



# The GATS = General Agreement on Trade in S ...?



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DVD  
VIDEO

BBC



# Yes Minister

Series Three

Series Three of the classic comedy series finds Rt Hon Jim Hacker MP, Sir Humphrey and Bernard still jostling their way through the corridors of power.



GO TO WORK ON A SAUSAGE !



# WTO Decision-Making: Consensus

“The WTO shall continue the practice of decision-making by consensus followed under GATT 1947”

(Marrakesh Agreement, Article IX:1)

# WTO Dispute Settlement: Last resort



“ ... any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements”.

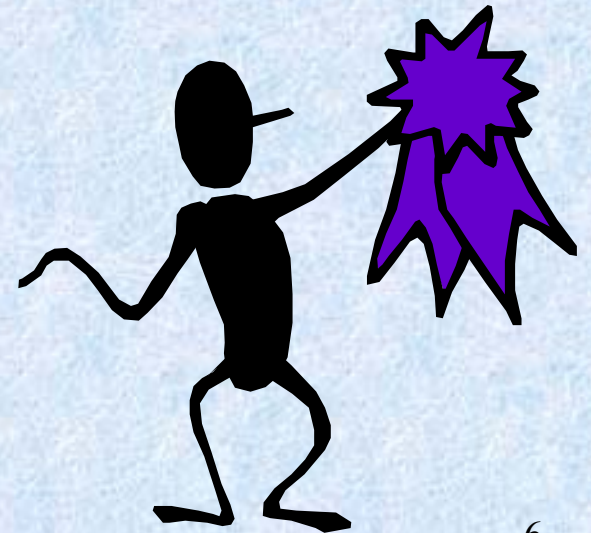
**“The level of the suspension ... shall be equivalent to the level of nullification or impairment”.**

(Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 22)



# GATS: HALLMARKS

- Development dimension
- Flexibility
- Right to Regulate
- Smooth operation



# GATS & Development:



“The fact that commitments on market access and national treatment are subjects of concessions, provided under a positive list, is of **great importance to developing countries** as it **allows members to determine, in terms of their own national development strategy and policy, the individual service sector or transaction that they are willing to open up at a given time, under specific conditions and limitations.**”

Mauritius on behalf of the African Group

(WTO document S/CSS/W/7, Oct. 2000)<sub>7</sub>

# GATS: Relevance for individual sectors



Three possible Scenarios ...

- I. Not covered: (A) Governmental services and (B) air traffic rights
- II. Application of “unconditional” obligations: All other services
- III. Full application (specific commitments plus “conditional” and “unconditional” obligations): Services inscribed in Schedules of Commitments





... and two more elements of flexibility:

III.A Inscription of limitations

(including economic needs tests)

III.B Pre-commitments and/or Additional  
Commitments (Article XVIII)



# GATS & Flexibility:

## Current Commitments (May 2003)

Countries	Average number of commitments per Member	Range (Lowest/highest number of sectors per schedule)
Least developed economies	18	1 - 104
Developing economies	37	1 - 115
Developed economies*	101	80 - 110
Accessions since 1995**	98	32 - 135

\* Western Europe, Canada, United States, Australia, N Zealand, Japan.

\*\* Mainly transition economies.

Total number of sectors: ~160

# Structure of Commitments: Health (India)



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
A. <u>Hospital Services</u> (CPC 9311)	1) <b>Unbound</b>  2) <b>Unbound</b>  3) Only through incorporation with a foreign equity ceiling of 51 per cent  4) <b>Unbound</b> except as indicated in the horizontal section	1) <b>Unbound</b>  2) <b>Unbound</b>  3) None  4) <b>Unbound</b> except as indicated in the horizontal section	

[NOTE: "Unbound" means no market access / national treatment commitments under that particular mode. "None" means full commitments, i.e. commitments without limitation.]



# Modification of Schedules:

## Article XXI

A Member ... may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force [...]

At the request of any Member the benefits of which under this Agreement may be affected ... the modifying Member shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. [...]

Compensatory adjustments shall be made on a most-favoured-nation basis.

If agreement is not reached ... [an] affected Member may refer the matter to arbitration.



