The emergency measures and exceptions recognized by the GATT 1994

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The Emergency Measures

- Refer to:
- Articles XI(2)(a), XII, XIX , XXI of GATT 1994
- The Agreement on Safeguards
- The understanding on Balance-of-payments
- The Safeguard Clauses in the Agreement on Agriculture
- The Safeguard Clauses in the Agreement on Textiles and Closing
- A member may impose tariffs or quantitative restrictions when it determines that a certain good is being imported in such increased quantities so as to cause serious injury to the domestic industry producing the product or a directly competitive product
- A member may impose restrictions to safeguard its balance of payments when there is imminent threat or serious decline in its monetary reserves or to facilitate increase of its reserves when they are low
- A member may impose restrictions to prevent or relieve critical shortage of foodstuffs or other products of

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- The Exceptions
- General
- Refer to: Articles XIV, XXIV AND Pt IV of GATT 1994
- The following are not subject to the MFN obligation:
- Preferential arrangements that have existed for historical reasons (in relation to former colonies or between neighboring countries)
- Preferential arrangements for the benefit of developing countries (due to bilateral agreements between the developed and developing countries or unilateral measures of the developed countries) and preferential arrangements as between developing countries.
- Arrangements within customs unions, free-trade areas and similar arrangements.

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- Specific
- Refer to: Articles XI(2) and XX of GATT 1994
- A member may impose quantitative restrictions to:
- Protect its internal value system (public morals, national treasures of artistic, historic or archeological value)
- Ensure compliance to national regulations not inconsistent with GATT 1994
- Preserve its tangible and intangible wealth and economic system (e.g. to preserve exhaustible natural resources; human, animal or plant life or health, intellectual property; gold and silver; to ensure the marketing of commodities in international trade)
- So long as these restrictions are not:
- Unjustifiably discriminatory
- Disguised restrictions on international trade
- