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.
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.”

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.”
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

Some Relevant Differences between Goods and Services

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

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
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

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”
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?

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?
Ways Forward...

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