



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO

Trade Negotiations Simulation **Skills Course**

Power Point Presentations

1. APPROACHES AND STRATEGIES OF TRADE
NEGOTIATIONS

2. GENERAL AGREEMENT ON TRADE IN SERVICES

3. WTO PRINCIPLES AND THE MULTILATERAL
TRADING SYSTEM

4. NEGOTIATING FRAMEWORK FOR REDUCTION
OF TRADE BARRIERS

5. TRADE CONTINGENCY MEASURES



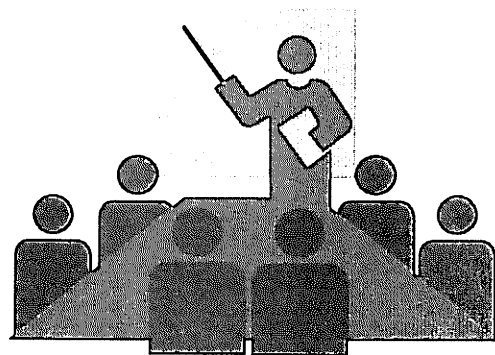
Approaches and Strategies of Trade Negotiations

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TRADE NEGOTIATIONS

- Process of communication
- Two or more persons
- Seek to advance their individual interests
- Through joint action
- Negotiation is the means to make deals



Challenge for Negotiators

- In any negotiations, negotiators need to do 2 things:
 - To **cooperate** with each other to create value;
 - To **compete** with each other to claim as large a share as possible of the value created.
- Too much competition– negotiators risk losing the deal
- Too much cooperation--- negotiators risk obtaining less than the maximum benefit for their governments

3

TRADE NEGOTIATIONS



Few Basic Rules for Negotiators

- **Carefully plan your opening moves and make them fit your goals**
- **Work to build relationships with your negotiating partner**
- **Search for your negotiating partner's needs and interests**
- **Rely on objective standards to justify your proposals**
 - Your negotiating partner should do the same
- **Consider using third parties to help conclude the negotiation**
- **Plan effective implementation of the Agreement**

5

CHALLENGE FOR NEGOTIATORS

The challenge is to apply them in a multitude of situations that you will face in concluding negotiations around the world

Throughout the negotiations, a skilled negotiator constantly needs to delve behind stated positions in order to determine the negotiating partners real needs and interests

At the outset, through words and actions, negotiators need to make it clear to each other that they see the process of negotiations not as a combat or struggle but as an effort to find a mutually acceptable solution to a problem they both share

Negotiators need to do their utmost throughout the negotiations to maintain an atmosphere of problem-solving despite the tensions and conflicts that inevitably arise during the course of any business negotiation

6

Value creation in negotiation

Value creation in negotiation begins with fostering a favorable atmosphere for problem solving

At the outset, through words and actions, negotiators need to make it clear to each other that they see the process of negotiations not as a combat or struggle but as an effort to find a mutually acceptable solution to a problem they both share.

Negotiators need to do their utmost throughout the negotiations to maintain an atmosphere of **problem solving** despite the tensions and conflicts that inevitably arise during the course of any business negotiation.

Throughout the negotiation, a skilled negotiator constantly needs to delve behind **stated positions** in order to determine the negotiating partner's real needs and interests.

7

TRADE NEGOTIATIONS

- **Declaratory Phase**

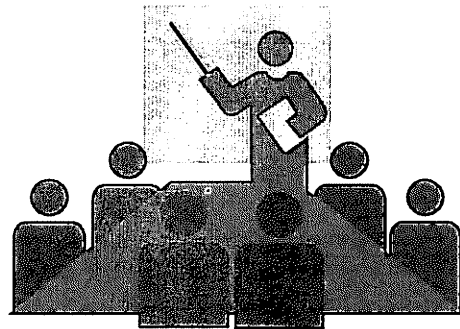
Discussions with Govts.
Discussions with friends
Various lobbies

- **Making speeches addressed to the chair**

Precursor to negotiations

- **Listening mode**
- **Problem-solving mode**

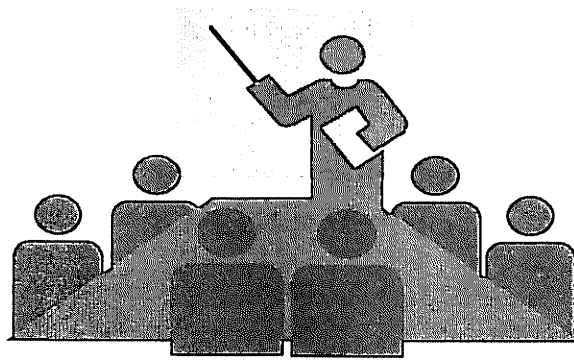
Actual negotiations



8

TRADE NEGOTIATIONS

Eight Steps to Successful Negotiations



Eight Steps to Successful Negotiations

- Create the right environment
- Research your objectives
- Decide who you are and who your negotiating partner is
- Open the negotiation
- Talk and listen
- Make proposals
- Summarize
- Close and confirm

Creating the right environment

Involves

- Creating the right atmosphere
- Choosing the right time to negotiate
- selecting the best place

11

Creating the right atmosphere

- There are four possible outcomes to a negotiation:
- I WIN <<>> YOU LOSE
- I LOSE <<>> YOU WIN
- I LOSE <<>> YOU LOSE (Deadlock)
- WE BOTH WIN!!
 - the goal of a skilled negotiator. The WIN-WIN outcome is the most desirable. It gives both parties a stake in the implementation of the agreement.
- WIN-WIN outcomes are easier to arrive at if the negotiators are open about their needs without fear of being exploited. [Mutual Trust].

12

Creating the right atmosphere

- The risk of "losing" divides negotiators into two categories:
- those who are **competitive** and want to win at everything;
- those who are **collaborative** and want to achieve the best deal for both or all parties.

13

Competitive and Collaborative

Two negotiators alternate between a ...

- **Competitive style**
- Tough, uncompromising, highly aggressive and competitive style
- Shouts and make impossible demands
- **Collaborative style**
- Softer more cooperative style
- Hands are tied by his tougher colleague
- Wants to help you but needs you to help him
- So you move closer to his position than you intended
- But you are comforted by the illusion that this is a lot far less than you would have had to go to satisfy the "gorilla" who did all the shouting and made all those impossible demands.

14

Right atmosphere affected by:

- How you feel about the negotiating agenda
- How you feel about your negotiating partner
- The relative power of the two parties
- Your ability to cope with stressful situations
- Your composure -- especially with emotional pressure
- How much you trust each other
- Your degree of open-mindedness
- Your aspirations (Are you the sort of person who would wish to achieve better-than-average results?)
- How prepared you are to listen (as well as speak)
- Your charisma.

15

Choosing the right time

Skilled negotiators

- choose their timing carefully
- patiently draw reluctant countries to the negotiating table (it could take time)
- avoid spontaneous negotiation sessions
- prepare their case carefully
- weigh up what they think may be on their "negotiating partner's" agenda
- know their own limitations and those of their negotiating partners

16

Selecting the best place

- any place where you feel most comfortable and, as important, most confident
- Neutral territory is often suggested by negotiators as an appropriate way of avoiding any bias in the negotiations

17

Researching your Objectives

- Skilled negotiator always prepares a checklist of objectives-a "shopping list"-- and
- uses it to compare actual results from negotiations with those anticipated.
- Any move away from the original plan is then a conscious decision and a target for trading-off concessions from your negotiating partner.
- Skilled negotiators rarely negotiate without any kind of plan.