# GATS and Regulation: too much scope for unnecessary measures?

“ ... there are few significant GATS prohibitions that would apply to invalidate non-discriminatory domestic regulation” ... [except for accountancy] **“it cannot be said today that “necessity” is an important discipline for domestic regulation under GATS.”**

(Joel P. Trachtman, The ‘Necessity Test’ in Domestic Services Regulation: How to Move Forward in the GATS?, May 2002)



# GATS and Regulation: Negotiating Mandate in Article VI:4

To prevent **qualification requirements and procedures, technical standards and licensing requirements** from constituting “**unnecessary barriers to trade in services**”, the Council for Trade in Services is mandated to “**develop any necessary disciplines**”

Benchmarks:

- (a) “objective and transparent criteria”;
- (b) “**not more burdensome than necessary**”;
- (c) “not in themselves a restriction on the supply of the service” (licensing procedures).



# The “Accountancy Disciplines”

## Scope of Application

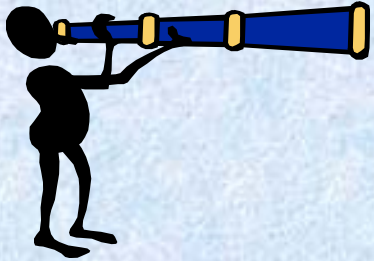
Measures **NOT** falling under Articles XVI and XVII of GATS

Only in **sectors subject to specific commitments**

## “Necessity test”

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”.**

(WTO documents S/L/63 and 64, December 1998)



## A closer look at the New Round



Main Provisions (Article XIX:1 & 2):

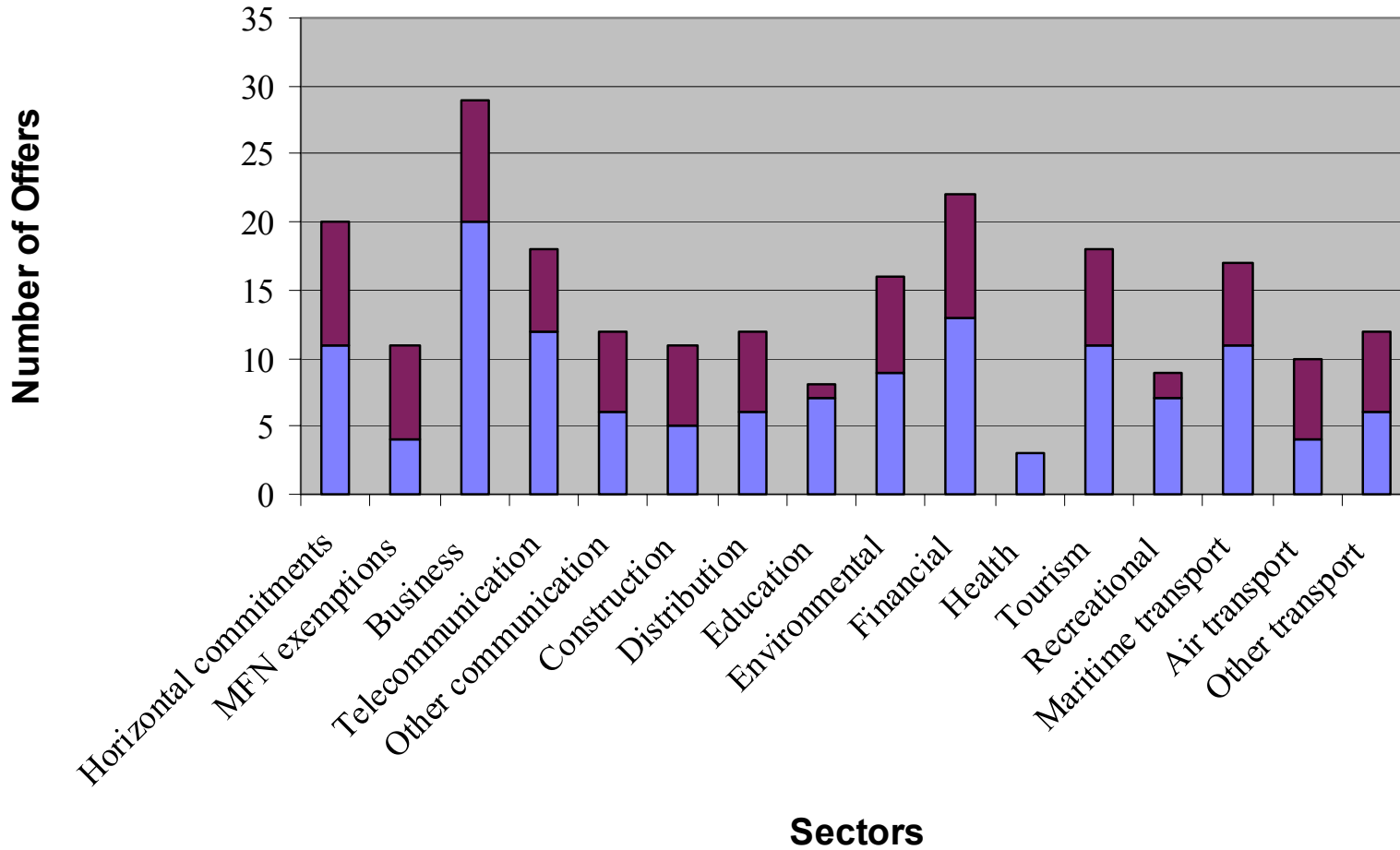
Objective of **progressive liberalization** which shall take place with “**due respect for national policy objectives and the level of development of individual Members**” ...

