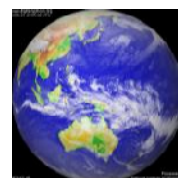
- Negative vs Positive list approach
- Complementary or competing?
- FTAs now cover services
- Why haven't signatories to FTAs taken equivalent commitments in GATS?
- GATS+ nature of bilateral deals: hold back level of GATS commitment in order to bring something to the table?



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## Major challenges # 6: Domestic consultation

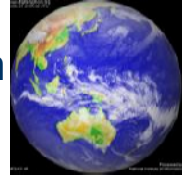
- Major resource challenge
  - 160 sub-sectors
  - Domestic regime behind borders
  - Need to undertake extensive domestic consultation
  - Major resource issue for developing countries
  - Brake on pace of negotiations
  - How to solve? How to learn?



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## Conclusions

- An ambitious outcome on services is a critical element of a balanced package in the Doha Round
- Many members have undertaken voluntary liberalisation since the UR that is not reflected in their schedules
- Credibility of GATS will come under greater challenge if commitments do not reflect the pace of global services liberalisation



# **An Introduction to GATS Rules**

Mr. Edward Sulikowski

## An Introduction to GATS Rules

Edward Sulikowski  
Director  
Services Trade and Negotiation Section  
Department of Foreign Affairs and Trade  
Canberra, Australia  
Kunming, June 2006



## 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





# **General Introduction of Domestic Regulation**

Mr. Dale Bruce Honeck





## Role of the WTO and GATS in Domestic Regulation



- WTO has no direct role either in promoting the creation of domestic regulations or in specifying their content. *WTO is not a standard-setting organization*
- GATS preamble explicitly recognizes the right of Members to regulate in order to meet legitimate national policy objectives
- GATS objective is to ensure that regulations do not create unnecessary barriers to trade

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## Trade Barriers & Domestic Regulation



- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>Market Access<br/>(Article XVI)<ul style="list-style-type: none"><li>– quantitative restrictions</li></ul></li><li>National Treatment<br/>(Article XVII)<ul style="list-style-type: none"><li>– discriminatory measures</li></ul></li></ul> | <ul style="list-style-type: none"><li>Domestic Regulation<br/>(Article VI)<ul style="list-style-type: none"><li>– qualitative requirements</li><li>– - regulatory autonomy of Members subject to GATS rules aimed at minimising trade restrictive effects (Article VI:1&amp;4)</li></ul></li></ul> |
|---|--|

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## GATS Article VI - in brief



### In sectors where commitments are undertaken:

- ☞ VI:1 - Reasonable, objective and impartial administration of measures of general application
- ☞ VI:3 - Decisions on applications within a reasonable period
- ☞ VI:6 - Procedures to verify competence

### In all sectors, with or without commitments:

- ☞ VI:2 - Procedures for the review of administrative decisions affecting trade in services

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## Regulatory Disciplines... To be developed (Article VI:4)



- ☞ To ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade, *the Services Council shall develop any necessary disciplines*"
- ☞ Such disciplines shall aim to ensure that these are, *inter alia*:
  - (a) based on objective and transparent criteria
  - (b) not more burdensome than necessary
  - (c) in the case of licensing procedures, not in themselves a restriction on supply

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## Regulatory Disciplines... Provisional application (Article VI:5)



- ☞ “(a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments ...”
- ☞ (b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), *account shall be taken of international standards of relevant international organizations* applied by that Member.”

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## Stages achieved thus far...



- ☞ Ministerial Decision on Professional Services
- ☞ Results of the Working Party on Professional Services
- ☞ Working Party on Domestic Regulation

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## Ministerial Decision on Professional Services



- ☞ April 1995
- ☞ Established the Working Party on Professional Services (WPPS)
- ☞ Required the immediate implementation of GATS Article VI:4
- ☞ Gave priority to the accountancy sector

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## Creation of MRA *Guidelines*



- ☞ 28 May, 1997: WTO Council for Trade in Services adopted the voluntary *Guidelines for Mutual Recognition Agreements in the Accountancy Sector*.
- ☞ In addition to a reminder of Article VII notification requirements, the *Guidelines* give recommendations on the form and content of MRAs in accountancy.

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## Disciplines on Domestic Regulation in Accountancy (Dec. 1998) - in Brief



Do not address measures subject to scheduling under Articles XVI and XVII of the GATS

### Necessity test

To ensure that measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers, the quality of the service, professional competence, and the integrity of the profession

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## Accountancy Disciplines - in Brief (Cont.)



### Transparency

- provide information on competent authorities
- provide information on activities regulated, licensing requirements and procedures, qualification requirements and procedures; and technical standards
- inform the rationale behind measures in relation to legitimate objectives (upon request)
- endeavour to provide opportunity for prior comment before adoption of new measures

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## Accountancy Disciplines - in Brief (Cont.)



### ☐ Licensing requirements

e.g. membership in professional organisations; non-discriminatory residency requirements; use of firms names; professional indemnity insurance; cost-based fees)

### ☐ Licensing procedures

e.g. application procedures and related documentation; information on status of applications; immediate entry into force of licences

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## Accountancy Disciplines - in Brief (Cont.)



☐ Qualification requirements (incl. equivalency of education, experience, and/or examination requirements)

☐ Qualification procedures (incl. verification of an applicant's qualifications; scheduling of examinations; and non-discriminatory residency requirements)

☐ **Technical standards:** only to fulfil legitimate objectives; and take account of internationally recognized standards

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## WTO Working Party on Domestic Regulation (WPDR)



- Established 26 April 1999.
- Replaced the Working Party on Professional Services.
- Emphasis on the development of generally applicable disciplines for all services sectors.