18

Your negotiating brief

Should include

- An agenda of issues to discuss
- Your objectives expressed in terms of parameters
- Questions to ask to reveal information about the negotiation or
- Your negotiating partner's position

19

Agenda

An order of business, setting out the sequence of issues to be negotiated

- Agree on the composition and order in which items are to be discussed
- In case of disagreement on the order, one solution is to agree to negotiate the terms in any order on the basis that:
 - “Nothing is agreed until everything is agreed”.

20

Preparation for Negotiations

- Requires the various members of the team to prepare together and to develop a coordinated Plan of Action.
- While a team usually consists of specialists and technicians, the team leader should be a generalist with a broad vision, a person who can integrate the various technical requirements into a broad concept or premise that will become the basis for the deal.
- The team leader carries the bulk of the burden of conducting the negotiations and must make the tactical decisions and call the shots.

21

Pre-Negotiation Planning

OPENING

- How should I open the negotiation?
- How interested are they in the negotiation?
- What needs might exist?
 - Theirs
 - Ours
- What areas of common ground exist between us?

22

Pre-Negotiation Planning

AUTHORITY

- Who am I negotiating with?
- What is the history/track record of the relationship?
- How much authority does my negotiating partner have?

23

Pre-Negotiation Planning

POWER AND INFLUENCE

- What is their "power" over us and/ or our competitors?
- What is our power in this situation?
 - We often judge the effectiveness of negotiating agents in terms of their authority, their power to make legal commitments for the countries they represent.
- How can we exploit our strength for mutual benefit?

24

Pre-Negotiation Planning

POWER AND INFLUENCE

- But of equal, if not greater importance, is the negotiators' clout
 - their power to persuade their governments to accept the agreements they have negotiated at the WTO.
- Negotiators with clout may be more open to exploring creative solutions to problems than negotiators without clout who feel they must hold to their instructions and refer back to the bureaucracy constantly to seek approval for the smallest changes.

25

Pre-Negotiation Planning

COMMITMENT

- How interested are they in the negotiation?
- How badly do they need an agreement?
- Do we want or need an agreement today?
- Will a negotiated agreement stick?

26

Pre-Negotiation Planning

COMPETITION / EXCLUSIVITY

- How might market forces or changes in technology affect the negotiation?
- What leverage might be used?

27

Pre-Negotiation Planning

INNOVATION AND PROMOTION

- What concessions are we likely to have to make to ensure the deal is successful?
- How innovative are the proposals under discussions?
- Who will contribute what to help?

28

EXTROVERT STYLE

The person with extrovert style

- always has a say;
- produces lots of ideas and suggestions;
- may enjoy a discussion and argument;
- quite likes to stir things up in a discussion;
- may reveal inner thoughts regardless of the circumstances;
- frequently gets his/her own way in discussions.

29

INDUCTIVE STYLE

The skills involve the following:

- putting others at ease;
- encouraging them to come up with lots of ideas;
- being able to extend and develop those ideas;
- encouraging a warm and friendly atmosphere;
- giving credit and praise to others;
- taking care to avoid upsetting others.

30

Clarifying behavior in interactions with others

- listening carefully to what others say;
- checking that you have understood what they have been saying;
- finding out what others are saying
- Open questions:
 - What? When? Who? Why? Where? and How?
 - Open questions invite your negotiating partner to respond with extended statements rather than with “yes” or “no” answers.
 - To unblock deadlock, ask open questions.

31

So Where should we meet?

- | | |
|--|--|
| <ul style="list-style-type: none">• <u>'Home' Advantages</u>• you may feel more in control• you can control interruptions• you can orchestrate recesses• you have access to records, files and data• back-up support is available should you need it• you may have the moral advantage in cases of late arrivals, etc.• You are visibly “in charge” | <ul style="list-style-type: none">• <u>'Away' Advantages</u>• you have the chance of assessing your negotiating partner's workplace• your negotiating partner may make allowances as you are not on home ground• you can pressurise your negotiating partner by suggesting senior staff get involved to break deadlocks |
|--|--|

32

Opening the Negotiation

- Assertive expression: **WE** better than **I**
- The **golden rule** is to keep cool, avoid rhetoric and provocative language and maintain self- control
- A good defence is to slow interaction down, make a conscious effort to avoid reaction and concentrate on non-controversial language.
- A cool but firm tone; respectful negotiating manners; an analytical rather than emotional approach, demonstrable listening skills.
- Skilled negotiators try:
 - Not to take things personally;
 - To separate issues from personalities;
 - To concentrate on interests rather than issues.

33

Recipes for improving your listening skills

- watching your negotiating partners' lips while they are talking (and watching their eyes while you are talking- to gauge their reaction to what you are saying);
- try concentrating on the overriding message in their contributions-rather than becoming bogged down or distracted by individual words;
- take notes to aid your concentration;
- avoid trying to second-guess your negotiating partner's statements or trying to finish off their statements (even in unison);
- categorising contributions received from your negotiating partner (e.g. is this contribution a question, summary, or proposal-and planning an appropriate response).

34

EYE GAZE

- Level eye contact is often taken as an indication of honesty and, therefore, an interpretation could be that the negotiator may be trusted.
- Negotiators need to vary their use of eye contact but an essential use is to look for reaction to ideas or trial proposals.
- Failure to do this may protract a negotiation-- simply because the signals of possible progress in persuading the negotiating partner to accept your position may go unnoticed.

35

EYE GAZE

WHAT SIGNALS?

- The occasional frown or flicker of smile;
- the raising of an eyebrow or
- even the sharp return of a glance.

36

CULTURE

37

Process of Negotiations

- Involves Making proposals and counter- proposals.
- Requires putting options on the table and then considering alternatives.
- "... the process to be adopted in the negotiations would be... in a variety of configurations--- bilateral, plurilateral and multilateral... While negotiations in various configurations are essential to narrow differences, any convergence emerging from them must feed back into the multilateral process in a continuous loop" D-G Pascal Lamy, TNC meeting, 21 July 2008

38

Making Proposals

- Assertive questions such as 'How can you justify this position?' may draw your negotiating partner to reveal his or her arguments and aims in the negotiation
- In making appropriate proposals, consider the following:
 - Timing
 - Encouraging proposals
 - The best formula
 - Defending principles
 - Meeting inhibitions

39

Making Proposals

- In making proposals, remember the negotiator's most useful two-letter word, **if**
- All proposals should start with “**if**” to tell your negotiating partners what they must do for you if you are to do something for them
- If they reject your conditions, you are free to amend, postpone, or withdraw your proposal.

40

TIMING

A simple innocuous question may be asked:

- 'We are both busy people and I am sure we could close this deal very quickly-- if you agree, of course?'
- 'Yes, that seems a good idea.'
- 'So, what is your bottom line?'

41

TIMING

Questions to put you on the spot:

- Is that your final offer? "Yes" ends the negotiation. "No" tells your negotiating partners that you have other (better) proposals for them.
- Their next question is going to be: "Well, what is your final offer?" "Is that proposal negotiable?"
 - "Yes" opens the negotiation on your next proposal. "No" ends the negotiation.
- Counter: My proposal is based on the circumstances as I understand them at present, but I am always willing to listen to constructive suggestions that will improve the acceptability of my proposal.

