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