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## Domestic Regulation - Issues under consideration



- Necessity Test -- obligation not to create “unnecessary barriers to trade” / policy objectives / least trade restrictive measure / reasonably available alternative means**
- Transparency -- clarifications of existing GATS transparency provisions / creating additional requirements?**
- Equivalence -- consideration of education, professional experience, etc. obtained abroad**
- International Standards -- role as a benchmark? / presumption in favour of regulation based on IS / requirement to base regulation on IS**

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## Domestic Regulation in the New Round



### Negotiating Guidelines

Adopted by the Council for Trade in Services on 28 March 2001

☞ “Members shall aim to complete negotiations under Articles VI:4 ...prior to the conclusion of negotiations on specific commitments.”

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## Domestic Regulation in the New Round



### Negotiating Proposals

Special Session of the Council for Trade in Services

☞ Nearly every negotiating proposal included domestic regulation aspects.

☞ “Transparency and Other Aspects of Domestic Regulation” was one of the horizontal issues in Special Session discussions.

☞ Canada and the U.S. submitted specific proposals on transparency (S/CSS/W/47 and 102). 18

## Workshop on Domestic Regulation: 29-30 March 2004



- ☰ GATS and Domestic Regulation
- ☰ Concepts Related to the Development of Disciplines on Domestic Regulation
- ☰ Wider applicability of the *Accountancy Disciplines*?
- ☰ Regulators (and “Regulatees”) Views
- ☰ Future Possibilities

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## Domestic Regulation in the DDA



### Hong Kong Ministerial Declaration

Adopted on 18 December 2005

“Members shall develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations. We call upon Members to develop text for adoption. In doing so, Members shall consider proposals and the illustrative list of elements for Article VI:4 disciplines.”

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## Illustrative List of Elements (1)



- ☞ Licensing requirements and procedures
  - Transparency, requirements, procedures, documentation, review/appeal, timeframes and fees
- ☞ Qualification requirements and procedures
  - Transparency, requirements, verification of qualifications and assessment of equivalency, examinations, procedures, documentation, review/appeal, timeframes, fees, mutual recognition agreements
- ☞ Technical standards
  - Transparency, conformity assessment, use of international standards setting bodies

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## Illustrative List of Elements (2)



- ☞ Transparency (horizontal)
  - Mechanism to respond to enquiries, publication, notice and comment, transparency of application procedures
- ☞ Objective scope and application
  - Right to regulate, sector specific versus horizontal disciplines, application to specific commitments, non overlap with other GATS provisions
- ☞ Definitions
- ☞ Development considerations
  - Compliance, Implementation, technical assistance and capacity building

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## Members' Proposals - I



- ▣ Japan – Draft Annex on Domestic Regulation
- ▣ EC – Licensing Procedures
- ▣ Colombia – Visa or Entry Permit Procedures
- ▣ Mexico and Switzerland – Technical Standards
- ▣ India and others – Qualification Requirements and Procedures
- ▣ Brazil and others – Elements for Draft Disciplines
- ▣ United States – Transparency Disciplines
- ▣ Hong Kong and Others – Application to Different Levels of Government and NGOs

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## Members' Proposals - II



- ▣ Australia – Legal and Engineering Services
- ▣ Chinese Taipei – Telecommunications
- ▣ Chinese Taipei – Definitions
- ▣ China and Pakistan – Proposed Disciplines
- ▣ ACP Group – Pro-development Principles
- ▣ African Group – Communication on Domestic Regulation
- ▣ SVEs – Trade-Related Concerns
- ▣ Hong Kong and Others – Proposal for Draft Text

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## DR Disciplines – Possible Legal Form



### Annex to the GATS

- Scope of application (only where commitments are undertaken?)
- Uniformity of application
- Requires consensus
- Requires amendment of GATS

### Reference paper(s)

- Non-uniform application
- Does not require consensus
- Does not require amendment of GATS

### Other forms (e.g. additional commitments under Article XVIII)

- To be negotiated through request-offer

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## WPDR – The Way Forward



Issues paper by the Chairman

Members to convert their proposals into legal text

Mandate to the Chairman to produce a first comprehensive draft

Text based negotiations on Chairman draft

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**Disciplines on Domestic Regulation:**

*How to better understand and participate in the negotiations*

Ms. Naoko Tsuchida

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# Disciplines on Domestic Regulation:

*How to better understand  
and participate in the negotiations*

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Naoko Tsuchida  
International Economic Affairs Bureau I  
Japan Business Federation (Keidanren)

\*This presentation is made on a purely personal basis and does not prejudice official position of the Government of Japan nor of Japan Business Federation.

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## Synopsis

1. What are 'DR Disciplines'?
  2. What are the benefits of 'DR Disciplines'?
  3. What is the implication of each proposal?
  4. What is required for Members to be engaged in the negotiations?
-



## What are DR Disciplines?

1. They are disciplines on measures relating to **Licensing Requirements, Licensing Procedures, Qualification Requirements, Qualification Procedures and Technical Standards**.
2. These measures should be:  
based on **objective and transparent criteria**  
and  
**not more burdensome than necessary**.

## What are 'DR Disciplines'?

- They do *not* deprive Members of their **Right to Regulate** itself.
- They do *not* cover **every kind of regulations**.
- They do *not* prejudice the application of any **other provisions in the GATS**, such as Prudential Curve-Out, General Exceptions and Security Exceptions, etc.

Disciplines=More **TRANSPARENT&SLIM** regulations!

## What are the benefits of 'DR Disciplines'?

- Regulatory Transparency:
    1. assures **legal certainty** and **predictability** for foreign service suppliers;
    2. reduces the room for **arbitrary operation** of regulations, and thus
    3. enables foreign service suppliers to operate based on **long-term business strategies** under stable regulatory environment.
- 

## What are the benefits of 'DR Disciplines'?

- Slim Regulations
    1. save **foreign service suppliers** costs for administrative procedures,
    2. save also **domestic service suppliers** costs for administrative procedures, and
    3. save **regulatory authorities** administrative costs.
-

## What is the implication of each proposal?

- Transparency
    1. Publication of **COMPETENT AUTHORITIES**  
*Benefit:* facilitates **access to necessary information** on regulations.  
*Cost:* impose on governments **cost to update and publicize** information on all the relevant authorities.
- 

## What is the implication of each proposal?

- Transparency
    2. **ADVANCE PUBLICATION**  
*Benefit:* makes regulatory changes **predictable** and gives service suppliers **time to prepare** for the changes.  
*Cost:* takes authorities **more time** to make regulatory changes.
-

## What is the implication of each proposal?

- Transparency

### 3. PRIOR COMMENTS

*Benefit:* makes **business interest** reflected in regulations.