42

Encouraging Proposals

Hand-holding skills: encouraging your negotiating partner to feel that you are trustworthy, and are not trying to lay a trap

- encouraging your negotiating partner to make leading proposals in an open atmosphere
- Such a step needs to be accompanied with appropriate non-verbal signals—
 - Warm smiles
 - gentle nods and
 - a high level of attention (eye contact and slightly laid-back body position but facing your negotiating partner).

43

First Offer

- **Never accept a first offer: negotiate**
- **The first offer is where they open; it is not where they expect to end up.**
- **In business transactions, skilled negotiators do not accept the price they are first quoted. They negotiate to see what other offers are lurking in the background.**

44

Final Offer

- If you make one, mean it; otherwise do not. At the beginning of a negotiation, final offers may be risky and foolhardy.
- To make final offers, pay attention to your language
 - “if no more movement is possible-- you are at your exit point and prefer no deal to one on worse terms”. Convey this.
- A badly phrased final offer, however, is a provocative ultimatum. Tell them:
 - You can go “no further”
 - You are at the “end of the road”
 - That it is “decision time”
- None of these statements mentions “final offer”, but that is how it will be perceived.
- Do not ask: Is that your final offer? Your negotiating partner can hardly say “no” (the answer you want) without compromising his/her position, hence your negotiating partner is most likely to say “yes”, blocking off the negotiation.

45

Unconditional offer

- Unconditional offers do not require anything in exchange; for example:
- Q. I'll increase my offer by further cuts in duties of 20%. How about that?
- A. OK. We'll liberalize MA mode 1 engineering-related services.
- Many unconditional offers, without a high degree of trust between the negotiators, does not promote reciprocal goodwill.
- The other negotiators stiffen their position when you make unconditional offers.

46

Unconditional offer

- Also the “little” things you give away may acquire considerable leverage potential later in the negotiation -- they could even clinch the agreement if offered at the right time--
 - And throwing them away in the futile hope of creating goodwill is extremely costly when the result is that you have nothing left to close the deal.
- An unconditional offer is music to the ears of your negotiating partner; it's a wasted offer.
- Your negotiating partner will accept the offer but come back for more. One-way conceding is no way to conduct a negotiation. Make conditional offers.
- Linked give and take -- one goes with the other-- and therefore only offer to give if you simultaneously get something in exchange.

47

The Best Formula: Conditional “language”

- Conditional language states the negotiator's terms for settling an issue:
 - **“Give me some of what I want, and I will give you some of what you want”**
- Conditionality asserts that they cannot get what they want from you without you getting what you want from them.
- Skilled negotiators use “conditional language” when making an offer:
 - **On condition that ...**
 - **Provided that ...**
 - **If you'll do such and such, then I will agree to do so and so.**
- Conditional language educates the other negotiator on how the issue can be settled.

48

The best formula

- The best formula is to present your proposals using a *conditional approach*. For example,
 - *'If you give duty-free access to our cereals and vegetables, then we will reduce duties on portable computers in our country'.*
- Introduce trial proposals e.g.
 - *'I'll tell you what we might be able to arrange, if perhaps you could find a way of giving duty-free access to our cereals and vegetables, then we might be able to find a way of reducing duties on portable computers in our country'.*

49

The best formula

- Introducing trial proposals (cont.):
 - *'We are willing to reduce farm export subsidies if you and other countries do the same'.*
 - *'Your proposal to gradually reduce farm export subsidies is "understandable" given the size of your country's subsidies.*
 - *You want to lower them in stages and this is understandable. But then we also would lower them at the same pace that you do'.*

50

Skills we need to develop in closing off negotiations satisfactorily

- Summarizing progress
- Resurrecting earlier issues for agreement
- Using concessions to improve the agreement
- Choosing appropriate persuasion strategies
- Linking issues in the agreement
- Listening for concessions
- Using appropriate closing techniques.

51

Summarising

- Is simple but effective negotiating behaviour.
- Summaries help to:
 - clarify proposals and the terms of the agreement,
 - reduce tension and demonstrate that you are listening to what your negotiating partner is saying.
- Remember the one little word which provides the signal of a summary-- **So**, ... and try to use it:
 - whenever the progress of the negotiation is stalled;
 - when you are not sure what has been said or agreed
 - when you feel that the time is ready to begin to close the meeting.

52

Summarising

- A summary refocuses attention on to the issues:
 - What has been said about them
 - What each side is proposing
 - What the differences are
 - What remains to be agreed
 - What has been agreed.
- Summaries should be short. A biased summary can start an argument

53

Summarising

- Summarize during all phases of the negotiation, particularly
 - When argument is dominating the exchanges
 - When calling for agreement
 - After agreement has been reached, to check that what you think you have agreed corresponds to what your negotiating partner believes.

54

Resurrection

- The subtle temptation of concessions may encourage your negotiating partner to be more flexible on issues which were sticking points in the beginning
- **LINKING**
 - Linking one item with another is a further method of obtaining movement on difficult issues
- Set the difficult issue aside while settling the other more manageable issues.
- **USING CONCESSIONS**

55

Nudging the negotiation towards closure

- **Calling a recess**
- **Imposing a deadline**
- **Threats to pull out or call time**
- **Asking for agreement**
- **The summary close**
- **What if:**
 - Useful when faced with deadlock. It helps explore possible solutions to the deadlock; e.g.
 - What if we were to consider phasing out all forms of export subsidies by front-loading the cuts?

56

Calling a recess

- **Negotiators need:**
 - a break to think about what has been said
 - to reconsider position
 - to regroup the team
 - to consult with advisors or more senior decision-makers
 - to rest and recuperate.
- **Deadlines can help or hinder. Deadlines put you under pressure.**

57

CONFIRMING

- **Taking and exchanging notes**
- **Getting the agreement in writing**
 - All agreements should outline the action to be taken by each party to implement it.
- **Checking that minutes and your negotiating partner's notes agree with your notes**
- **Paying meticulous attention to the small print and footnotes.**

58

But What if your negotiating partner does not tell you its interests?

- **Throughout the negotiations, a skilled negotiator constantly needs to delve behind stated positions in order to determine the negotiating partner's real needs and interests.**

59

A Way of Obtaining Additional Information about the Other Team's Members

- **Begin the negotiating session by briefly describing the background of each of your team's members**
- **When you have finished, the team leader of the other group is expected to do the same.**

60

Evaluating Strengths and Weaknesses

PREPARATION

- Do I spend enough time preparing to negotiate?
- Have I discussed the case with other people in my institution?
- Have I researched my negotiating partner's case?
- Is there any additional information I may be able to collect from my negotiating partner's institution?
- Which outcome do I really want: Win/Win, Win/Lose or Lose/Lose?
- Have I prepared a negotiation plan/brief?

61

Evaluating Strengths and Weaknesses

PREPARATION

- What is on my objectives / shopping list?
- What are the parameters for each objective?
- Have I prioritized my objectives?
- What concessions can I give?
- Where will we meet?
- Have I analyzed relative power positions of the negotiating parties?
- When will be the best time to meet?

62

Evaluating Strengths and Weaknesses

KNOW YOURSELF

- **In what circumstances am I:**
 - most comfortable?
 - least comfortable?
- **How easy do I find it to:**
 - take decisions?
 - persuade others?
 - be positive and persistent?
 - choose the most persuasive words?
 - think clearly under stress?
 - control myself?