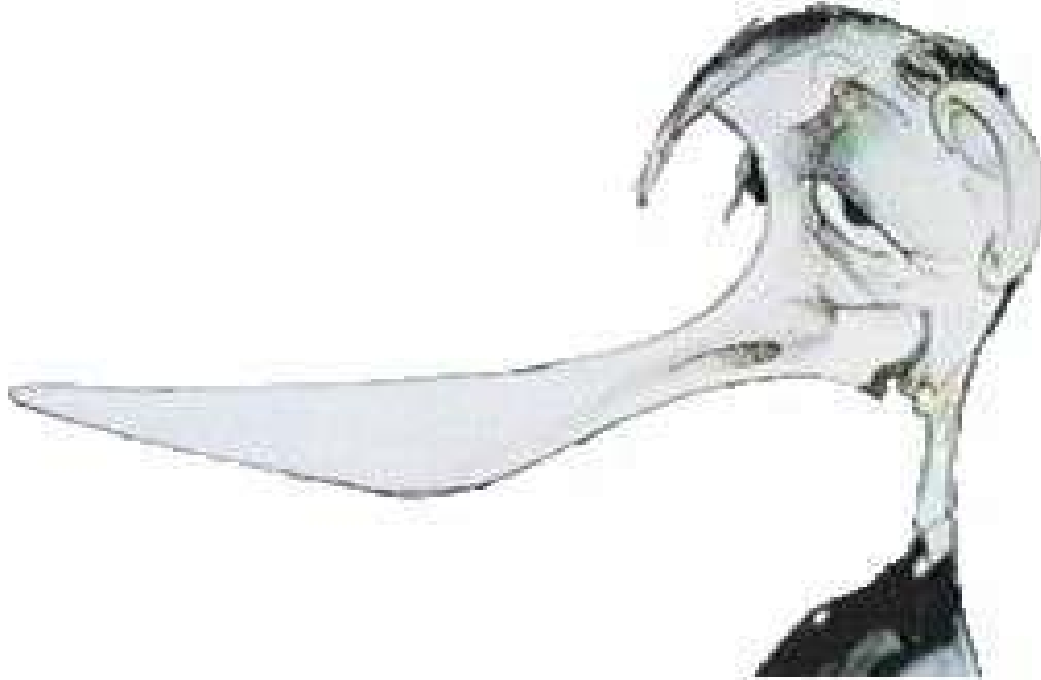
There shall be “**appropriate flexibility**” for individual developing countries for **liberalizing fewer sectors and modes, progressively extending access in line with their development situation** ...



# Number of Offers by Sector

■ Developed  
■ Developing and in Transition





**THE END**