*Cost:* takes authorities **more time and resources** to make regulatory changes.

## What is the implication of each proposal?

- Licensing Requirements

### 1. TRANSPARENCY

*Benefit:* facilitates application for licenses by making requirements **predictable** and **legally stable**.

*Cost:* imposes on authorities **cost to publicize relevant information** and deprive them of **freedom of arbitrary operation or changes** of regulations.

## What is the implication of each proposal?

- Licensing Requirements
  - 2. Rules on **RESIDENCY REQUIREMENTS**  
*Benefit:* lower trade barriers for foreign service suppliers.  
*Concern:* have to take into account local conditions.
- 

## What is the implication of each proposal?

- Licensing Procedures
  - 1. **TRANSPARENCY**  
*Benefit:* guarantees impartiality and legal certainty of the processing of applications.  
*Cost:* imposes on authorities cost to publicize relevant information and deprive them of freedom of arbitrary processing of applications.
-

## What is the implication of each proposal?

- Licensing Procedures
  - 2. **STANDARD PROCESSING TIME-FRAME**  
*Benefit:* expedites the processing of applications.  
*Cost:* imposes on authorities **obligation to meet the timeline.**
- 

## What is the implication of each proposal?

- Licensing Procedures
  - 3. Rules on **DOCUMENTATION**  
*Benefit:* lower cost for applicants by reducing **unnecessary documentation.**  
*Cost:* obligate authorities to **review and restructure documentation.**
-

## What is the implication of each proposal?

- Licensing Procedures
  - 4. Rules on **FEES**  
*Benefit:* lower cost for applicants by prohibiting **unduly expensive fees**.  
*Cost:* reduces authorities' **revenue from fees**.
- 

## What is the implication of each proposal?

- Qualification Requirements
  - 1. **TRANSPARENCY**  
*Benefit:* facilitates application for qualifications by making requirements **predictable** and **legally stable**.  
*Cost:* imposes on authorities **cost to publicize relevant information** and deprive them of **freedom of arbitrary operation or changes** of regulations.
-

## What is the implication of each proposal?

- Qualification Requirements
  - 2. Rules on **EXAMINATION SUBJECTS**  
*Benefit:* free applicants from **irrelevant subjects** of exams and unnecessary **residency requirements**.  
*Cost:* obligate authorities to **review** contents of examinations.
- 

## What is the implication of each proposal?

- Qualification Requirements
  - 3. Rules on **LANGUAGE REQUIREMENTS**  
*Benefit:* **increase opportunity** for applicants who is not fluent in local language.  
*Cost:* require authorities to **adjust exams** in such ways as to accommodate these applicants.
-



## What is the implication of each proposal?

- Qualification Requirements

4. VERIFICATION

*Benefit:* facilitates obtaining qualifications by holders of foreign qualification.

*Cost:* impose on authorities cost to create mechanisms for verification.

## What is the implication of each proposal?

- Qualification Procedures

1. TRANSPARENCY

*Benefit:* guarantees impartiality and legal certainty of the processing of applications.

*Cost:* impose on authorities cost to publicize relevant information and deprive them of freedom of arbitrary processing of applications.

## What is the implication of each proposal?

- Qualification Procedures
  - 2. Rules on **EXAMINATIONS**  
(frequency, electronic means, period for application, etc.)  
*Benefit:* provide **more opportunity** for applicants to take exams.  
*Cost:* impose on authorities cost to **review and adjust** all the exams.
- 

## What is the implication of each proposal?

- Qualification Requirements
  - 3. **STANDARD TIME-FRAME** for verification  
*Benefit:* **expedites** verification of competence of applicants.  
*Cost:* imposes on authorities **obligation to meet the timeline.**
-

## What is the implication of each proposal?

- Qualification Procedures
  - 4. Rules on **FEES**  
*Benefit:* lower cost for applicants by prohibiting **unduly expensive fees**.  
*Cost:* reduces authorities' **revenue from fees**.
- 

## What is the implication of each proposal?

- Technical Standards
  - 1. **TRANSPARENCY**  
*Benefit:* guarantees **impartiality** and **legal certainty** of the application of technical standards.  
*Cost:* imposes on authorities **cost to publicize relevant information** and deprive them of **freedom of arbitrary application** of technical standards.
-

## What is the implication of each proposal?

- Technical Standards
- 2. Use of **INTERNATIONAL STANDARDS**  
*Benefit:* makes domestic technical standards more **objective** and **universal**, thus easy for service suppliers to observe.  
*Cost:* requires authorities for **understanding** of international standards.

## What is required for Members to be engaged in the negotiations?

- Consideration of **BENEFITS**
- 1. **Consultation with service suppliers** who have interest in doing business abroad
- 2. Estimation of how much each discipline improves their **competitiveness** and increase their **business opportunity** abroad
- 3. Estimation of effect of **domestic regulatory reform**

## What is required for Members to be engaged in the negotiations?

- Consideration of **COSTS**
  1. Consultation with relevant authorities
  2. Estimation of **what is acceptable** and **what is NOT acceptable**
  3. In case of what is not acceptable, estimation of **transitional period** required for adjustment

## What is required for Members to be engaged in the negotiations?

- **BALANCE**
  1. between **benefits & costs**, or in other words, **offensive & defensive** interest
  2. among **interests of different Members** and seek pragmatically for agreement
  3. between consideration for **developing Members** & benefits for service suppliers

## Conclusion

With each Members'

- **understanding** of each proposal,
  - efforts to undertake necessary **consultation**,
  - sense of **balance**,
  - **courage** to make changes, and
  - **pragmatism** to find common solution,
- the negotiations will see early and successful conclusion.