63

Evaluating Strengths and Weaknesses

OPENING THE NEGOTIATIONS

- **How good am I at putting others at ease?**
- **How good are my presentation skills?**
- **How able am I at probing others for information?**
- **Can I respond to others' probing without giving away anything of value?**
- **How well am I able to develop a collaborative atmosphere in negotiations?**
- **Have we established a common agenda and identified common ground?**

64

Evaluating Strengths and Weaknesses

THE NEGOTIATIONS

- How well can I balance talking and listening?
- How can I make the layout of the negotiations work for me?
- How good are my concentration and listening skills?
- When might a recess be useful?
- How can I make good use of interruptions?
- Who is in control of the negotiations?

65

Evaluating Strengths and Weaknesses

THE NEGOTIATIONS

- Have I identified the best time to make proposals?
- How good am I at introducing trial proposals?
- How can I formulate counter-proposals that go beyond my negotiating partner's proposals?
- Am I using 'If... then' and 'So?' successfully?
- When my negotiating partner blocks my proposals, am I able to unblock them again?

66

Evaluating Strengths and Weaknesses

THE NEGOTIATIONS

- **How able am I in using closing skills:**
 - hand-holding?
 - summarizing?
 - using late concessions?
 - linking issues in the agreement?

67

END

THANKS FOR YOUR PARTICIPATION

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Negotiating Framework for Reduction of Trade Barriers

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Negotiating Framework for Reduction of Trade Barriers

- Tariffs represent the only instrument of protection allowed generally by the WTO legal framework.
- Tariff concessions: tariff rates bound after reduction or at a low level without reduction (Article II of GATT 1994).
- A Binding is a commitment not to raise the tariff rate above the levels specified in the schedules of concessions.

Geneva Round (April - October 1947)

23 countries accepting the Havana Charter

- negotiated tariff cuts covering about half of world trade volume and
- exchanged over 45 000 concessions.

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Annecy (1949), Torquay (1950/51) and Geneva (1955/56)

- 1949-1956: Three additional rounds were held.
- Only Torquay round yielded appreciable tariff reductions (around 25% in relation to 1948 levels) and exchanged 8,700 concessions

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Dillon Round

(May 1961-March 1962)

- Dillon Round resulted in 4,400 tariff concessions and \$4.9 billion in tariff cuts.
- Agriculture and certain sensitive products were not covered by the Round.

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Kennedy Round

(November 1963-May 1967)

- A new approach to tariff negotiations was introduced: **a linear reduction formula** was adopted, by which most industrialized countries agreed to reduce their tariffs on industrial products by **50%**.
- An average reduction of **35%** was achieved because of exceptions to the formula.
- Agriculture products were subject to product specific concessions on the basis of requests and offers.

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Kennedy Round (November 1963-May 1967)

- Conclusion of the Anti-dumping Code
- Starting-point for the recognition of the **concept of non-reciprocity** in trade negotiations between developed and developing countries, and
- Of the commitment by developed countries to accord high priority to granting improved market access in products of export interest to developing countries.
- Resulted in \$40 billion in tariff cuts.

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Tokyo Round (September 1973-November 1979)

- In tariff negotiations, industrialized countries applied a **harmonization reduction formula** for industrial products,
 - Which resulted in a 34% cut in the **trade-weighted average** of these duties (i.e. the rate of duty weighted according to the value of trade).
- Resulted in \$300 billion in tariff cuts.

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Tokyo Round (September 1973-November 1979)

- The "Swiss Formula" reduced high tariffs proportionately more than low tariffs.
- The Swiss Formula of a non-linear cut involved the ratio of the product of the tariff rate and a constant to their sum:
- $$T_N = AT_0 / (A + T_0),$$
 where **A** is a constant
- (a representative value was : 14)
- T_0 is the base tariff rate and T_N is the new or resulting tariff rate.

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NAMA Coefficients

- **Developed** countries: Between 10 and 15.
- **Developing** countries: Between 20 and 27 overall.
- Developing countries could select:
 - a coefficient range of 20-22 linked to the highest flexibility;
 - a coefficient range of 23-25 linked to lesser flexibilities, and a range of 26-27 that would give them no flexibility to exempt tariff lines from full formula cuts.
- If a developing country chooses a coefficient of between 20-22, it could make up to 3 industrial products subject to half the formula cuts or could exempt 2 products from any cuts
- A coefficient of between 23 and 25 is paired with an ability to make either 2 industrial products subject to half the formula cut or exempt 1 product from any cuts.
- If a developing country opted for a coefficient of 26 or 27, it would not have any flexibility to exempt tariffs from the full formula cuts.

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Anti-Concentration clause

- **Anti-concentration clause:**
 - Sensitive NAMA tariff lines that will not be subject to tariff cuts should not be concentrated in one particular sector. At least 20% of products accounting for 9% of imports in each sector must be subject to full formula cuts.

Sectorals

- **Sectoral** initiatives aim to reduce, harmonize or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, over and above that which would be achieved by the formula modality, in particular on products of export interest to developing countries.
- Members shall define, sector by sector, S&D treatment for developing countries, e.g. **“zero for x”** tariff reductions, longer implementation period, later start of implementation and partial product coverage.

Sectorals

- 14 Sectoral agreements are proposed
 - Automotive parts, bicycles, chemicals, electronics/electrical products, fish and fish products, forestry products, gems and jewellery, raw materials, sports equipment, pharmaceuticals / medical devices, hand tools, toys; textiles, clothing and footwear; and industrial machinery.

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Uruguay Round (September 1986-April 1994)

- **Industrial products:** an overall reduction by one-third was achieved.
- **Agricultural products:** the norm was a reduction by a simple average of 36%, with a reduction on individual products of at least 15%.

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Uruguay Round (September 1986-April 1994)

- ***Ad valorem*** tariffs have the important advantage of:
 - Transparency
 - More predictability
 - Non-discrimination
 - Being easier to bind or reduce and
 - Less susceptibility to corruption.
- They also facilitate competition in internal markets and help ensure trade adjustments by importing countries to world market changes.

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Trade Rounds

- 9th Round: **Doha Round** (Nov.2001)
 - The Doha Round is a further step in this long journey.
 - It is a means to keep adapting WTO rules to the trading realities of today,
 - Addressing the needs of global production chains as well as SMEs,
 - Addressing sustainability issues related to trade, i.e. greater disciplines on agriculture, trade facilitation, rules to discipline fishery subsidies which contribute to depleting world oceans, and rules addressing non-tariff measures
- Bicycle theory. Ink spots paradigm

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Bicycle Theory – Ink spots paradigm

- Before the creation of the WTO, international trade was dogged by continual disputes
- It is noteworthy that each successive GATT/WTO Round leads to an incremental change toward free trade
- If the bicycle of multilateral trade liberalization via successive GATT/WTO rounds is not perpetually moving forward
- It is being argued that the bicycle analogy is flawed
- Alternative image. The trade liberalization process can be seen not as a bicycle but as a series of **ink spots** which must conform to WTO standards

Ink spots paradigm

- There are several ways in which they can promote policy convergence, including around socially sensitive forms of trade liberalization: they have to conform to WTO standards.
- WTO Rounds can be **Ink spots** too, provided the bargains struck there bring about **acceptance** and **convergence** rather than conflict and resistance
- The most important thing
- Countries which accept the new rules
- This can be a fresh and credible approach

Ink spots paradigm

- Trade officials argue that relatively little attention is paid to the **digital commerce** that has exploded over the past 14 years, bringing into focus.
 - Role of the Internet
 - Investment and competition issues
 - Rise of Non-tariff barriers to trade, such as consumer regulations
 - The booming trade in environmental products
 - The thorny issue of currency manipulation and its impact on trade
 - State-owned enterprises

Ink spots paradigm

- Global trade rules have not kept pace with the digital economy, regardless of the transformation of the global economy
 - Principal issues are “digital issues” that affect data flows across borders.
- Fresh negotiations that promote internet-enabled commerce and digital trade offer an opportunity to establish modern rules that can foster growth in the digital economy and rein in digital protectionism

Curbing a rise in digital protectionism

- The objective is to curb a rise in digital protectionism around the world
- Forms of digital protectionism include:
 - Restrictions on commercial data flows across borders
 - Certification and standards policies that distort competition
 - Discrimination in government procurement for local IT products
 - Intellectual property infringement
- Improving access to the global digital economy

Services trade

- According to the WTO, total services trade worldwide
- These figures are well above global economic growth
- As the services trade expands, it is replacing goods trade as the **new central topic in global trade negotiations**
- The services trade sector is more competitive and has more growth potential than say, merchandise

Picking World Pace at the WTO

- “The world is moving and is moving fast, and we need to pick up the pace here in the WTO”.
- “We need to keep up with the rapid changes that we are seeing in business and trade around the world”.

END

THANKS FOR YOUR PARTICIPATION

WTO Principles and the Multilateral Trading System

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25/06/2015

Main Principles Underlying the WTO System

- **Non-discrimination**
 - **Most-Favoured Nation treatment (MFN)**
 - All WTO Members are bound to grant to each other treatment as favourable as they give to any other Member in the application and administration of import and export duties and charges.
 - **National Treatment**
 - The national treatment principle outlaws discrimination between imports and locally-produced goods, or services and service suppliers or between foreign and national holders of intellectual property rights. Once duties have been paid, imported goods must be given the same treatment as like domestic products in relation to any charges, taxes or administrative or other regulations (GATT Article III).

Most-Favoured-Nation (MFN) principle

- There are two notable exceptions:
 - Customs unions and free-trade areas which should cover substantially all trade and not create barriers to trade with third countries; and
 - Special and differential treatment given to developing and least-developed countries.

3

Main Principles Underlying the WTO System

- **Transparency (3)**
 - WTO Members are obliged to publish and notify to the WTO Secretariat their trade-related laws and regulations.
 - Notification requirements.
 - Trade Policy Review Mechanism.

4

Main Principles Underlying the WTO System

- **Stability and predictability of trade regulations (4)**
 - Predictable and growing access to markets is ensured through binding of tariffs.
 - Bindings are undertakings under the WTO legal framework NOT to raise tariffs beyond an agreed level.

5

Tariff Bindings

- Tariff bindings are the central guarantee of market access within the WTO legal framework.
- Once a rate of duty is bound, it may not be raised without compensating the affected parties.
- Binding is particularly important to free trade because it gives some assurance to importers and exporters that they would not be subject to arbitrary tariff changes.
- Ceiling Bindings-- bindings at levels higher than applied rates

6

Article XXVIII Renegotiations

- Concern modification of WTO schedules.
 - First, bilateral consultations with the main supplier having INR
 - Then, bilateral consultations with countries having substantial interest in the goods concerned or with at least 10% share of the market.
 - Next, compensate the main supplier with INR say, in *cameras*.
 - Other countries with substantial interest may not want compensation in *cameras*, but say, in watches
 - The third country may want compensation in a different product say, in television.
- You are then obliged to compensate the third country with substantial interest in television before the modification of your bound tariffs can be accepted.

7

Main Principles Underlying the WTO System

- **Use of tariffs as instruments of protection (5)**
 - **Any protection must be provided in the most visible and transparent form**
 - *Ad valorem* tariffs have the important advantage of transparency, more predictability, non-discrimination, being easier to bind or reduce, and less susceptibility to corruption than QRs.

8

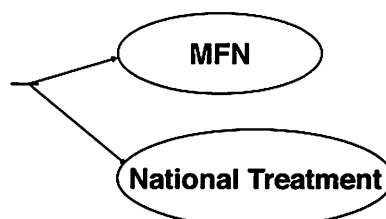
Main Principles Underlying the WTO System

- **Elimination of unfair competition (6)**
 - A **safeguard measure** can be adopted in emergency circumstances, when imports have increased to such levels and conditions that they are the cause of serious injury or threat of such injury to a domestic industry producing like or directly competing product
 - Measures affecting prices (i.e. tariffs) are preferable to QRs
 - QRs can be applied as safeguard measures in specific cases, e.g. as short-term response to disturbances in the current account, or as a way of protecting domestic industries from foreign competition.

9

Main Principles Underlying the WTO System

- **Non-discrimination**
- **Transparency**
- **Stability and predictability of trade regulations**
- **Use of tariffs as instruments of protection**
- **Elimination of unfair competition**



10

WTO Rules

- do provide precise guidance as to the various types of instruments which member governments may resort to in carrying out their individual economic and trade priorities.

11

END

Thanks for your interest

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WTO OMC

GENERAL AGREEMENT ON TRADE IN SERVICES

Scheduling of Commitments

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25/06/2015

TRADE IN SERVICES

- **Services industries account for 70% of world Gross Domestic Product and employ about 3.2 billion people around the world, but only 25% of international trade**
- **Services share of economic activity - services share of international trade >>Growth potential of trade in services such as banking, energy, tourism & computer services.**

TRADE IN SERVICES

- **Not all services can be exported, but some like:**
 - **Finance,**
 - **Telecommunications software,**
 - **Information,**
 - **Research and development,**
 - **Architecture,**
 - **Engineering services and**
 - **Advertising**
- **Can cross border.**

TRADE IN SERVICES

- **Global trade rules for finance, telecommunications and other services sectors have not kept pace with changes in technology as**
- **the rapid development of Internet and cloud computing creates new forms of trade.**
- **Retailing--- the most progressive services sector, for example, has been transformed by IT innovation.**

TRADE IN SERVICES

- **The most common services trade barriers involve restrictions on foreign investment.**
- **These range from full bans on foreign ownership to equity limits of 49% to restrictions:**
 - **on the number and**
 - **location of company branches**

Services “liberalization” under the GATS is essentially about opening specified sectors to competition on a non-discriminatory basis

“Liberalization” of trade in services under the GATS simply means introducing competition through essentially granting market access and national treatment. It does not mean deregulation; nor does it mean privatization since the GATS does not interfere with governments’ ownership or control of service supplying entities

Trade in Services negotiations

With the extraordinary growth of outsourcing, internet commerce and new methods of doing business many measures that impede trade today are outside the reach of the WTO.

The GATS, for example, does not explicitly address the growing practice of requiring local storage and processing of business data.

Technological advancement and increased use of the Internet have dramatically changed the global services markets

Such requirements significantly raise costs, increase data security risks and disproportionately hurt small businesses trying to reach international customers.

Negotiations should therefore consider the changes created by the digital revolution and address issues including cross-border data transfer, supply chains, state entities competing in commercial services, clustering and integration of services across sectors—e.g. agriculture, manufacturing, energy

Definition of Trade in Services

- The GATS does not define "services" but does define "trade in services".
- The definition covers not only the cross-border supply of services but also transactions involving the **cross-border movement of capital and labour**.
- Paragraph 2 of Article I defines trade in services as the **supply of a service** through any of four modes of supply.