## **Government Procurement in the GATS**

Mr. Dale Bruce Honeck





# Government Procurement in the GATS

WTO  
Trade in Services Division

1

## 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 with a view to 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.”

2



## 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"
- "On government procurement, Members should engage in more focused discussions and in this context put greater emphasis on proposals by Members, in accordance with Article XIII of the GATS."

3

## Economic Importance



- Services trade is growing more rapidly than goods trade.
- Growth of cross-border trade presents opportunities for developing country exports
- Sub-central governments = 2/3 of total procurement
- Restrictions on outsourcing by firms receiving procurement contracts.
- Sectoral focus in services
- Tied-Aid

4



## Relevance of GP for services

- Sectors of focus in the GPA:
  - 1.A.a.: Accounting, auditing and bookkeeping services (CPC 862)
  - 1.A.b.: Architectural services (CPC 8671)
  - 1.A.d.: Engineering services (CPC 8672)
  - 1.A.e.: Integrated engineering services (CPC 8672)
  - 1.A.f.: Urban planning and landscape architectural services (CPC 8674)
  - 1.B.: Computer related services (CPC 84)
  - 1.F.a.: Advertising services (CPC 871)
  - 1.F.b.: Market research and public opinion polling services (CPC 864)
  - 1.F.c.: Management consulting services (CPC 865)
  - 1.F.d.: Services related to management consulting (CPC 866)
  - 3.: Construction services (CPC 51)
  - 6.: Environmental services (CPC 94)

5

## 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 Procurement

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

6



## Current situation in the WTO



### Understanding on Commitments in Financial Services

- “... each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded MFN treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory”
- 31 Members: essentially developed countries (exceptions: Nigeria, Sri Lanka, Turkey)

7

## Features of the EC's proposal



- Opening of GP to international competition
  - Take GP commitments per sector, per mode.
  - Articulation between GP commitment and MA-NT commitment.
- MFN
  - Possibility to take exemptions; exception for GPA treatment; Article V.
- Procedural rules
  - Only apply for sectors with GP commitments

8



## Features of the EC's proposal



- Thresholds and entities listed in schedule, per sector if needed.
- Procurement of goods incidental to the supply of services are covered “if the value does not exceed that of the services themselves”.
- Issue of tenders relating to various sectors, including some with no GP commitments.

9

## Features of the EC's proposal



- S&D:
  - Price preference or offset permitted during a transitional period
- Procedural Rules, e.g.,
  - Publication
  - No offsets
  - Time limits (e.g., information available with sufficient time to assess interest and provide responsive bid)
  - Methods of procurement specified in advance (conditions for use of “non-open” methods)

10



## Features of the EC's proposal



- Procedural Rules, e.g.,
  - Award of contracts:
    - Taken on basis of criteria and conditions known in advance
    - Contract shall be awarded to lowest price or most advantageous
    - Obligation to inform tenderers of decisions and to promptly publish notice of award. On request, provide information on reasons for rejection.
  - Domestic review/Challenge procedures
    - Independent domestic tribunal or review body to allow for review of decisions of procuring entities.
    - Maintain procedures providing for interim measures and for compensation.

11

## Some Issues Raised



- Link with GPA (e.g., reciprocity conditions)
- MFN issues
  - Relationship between commitments and MFN derogations
- Scheduling approach: relevance of modal distinctions, types of limitations, additional commitments?
- Scope of the negotiating mandate

12

## **Subsidies in the GATS**

Mr. Dale Bruce Honeck





# Subsidies in the GATS

WTO  
Trade in Services Division

1

## 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 to avoid such trade-distortive effects. 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 of Members, particularly developing country Members, for flexibility in this area.

For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers."

2



## 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"
- "On subsidies, Members should intensify their efforts to expedite and fulfil the information exchange required for the purpose of such negotiations, and should engage in more focused discussions on proposals by Members, including the development of a possible working definition of subsidies in services."

3

## Current situation in the WTO



- Agreement on Subsidies and Countervailing Measures
  - Definition of subsidy, specificity
  - Prohibited: export subsidies
  - Actionable: challengeable if causing adverse effects
    - AE through injury to domestic industry (sole basis for countervail action)
    - AE through serious prejudice
    - AE through nullification and impairment

4



## Current situation in the WTO



- Agreement on Subsidies and Countervailing Measures
  - Countervailing measures:
    - Need to determine that there are subsidized imports, injury to domestic industry, and a causal link.
    - Calculation of benefit, effect of subsidized imports on prices.
    - No countervailing duty can be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit.
- Agreement on Agriculture
- Relevance of the ASCM for subsidies to services
- Agreements notified under GATS Article V

5

## Current situation in the WTO



- GATS obligations relevant for subsidies
  - MFN (Article II)
  - National treatment (Article XVII)
  - Domestic regulation (Article VI)
  - Monopolies and exclusive service suppliers (Article VII)
  - Nullification and impairment (Article XXIII)
  - Article XV:2
- Subsidies in negotiating proposals
  - Ex: audiovisual services, construction services
- Subsidy-related entries in schedules
  - 35 Members; 32 horizontal entries (sector-specific: AV, education, recreational)
  - Most involve M3; a minority involve M1; many limited to R&D

6



## Subsidies in Services Sectors (W/25)

- Sectors:
  - widespread, but in particular tourism, transport, banking
- Form of Subsidy:
  - tax incentives, direct grants, duty-free inputs and free zones, preferential credit and guarantees
- Objectives pursued
  - Attract investment; increase exports; promotion of culture; universal access (TC); equal footing with other countries; rescuing troubled firms (FS, air), develop infrastructure, raise tourism earnings.