Four Modes of Supply of Services

- **Cross-border supply**
 - Cross-border supply is the supply of a service from the territory of one Member into the territory of any other Member. This is the type of transaction analogous to trade in goods. For example: international transport and the supply of a service through telecommunication or mail. This includes business process outsourcing.
- **Consumption abroad**
 - This happens when the consumer moves to the territory of another country and buys services there. For example, tourism or when a German resident crosses the border to deposit money in a Swiss bank. It may also happen when the property of a consumer is sent abroad for servicing, as in the case of ship repair.
- **Supply through Commercial Presence**
 - This involves direct investment in the export market through the establishment of a business there for the purpose of supplying a service. For example, a country allows the establishment of foreign banks or hotels on its territory.
- **Supply through the Movement of Natural Persons**
 - Supply through the movement of natural persons means "the temporary entry of an individual in the territory of another Member for the purpose of supplying a service". This person could be the service supplier himself or an employee of the service supplier. In both cases, the GATS definition covers only the temporary stay of such persons

Schedule of Specific Commitments

- Each WTO Member is required to have a **Schedule of Specific Commitments in Services**.
- **Services schedules** consist of both **sectoral** and **horizontal** sections.
 - It is a document, which identifies the services sectors, sub-sectors or activities subject to Market Access and National Treatment obligations and any limitations attached to them.
 - The necessary indications must be entered with respect to **each of the four different modes** of services supply.

TRADE IN SERVICES

- **The heart of the services negotiations is in the “request-offer” process whereby Members negotiate among themselves on a bilateral/plurilateral basis on which domestic services sectors to liberalize.**
- **We seek new and improved market access commitments across the 4 modes of services supply.**
- **Participants’ commitments would substantially cover all sectors and modes.**
 - **Applying a Negative list approach or Positive list approach where appropriate**

TRADE IN SERVICES

- **Substantially all sectors would include: telecommunications, computer-related services, professional services, distribution, postal and courier, air transport, maritime, road, energy-related services, competitive delivery services, environment, construction, architecture and engineering, legal, accountancy and financial services;**
- **Innovative services such as cloud computing, international mobile roaming, electronic commerce and others.**

TRADE IN SERVICES

- **Members need to be more specific in identifying their priorities. Requests need to be more focused. In specific services sectors, Members need to be more precise in identifying the barriers they seek to remove.**
- **Where requests address modes of supply, such as mode 4, Members should be more specific about the sectors in which they seek commitments from their negotiating partners.**
- **Areas in which progress on market access is needed include improved levels of access under mode 3 (including restrictions on foreign equity participation), as well as a robust and satisfactory outcome in mode 4.**

TRADE IN SERVICES

- **Mode 4: There is a strong mutuality of interests in the needs and benefits from the movement of natural persons between developed and developing countries.**
- **Except for Mode 1– cross-border supply of services– all other modes of supply require the presence of natural persons.**
- **The negotiations should create a strong global framework that supports the ability of cross-border reinsurance capacity to flow where it is needed most to support local markets.**

TRADE IN SERVICES

- Where requests address **Limitations on Market Access** or **Limitations on National Treatment**, Members would need to be more specific about whether they apply a:
 - Negative List approach,
 - Positive List approach or even
 - a hybrid approach.
- Negative List approach to services negotiations covers **all services sectors unless certain sectors are specifically excluded. This approach will encompass new services that develop over time.**
- A Positive List approach to services negotiations seeks to liberalize only those sectors specifically mentioned.

Commitments are legally binding access guarantees

Nevertheless, the GATS allows for

- **departures** in specified circumstances
 - protection of life & health, public morals, etc.
 - security concerns
 - prudential concerns (financial services)
 - Balance of payments problems and
- **renegotiation** of commitments against compensation (Article XXI)

GATS: Modal Structure

- | | |
|-------------------------------|--|
| • MODE | • EXAMPLE (Health) |
| • Cross-border Trade | • Tele-diagnosis from Country A into Country B |
| • Consumption Abroad | • A's resident obtains hospital treatment in B |
| • Commercial Presence | • Hospital operator from A has subsidiary in B |
| • Presence of Natural Persons | • Physician from A practices in B |

Mode 4: who is in and who is out?

- | | |
|--|---|
| • <u>Covered</u> | • <u>Not covered</u> |
| • Employees of foreign service suppliers in host country (ICTs) | • Employees in the goods sector |
| • Employees of foreign service suppliers abroad to fulfil a contract (CSS) | • Employees of host country firms |
| • Natural persons as independent service suppliers fulfilling a contract (CSS) | • Persons with citizenship, permanent residence and/or work permit. |
| • Also Business Visitors | |

Scenario I: Status of Government Services

- **Excluded from coverage** are “services provided in the exercise of governmental authority” which, in turn, are defined as services that are supplied “neither on a **commercial basis**, nor in **competition** with one or more service suppliers” (Article 1:3)

Policy measures in areas not covered by GATS disciplines

- Immigration rules.
- Services supplied under Government Authority.
- Fiscal policy and taxation measures (provided the taxes do not discriminate against foreign services or service suppliers).
- Import restrictions on equipment necessary for the supply of a service.
- Restrictions on short term capital movements, or measures that affect property rights (provided they are non-discriminatory).
- Exchange rate management.
- Privatization of state owned property, though there are disciplines for state-owned trading entities and monopolies.

Preparing a Schedule: Two steps

•Select sectors and sub-sectors for inclusion

•*Relevant considerations [underling objectives]:*

•Attract foreign investment [employment], foster competition [efficiency], broaden product choice and improve quality [consumer welfare], etc.

•Consider need for modal exclusions or limitations

•Relevant considerations [type of limitations]: promote know how transfer [joint venture requirements (mode 3), protect domestic employment [quantitative limitations (modes 1, 2, 4), subsidies], prevent market disruption [phase-in commitments], etc.

GATS: Sectoral coverage

■ Business Services

■ Communication

■ Construction

■ Distribution

■ Education

■ Environmental Services

■ Health Related Services

■ Financial Services

■ Tourism

■ Recreation, Culture, Sports

■ Transport

■ Other Services

Not to forget: Flexibility for Developing Countries?

- **Article XIX:3** calls for appropriate flexibility to be given to individual developing countries “for opening fewer sectors and liberalizing fewer types of transactions, ...”
- **Article IV:1**: Developing countries’ participation in world trade is to be facilitated through negotiated specific commitments liberalizing, *inter alia*, sectors and modes of export interest to them.
- **Article IV:3** Special priority for LDCs

“Open definition” of National Treatment (Article XVII)

1. Treatment shall be “no less favourable than accorded to own like services and services suppliers”.
2. ... “either formally identical or formally different treatment”...
3. Relevant benchmark: no modification of “the conditions of competition” in favour of own like services or service suppliers.

Meaning of “limitations”?

- Scheduling of a sector does not imply that trade (i.e. MA and NT) must be liberalized for all modes.
- Rather commitments may vary within a spectrum between:
 - “unbound” = no commitment
 - “none” = no limitation (full commitment)

How Commitments are Recorded in Schedules

- Where there are no limitations on market access or national treatment in a given sector and mode of supply, the entry reads **NONE**.
- However, it should be noted that when the term NONE is used in the second or sector-specific part of the schedule it means that there are no limitations **specific to this sector**.
- It must be borne in mind that there may be relevant horizontal limitations in the first part of the schedule.