7

## Possible distorting effects of subsidies

- Import-substituting effect
  - Ex: production subsidy
- Export-enhancing effect
  - Production subsidies, export credits, export free zones
- Consumer subsidies
  - Ex: education grants
- Investment incentives
  - Locational subsidies; bidding wars

8



## Relevant Characteristics of Services

- Role of public policy objectives
- Modes of supply; specificity
- Determining the effect of subsidies: “customized” services, regulations and other barriers influencing price differentials, trade statistics.
- “Services provided in the exercise of governmental authority”
- N-D subsidies and the structure of the GATS:
  - Sequencing issues
- Feasibility of countervailing measures; definition of domestic industry.

9

## Definition of Subsidy

- Relevance of the ASCM definition
  - “Government or any public body”
  - “Services supplied under governmental authority”
  - Income or price support
  - Government provision and purchase of services
  - Conferring of a benefit
  - Specificity

10

## Additional Subsidy Issues



- Export subsidies:
  - Scope of the GATS
  - Relevance in services
  - Definition and modes of supply
    - “Local content” subsidy and NT in the GATS
    - “Contingent in fact” and the tourism sector
  
- Exchange of information
  - 5 answers to the questionnaire (HKC, NZ, Norway, Poland, Switzerland)
  - Transparency issues

11

# **Emergency Safeguard Measures in the GATS**

Mr. Dale Bruce Honeck



# Emergency Safeguard Measures in the GATS



WTO  
Trade in Services Division

1

## 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.

2



## 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.”

3

## 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.”

4



## 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

5

## Some Relevant Differences between Goods and Services



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

6



## 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?

7

## 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

8



## 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

9

## 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”

10



## 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?

11

## 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?

12

## Ways Forward...



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



# **Mexico's Experience in Negotiations of Services**

Mr. Luis Rivera Banuet

## **“Mexico’s experience in negotiations of services”**

*Luis Rivera Banuet  
Department of Multilateral and  
Regional Negotiations of Services  
Ministry of Economy*

1

### **Structure of presentation**

- **Uruguay Round (1986-1994)**
- **The economic importance of the service sector in Mexico**
- **Mexico’s Multilateral and Regional Strategy**
- **Multilateral negotiation experience**
- **Bilateral negotiation experience**
- **Bilateral approaches**
  - Negative list**
  - Positive list**
- **Final remarks**

2



## Uruguay Round (1986-1994)

- **Subjects of the Uruguay Round**
  - **Market access to industrial goods**
  - **Agriculture**
- **New sectors and issues in the multilateral trading system**
  - **textiles**
  - **Services (GATS)**
  - **intellectual property**
  - **investment measures**
  - **dispute settlement**
- **The creation of the WTO as a new agency of international trade**

3

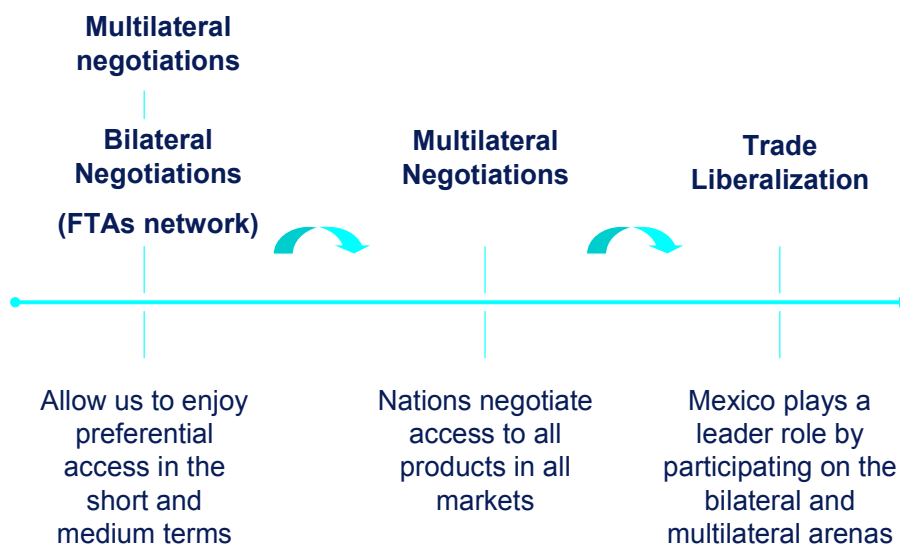
## The economic importance of the services sector in Mexico

- **Services represent the most dynamic component in the developed and developing countries. Besides their relevance, they are an indispensable part in the production of most goods**
- **In Mexico, services participate with 66% of GDP and with 60% of the total employment**
- **Mexico's strategy in services promotes trade and development through progressive liberalization**

4

## Mexico Multilateral and Regional Strategy

How do these negotiations work?



5

## Mexico: multilateral negotiation experience

### WTO

- **The GATS commits member countries to undertake negotiations on specific issues and to enter into successive rounds of negotiations to progressively liberalize trade in services.**
- **Following the standard format which is intended to facilitate comparative analysis.**
- **The GATS provides a credible and reliable system of international rules.**
- **Mexico identifies the services for which the Member guarantees market access and national treatment and any limitations that may be attached.**