How Commitments are Recorded in Schedules

- All commitments in a schedule are bound unless otherwise specified.
 - In such a case, where a Member wishes to remain free **in a given sector** and **mode of supply** to introduce or maintain measures inconsistent with market access or national treatment, the Member enters in the appropriate space the term **UNBOUND**.
 - In some situations a particular mode of supply - such as the cross-border supply of bridge-building services - may not be technically possible or feasible. In such cases the term **UNBOUND*** is used, usually in conjunction with an explanatory footnote stating "Unbound due to lack of technical feasibility".

How Commitments are Recorded in Schedules

Commitments use the following standard terms		
Full commitment	None	This means there are no limitations or laws inconsistent with the GATS (other than possibly any horizontal limitations inscribed in the first part of each schedule).
No commitment	Unbound	In this case measures inconsistent with the market access or national treatment disciplines can be introduced or maintained. It is only relevant for use where a commitment has been made in a sector with respect to at least one mode of supply. Where all modes are unbound, and no additional commitments have been undertaken in the sector, the sector will not appear in the schedule at all.
No commitment technically feasible (the asterisk should refer to a footnote which states 'unbound due to lack of technical feasibility')	Unbound*	It may not be technically possible for some services to be supplied through a certain mode of supply (such as a cross-border sit-down restaurant service). In such cases the term 'unbound*' has been used.
Commitments with limitations		The limitations on market access and national treatment are inscribed, whether this involves binding the existing regulatory situation, or one that is more liberal.

-

How Schedules of commitments are structured

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
All insurance and insurance Related Services (CPC 812**).	1) Unbound, except for insurance of cargo transportation, brokerage and reinsurance. 2) None 3) None, except for foreign ownership in domestic legal entities providing insurance services must not exceed 49%. This restriction will be eliminated by 1 January 2007. 4) Unbound except as indicated under horizontal commitments.	1) None. 2) None. 3) None. 4) Unbound except as indicated under horizontal commitments.	The qualifying examination to determine the competence and ability to supply the service for the purposes of registration with the professional bodies will be conducted in the English language.

How Schedules of commitments are structured

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
8. HEALTH RELATED AND SOCIAL SERVICES A. <u>Hospital Services</u> <u>(CPC 9311)</u>	1) Unbound 2) Unbound 3) Only through incorporation with a foreign equity of 51%. 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) Unbound 3) None. 4) Unbound except as indicated in the horizontal section.	The qualifying examination to determine the competence and ability to supply the service for the purposes of registration with the professional bodies will be conducted in the English language.

Horizontal Limitations

- To avoid repetition, measures applied to a number of sectors are listed at the front of the schedule.
- The "horizontal section" thus contains **limitations that apply across all sectors** included in the schedule for any mode of supply. They often refer to a particular mode of supply, notably **commercial presence** and the **presence of natural persons**.
- It is advisable to check for the existence and nature of the horizontal section of a schedule before reading the line for a particular sector in the second part of a schedule.
- Any evaluation of sector-specific commitments must therefore take the horizontal entries into account.

Role of Horizontal Commitments

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
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>4) Unbound except for the temporary presence for up to 3 years of the ff. categories of persons</p> <p>A <u>Services salespersons</u></p> <p>B <u>Intra-corporate Transferees</u> Executives... Managers... Specialists... Professionals...</p> <p>C <u>Personnel Engaged in Establishment</u></p>	<p>3) Unbound for subsidies. Acquisition of land subject to Government approval</p> <p>4) Unbound except for measures concerning the categories of natural persons referred to in the Market Access column.</p>	

Relationship between Specific Commitments and actual market conditions

- Commitments guarantee **minimum levels** of Market Access and National Treatment
- Members remain free to offer **better conditions** (subject to MFN principle)
- Commitments **may be upgraded** at any time to reflect the improved conditions

Subsidies

- Subsidies, like all other measures affecting trade in services, are subject to relevant GATS provisions such as MFN and, in scheduled sectors, National Treatment.
- Article XV recognizes that subsidies may (nevertheless) have trade-distortive effects in certain circumstances and mandates negotiations on “necessary multilateral disciplines” (no deadline)

Services Negotiations

- **Members shall:**
 - “To the maximum extent possible” respond to requests from members for improved market access by offering “deeper and/or wider commitments” in services. These commitments shall, where possible, substantially reflect current levels of market access and national treatment and provide new market access and national treatment in areas where significant impediments exist.
- The services negotiations are taking place on the basis of “request-offer” format, whereby market access concessions are negotiated on a bilateral basis.

TRADE IN SERVICES

- **We expect all parts of the negotiations to move forward in concert– Agriculture, NAMA, Services. The horizontal process will allow Ministers to make trade-offs among Agriculture, NAMA and Services**



END

THANKS FOR YOUR PARTICIPATION

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**ADVANCED TRADE NEGOTIATIONS
SIMULATION SKILLS COURSE**

PART IV: TRADE CONTINGENCY MEASURES

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25.06.2015

**MANDATE FOR THE
RULES NEGOTIATIONS**

The mandate of the rules negotiation is to:

- **Clarify and improve** disciplines on Anti-dumping, Subsidies and Countervailing measures including Fisheries subsidies and Regional Trade Agreements (RTAs).

MANDATE FOR THE RULES NEGOTIATIONS

- **Negotiations on RTAs would be based on specific proposals introduced by WTO Members.**
- **The potential scope of these proposals should encompass all WTO provisions dealing with RTAs, in particular Article XXIV of GATT 1994, the relevant provisions of the Enabling Clause and Article V of GATS.**

3

RULES NEGOTIATIONS

- **Anti-dumping (Agreement on Implementation of Article VI of GATT 1994)**
- **Subsidies and Countervailing Measures**
- **Fisheries Subsidies**
- **Regional Trade Agreements (RTAs)**
- **(Safeguards not included in the mandate)**

4

TWO PHASES IN THE RULES NEGOTIATIONS

The Mandate envisages two phases :

- Phase 1: Centred on identification of Articles in the respective Agreements which need clarification; and
- Phase 2: Involves text-based proposals on the type of agreement

5

ANTI-DUMPING

- India initiated 275 anti-dumping investigations between 1992 and March 2012, involving 42 countries.
- Other countries prominently figuring in anti-dumping investigations are Argentina, China, Brazil, Korea and Singapore.
- Major product categories on which anti-dumping duty has been levied are chemicals and petrochemicals, pharmaceutical, steel and consumer goods.
- Unlike safeguard duties which are levied in a uniform manner, anti-dumping duty varies from product-to-product and country-to-country.

6

ANTI-DUMPING

- Countries initiate anti-dumping probes to check if their domestic industries are being hurt because of a surge in cheap, or below-normal-cost imports.
- As a counter-measure, they impose duties to counteract the effect of dumping.
- Anti-dumping measures are taken to ensure fair trade and provide a level playing field to domestic players. It is not a measure to restrict imports or cause an unjustified increase in the cost of products.

Source: WTO Committee on AD Practices, 2009

7

ANTI-DUMPING

Subject	2008 July/2009 June	2007 July/2008 June
Total notification of provisional and final AD measures	281	201
India	68	45
US	47	30
Brazil	28	17
Argentina	23	10
EU	20	26
China	14	18

Source: 2009 Report WTO Committee on AD Practices

8

DO YOU REQUIRE TRADE REMEDY LEGISLATION BEFORE INVOKING THEM?

- A Member needs not have domestic legislation before being able to impose antidumping or countervailing duties. However, the country has to observe all the relevant procedures before imposing any such duties.
- The situation with safeguards is different. Article 3.1 of the Agreement on Safeguards specifically provides that:
" A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of the "GATT 1994".
- Thus without prior legislation, a country cannot impose a safeguard measure even if it could satisfy all the relevant requirements. It will be advisable for a country to have trade remedy laws even if it does not apply them.

9

ANTI-DUMPING

Key players in the Negotiations:

- "Friends of AD negotiations": Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Mexico; Norway; Chinese Taipei; Singapore, Switzerland; Thailand; Turkey
- United States; India; EU; Canada; Australia; Egypt; Morocco; China
- Process open to all WTO Members

10

ANTI-DUMPING

A number of issues, mostly technical, have been presented to the Group:

- **Article 2** (Determination of Dumping): more than 10 issues identified by Members as deserving clarification or improvement.

Also general issues:

- Transparency, technical assistance, reducing cost of investigations.

11

ANTI-DUMPING

Friends (main objectives):

- Preventing abusive AD measures
- Avoiding excessive burden on respondents
- Enhancing predictability and fairness in the system

12

ANTI-DUMPING

Friends (specific proposals):

- **More than 30 different issues – examples**
- **Determination of Normal Value**
 - **Art. 2.2 (footnote 2) : Quantity of sales in the domestic market**
 - **“Particular market situation” (lack of definition)**
 - **De minimis thresholds (Art 5.8)**
 - **(2% margin, 3% negligible volume)**
 - **Art. 6.8, Annex II : Facts available**
 - **Art. 8 : Price Undertakings**
 - **Art. 9.1 : Lesser duty (mandatory application)**
 - **Art. 11.3 : Sunset review (max. 5 years)**
- **Public interest clause**

13

ANTI-DUMPING

Australia

- **Treatment of confidential information**

Canada

- **Transparency, predictability (codification of decisions), efficiency (limit repeated dumping findings)**

Morocco, Egypt

- **Importance of Trade remedies and need to preserve their effectiveness**

14

ANTI-DUMPING

- **Zeroing** is a dumping calculation method which excludes non-dumped transactions from the calculation of the weighted average dumping margin in anti-dumping investigations, and thereby artificially inflating dumping margins.
- This method leads to the finding of dumping margins where none exist, or to the finding of higher dumping margins than actually occurred. WTO Appellate panels have ruled that zeroing violates Articles 2.4 and 2.4.2 of the Antidumping Agreement requiring "fair comparison" between the export prices and home market prices of the targeted product. All uses of zeroing, except in targeted-dumping investigations are deemed WTO illegal.
- WTO Anti-dumping rules require that the dumping margin calculation include all comparable transactions.

15

SUBSIDIES AND COUNTERVAILING MEASURES

NEGOTIATIONS :

- Some key players: United States, EU, Canada, Brazil, Venezuela, Australia
- Process open to all Members
- Developing-country issues

SOME PROPOSALS ON DISCIPLINES:

- Venezuela: Re-introduction of non-actionable subsidies
- Brazil and India: Definition of prohibited subsidies
- EU: "Disguised" subsidies, environmental subsidies, notification procedures
- Brazil : Discussion of export credit rules

EU, United States / developing countries:

- Views on S & D Treatment

16

SUBSIDIES AND COUNTERVAILING MEASURES

Proposals on disciplines (cont.)

AFRICAN GROUP :

- Special and Differential Treatment (Art. 27)
- Recognition that subsidies play a role in development strategy
- Increased flexibility to use subsidies

FISHERIES SUBSIDIES

Demandeurs' view:

- Over-capacity, over-fishing due to subsidies
- Effects on access to resources
- Current rules do not address these problems
- Improved WTO disciplines required

17

FISHERIES SUBSIDIES

1. "Friends of Fish":

Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines, United States:

- Need to identify fisheries subsidies on the basis of their effects
- Categorization of subsidies by IOs (FAO, APEC, OECD, UNEP).

2. The US and "Friends of Fish" support "top-down" approach. The "top-down" approach focuses on broad prohibition aimed at subsidies that contribute to over-fishing and on targeted exceptions.
3. Other WTO Members, including Japan, Korea Rep. and Chinese Taipei advocate the "bottom-up" method.
4. The "bottom-up" proposal prohibits only a limited number of subsidies, and only under limited circumstances.

18

FISHERIES SUBSIDIES

Japan, Korea Rep. and Chinese Taipei submitted a paper, proposing prohibited subsidies that include:

- **Those related to IUU fishing and the prevention of IUU fishing, which reportedly,**
- **Is greatly threatening the conservation and management of fish stocks.**

IUU fishing can be characterized as fisheries which:

- **Do not comply with catch quotas and other regulatory measures set domestically or internationally,**
- **Do not report the results and other relevant information of their operations to the appropriate authorities, and**
- **Are not controlled by any management framework.**

19

FISHERIES SUBSIDIES

- **The direct incentive of IUU fisheries is considered to be an economic benefit;**
 - **The investors pursue an economic gain by operating freely outside the framework of an international management system and exporting their products caught with less cost.**
- **In 2001, FAO members adopted the International Plan of Action to Prevent, Deter and Eliminate IUU Fishing.**
 - **The Plan of Implementation of World Summit on Sustainable Development, approved in Johannesburg in 2002, has requested the elimination of subsidies that contribute to IUU fisheries.**
 - **The FAO Ministerial Declaration adopted in March 2005, calls “to identify, reduce and ultimately eliminate the economic incentives that lead to IUU fishing.**

20

FISHERIES SUBSIDIES

- **The most typical subsidies which might benefit IUU fisheries would be subsidies for overseas transfers of fishing vessels to non-CPCs of RFMOs:**
 - **Overseas transfers of fishing vessels to non-CPCs of RFMOs could directly result in IUU fisheries and therefore subsidies for those activities should be prohibited.**
 - **CPCs - contracting parties, cooperating non-contracting parties, entities or fishing entities.**
 - **RFMOs - regional fisheries management organizations**

New Zealand

- **Impact of subsidies: price suppression, price undercutting, displacement of imports,**
- **Difficult to demonstrate in fisheries,**
- **Difficult to resort to serious prejudice or injury provisions of SCM Agreement.**

21

FISHERIES SUBSIDIES

EC

☐ **Prohibition (“red light”)**

- 1. Subsidies for marine fishing fleet renewal**
- 2. Subsidies for transfer of fishing vessels to third countries**

☐ **Permission (“green light”)**

Support to fishermen, improve safety of fishing conditions, stoppages, withdrawal of capacity

☐ **Notification requirements**

22

FISHERIES SUBSIDIES

Antigua & Barbuda, Barbados, Dominican Rep. Fiji, Grenada, Guyana, Jamaica, PNG, St. Kitts & Nevis, St. Lucia, Solomon Islands, Trinidad & Tobago

- **Addressing over-exploitation of fisheries resources**
- **Propose that development assistance granted to small vulnerable coastal states should not constitute a subsidy**
- **Seek appropriate S & D treatment in any disciplines on fisheries subsidies:**
 - **Any development assistance to developing coastal states**
 - **Assistance to artisanal or small-scale fisheries**
 - **Access fees in fisheries access agreements**
 - **Fiscal incentives – to facilitate the development of capabilities of small vulnerable coastal states.**

23

THANKS FOR YOUR ATTENTION

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24