6

## GATS Rules

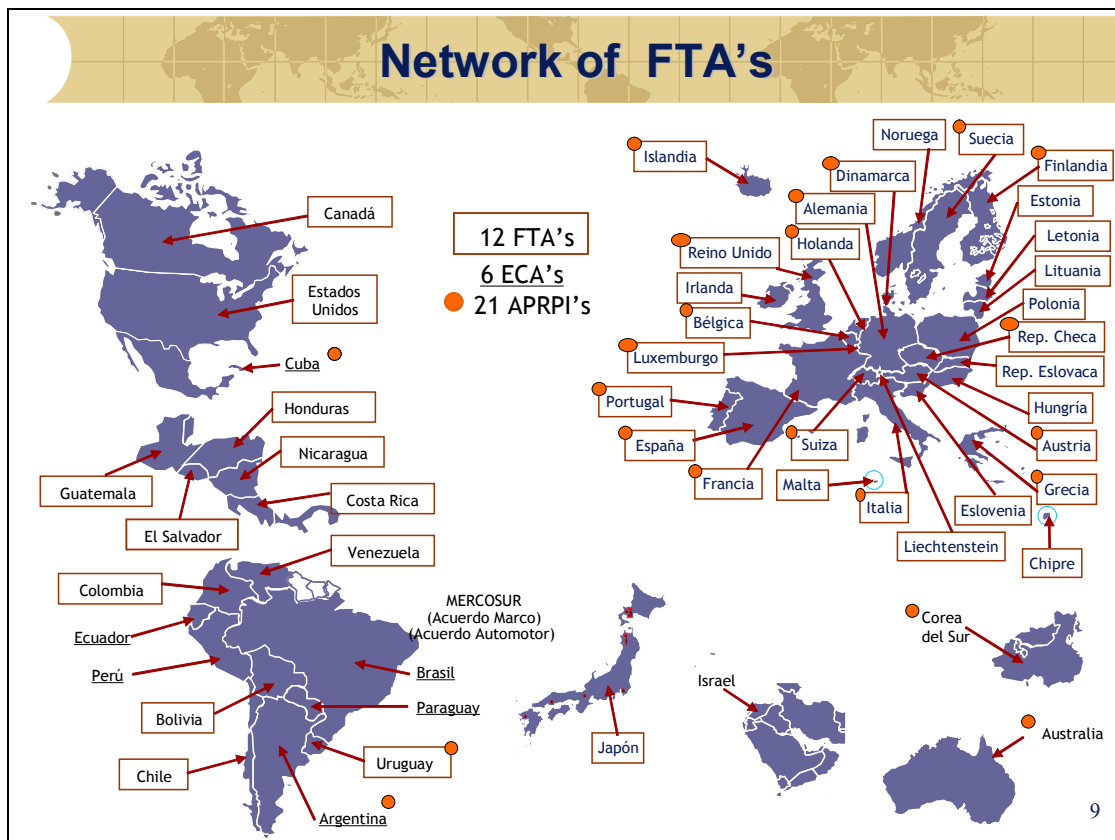
- **Mexico has been participating in the Working Party on GATS Rules**
- **Analyse the need and feasibility of the Emergency Safeguard Measures**
- **On subsidies Mexico has proposed delegations to work in a better definition**
- **Government Procurement: consultations on EC proposal and the scope of Article XIII**

7

## Mexico: bilateral negotiation experience

- **All FTA's signed by Mexico, with exception of Israel, include a chapter of services**
- **The FTA's comply with the general principles of the international system of trade: most favoured nation and national treatment**
- **Article V of the GATS**
- **Article XXIV of the GATT**

8



### Approaches in Services

Mexico has been using two major approaches toward the liberalization of trade in services

- “Positive List” or *“Bottom UP”*
- “Negative List” or *“Top Down”*

10

## Approaches in Services

### Decision making

Making a decision on which approach will be used, mostly depends on three key factors:

- ✓ liberalization objectives (degree) of the agreement.
- ✓ level of transparency and predictability of commitments.
- ✓ availability of financial and human resources of the Parties.

11

## Negative List

- This is the so-called “*list or lose*” technique: all measures not set out in the relevant list of reservations are considered to be fully covered by the agreement and are, therefore, liberalized.
- Non-conforming measures are further liberalized by consultations or periodic negotiations.
- A negative list approach will foster greater transparency

12

## Reservation and exceptions

- Each country will determine their liberalization commitments and exceptions with respect to the negotiations of:

National Treatment  
 Most Favored-Nation Treatment  
 Performance Requirements  
 Senior Management  
 Local Presence

13

## Example negative list Reservation

### Annex I

<b>Sector:</b>	Retail Trade
<b>Sub-Sector:</b>	Sale of Non-Food Products in Specialized Establishments
<b>Industry Classification:</b>	CMAF 623087                      Retail Trade of Firearms, Cartridges and Munitions CMAF 612024                      Wholesale Trade Not Elsewhere Classified (limited to firearms, cartridges and munitions)
<b>Type of Reservation:</b>	National Treatment (Article 58)
<b>Level of Government:</b>	Federal
<b>Measures:</b>	Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III
<b>Description:</b>	Investment Investors of the other Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in an enterprise established or to be established in the Area of Mexico that is engaged in the sale of explosives, firearms, cartridges, ammunition, and fireworks, excluding the acquisition and use of explosives for industrial and extractive activities, and the preparation of explosive mixtures for such activities.
<b>Phase-Out:</b>	None

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## Reservations/annexes

- Existing measures and liberalization commitments (Annex I)
- Reservations for future measures (Annex II)
- Activities reserved to the State (Annex III)
- Exceptions to most favored nation treatment (Annex IV)
- Quantitative Restrictions (Annex V)

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## Positive List

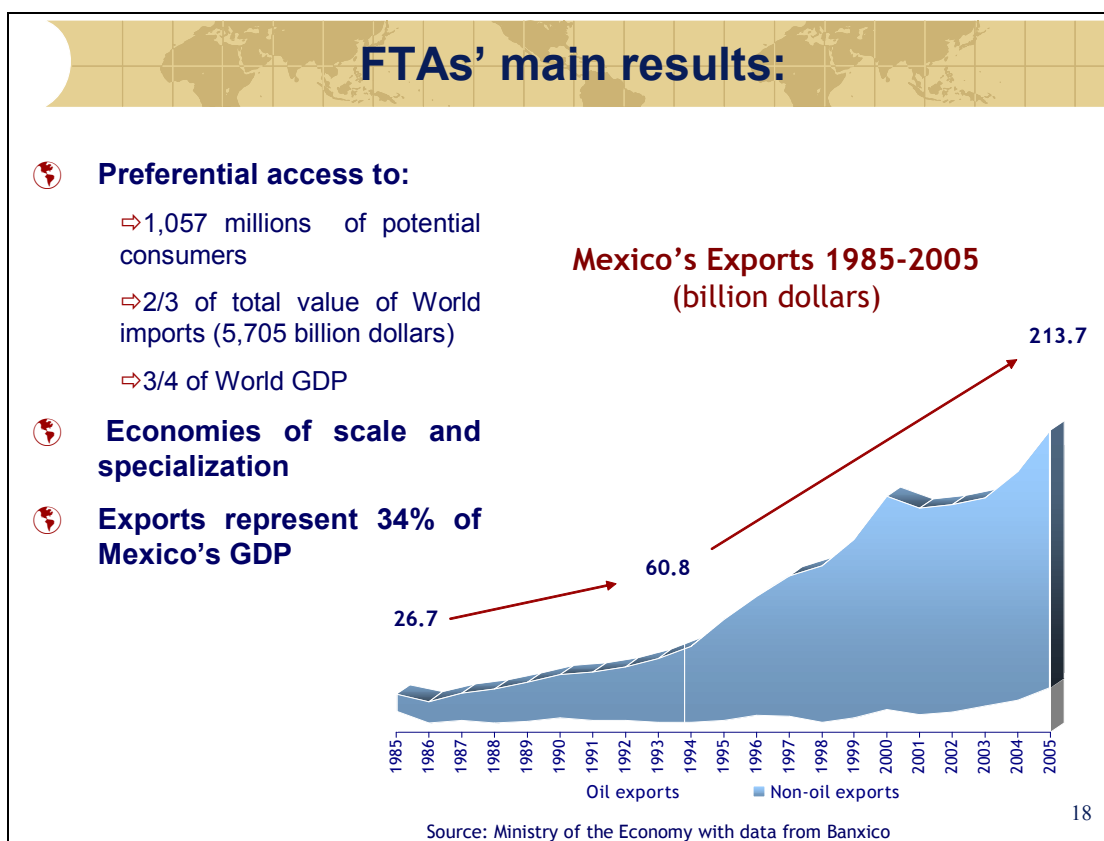
- It specifies the sectors covered by the provisions of the agreement.
- Countries undertake national treatment and market access commitments, indicating the type of access or treatment offered to services or service suppliers in scheduled sectors.
- A country will not be bound in those particular sectors and sub-sectors excluded from the schedules.

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## Example of positive list

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
C. <u>Retail trade services</u> - Retail sales of food, beverages and tobacco in specialized establishments (CPC 6310)	1) None 2) None 3) None Foreign investment of up to 100 per cent of the registered capital of enterprises. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	
- Retail sales of food products in supermarkets, self-service stores and shops (CPC 6310)	1) None 2) None 3) Foreign investment of up to 100 per cent of the registered capital of enterprises. Trade union and co-operative stores do not allow foreign investment. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	
- Retail sales of non-food products in department stores and shops (CPC 632)	1) None 2) None 3) Foreign investment of up to 100 per cent of the registered capital of enterprises. Trade union and co-operative stores do not allow foreign investment. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	
- Retail sales of motor vehicles, including tyres and spare parts (CPC 61112)	1) None 2) None 3) Foreign investment of up to 100 per cent of the registered capital of enterprises. Trade union and co-operative stores do not allow foreign investment. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	

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## Final remarks

- ✓ The top-down (negative list) mechanism has been the main guideline underlying Mexico's approach to liberalization of trade in services.
- ✓ Why?
  - a) Entails a higher level of commitment between the Parties since it binds existing measures for the entire service sector,
  - b) while allowing for reservations in areas where national law is incompatible with basic principles.
- ✓ The major challenge we have faced: need to identify all national non-conforming measures before any agreement could be finalized.

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## Final remarks

- 🌐 The negative list approach provides a better understanding of the liberalization degree among the Parties
- 🌐 Mexico has an attractive framework; provides long term certainty for all economic agents, including investors and service providers
- 🌐 Mexico represents a great opportunity for entrepreneurs to do business as partners in joint-ventures
- 🌐 Access to better services and reduction of costs

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**Thank you**

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# **China's Experience of WTO Services Rules Negotiations**

Mr. Wang Zhen



## China's Experience of WTO Services Rules Negotiations

- Part I Context
- Part II Coordination
- Part III Contributions
- Part IV Challenges
- Part V Conclusion



## Part I Context

- China is a developing country.
- Newly Acceded Member of the WTO
  - ① Date of Accession: 11 December 2001
  - ② Extensive Services Commitments: 62.5%
  - ③ Not Status Quo, But Future Reform
- State of Play of Services Trade

## Part II Coordination

- Lead Coordinator  
  
Division of Trade in Services,  
Department for WTO Affairs,  
Ministry of Commerce

## Part II Coordination (continued)

### ■ Coordination of Decision-Making

- ① Beijing-Geneva Interaction
- ② Inter-agency Coordination Mechanism
- ③ Intra-ministry Coordination Mechanism
- ④ Invite Academia to Participate
- ⑤ Engage Industrial Associations
- ⑥ Publish Articles on Newspaper

## Part III Contributions

- Mainly in the area of Domestic Regulation

Awareness of domestic regulation increases significantly among government agencies.



## Part III Contributions (continued)

- Case Study 1  
Ministry of Construction
- Case Study 2  
Ministry of Justice
- Case Study 3  
All stakeholders

## Part IV Challenges

- Capacity
- Language
- Experience
- Relevance
- Resources
- Balance

## Part V Conclusion

- A proactive role rather than a reactive one will help China better understand, participate in and contribute to the rules negotiations.
- It is imperative to find effective ways to address challenges, especially capacity, language and relevance.
- Technical assistance like this seminar is of vital importance to build up experience and capacity.
- Benefits depend on domestic coordination efficiency and the subsequent capacity to negotiate in Geneva.

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## **Indonesian Case: Insurance Service Sector**

Ms. Nuning Sri Rejeki Wulandari

## **NEGOTIATION ON RULES AS A SIGNIFICANT PART OF HAVING COMMITMENT WITH WTO MEMBER COUNTRIES INDONESIAN CASE: INSURANCE SERVICE SECTOR**

The growth and development of the world economy is numerous. Each developed country focus on the increasing participant of developing countries in trade and services of the global market.

In response to a request of developed countries and as a part of responsibility of member country in regional, bilateral and multilateral consensus in International Trade and Services, it is important to set up an economy strategy to have a fair competition with other countries.

Indonesia became a member of WTO (World Trade Organization) since January 1, 1995 and it is categorized as a developing country. Developing country status in the WTO bring certain right e.g. provisions in some WTO agreements which provide developing countries with longer transaction periods before they are required to fully implement the agreement, and developing countries can receive technical assistance.

To negotiate an issue in term of negotiation sectoral sector, the regulation and requirement of the services sector which has to be complied by foreign supplier in doing operation has to be set up. The objective of it to avoid the requirements will be used as barriers which are not necessary in the trading process. Actually, negotiation should be related to qualify the requirements and procedures, technical standards, and licensing requirements which are required by a service provider.

Following those criteria, sectoral stepping forward to:

- Provide complete information of the regulations and recognize each other prudential measures that can impact how measures shall be applied.
- Consider the priorities and concern (identify the offers and request).
- Discuss the material with other sector to have clear picture of regulations which are related.
- Table initial offer under current round negotiation

Indonesia case in insurance sector which is one of financial service sector has committed in negotiation. Insurance itself is essentially a form of risk management used to hedge against the risk of financial loss.

The insurance business has existed in Indonesian economy for a long time and played an important role in the course of the national history, standing side by side with the others sectors. So far, the existence of the insurance business has only been based on the Civil Code which regulates the insurance as an agreement. As a matter of facts, the insurance business is a business that promises a protection to the insured and, at the same time, it also deals with the public funds. Owing to those two rules, in an increasing economic development, the presence of a strong and reliable insurance

industry is perceived as being urgent. In connection with those matters, the insurance business constitutes a field of business which requires a sustainable guidance and supervision from the government in order to secure the public interest.

Therefore, it is necessary for the government to have a regulation in the form of law, so that it will have a stronger jurisdiction, constituting a basis, either for the business activities of the insurance companies, or for the government in conducting the supervision.

Basically Indonesian insurance law follow the business specialization principle in the types of insurance business. This due to the fact that the insurance business is a business requiring specific expertise and skill in its conducts. The Indonesian insurance law also underline the freedom of the insureds in closing the insurance companies. In order to protect the rights of the insured, the law provides the provision to be the guideline for the insurance's conduct of business in order to prevent any business activities which might cause conflict of interest as well as to make the services rendered be based on an objective consideration which will not harm any party concerned.

Schedule of commitments Indonesia in insurance sector for market access is unbound. It is also unbound for national treatment. Licensing procedures in Indonesia is regulated in: (1) Government law No. 2/1992, Government Regulation No. 73/1992, Government Regulation No.69/1999 and Ministry of Finance Decrees.

Licensing procedures are understood to be the administrative procedure relating to submission and processing of an application for a license, covering licenses, authorizations, permits, for which certain requirements have to be full filled in order to obtain permission to supply a service.

To obtain an insurance license in Indonesia, there are requirements that must be full filled, such as: (a) the article of association (b) organizational structure, (c) capital requirement, (d) ownership, (e) expertise in the field of insurance, (f) feasibility of business plan, (g) other things needed to support the growth of insurance industry managed in sound of business.

Those requirement has a detail explanations in Government Regulations and Ministry of Finance Decrees. In connection with market access, the requirements of having an insurance license could be explained as follows:

#### 1. Legal Aspect

- Insurance business may only be carried out by legal activities in the form of state own company, cooperative, limited liability, mutual company
- Insurance license is given by Ministry of Finance

#### 2. Ownership

Insurance company may only be founded by:

- a. An Indonesian citizen and / or Indonesian legal entity which fully owned by Indonesian citizen and / or Indonesian legal entity

- b. An Insurance company which jointly owned by those as stated in letter a and an insurance company which has been incorporated under the jurisdiction of a foreign law
  - c. An Insurance company having the same type of business activity with the business activity of the insurance company which establishes or owns it
  - d. A loss insurance company or a reinsurance company who found(s) or owner(s) is a loss insurance company and or reinsurance company
3. Paid up capital
- a. Minimum paid up capital for a new insurance or reinsurance company shall be as follow:
    - Rp 100.000.000.000 (one hundred billion rupiah) for insurance company
    - Rp 200.000.000.000 (two hundred billion rupiah) for reinsurance company
  - b. At the time of establishment , direct investment of foreign party in insurance company shall not exceed 80% (eighty per cent)
  - c. Any change in ownership of the insurance company shall be reported to the Ministry of Finance.

As the principle of GATS and the advantages to join or be a member in international negotiation forum during liberalization era, we believe that country policies such as prudential measurement have to be considered to get economic advantages through a fair competition in the global market. In according to this, Government of Indonesia made binding commitments in the GATS framework which the commitments are intended to have legally secure and predictable conditions of access to market, benefits for traders-investors and ultimately all of us as a consumers.

Under the national treatment, Government of Indonesia give the equal treatment not only to the local insurance companies but also to the joint venture insurance companies.

We hope that through the negotiation the idea of liberalization will support the economic growth and standard of living of developing countries, and also create peace among nations.





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APEC#206-CT-04.7  
ISBN: 981-05-6661-1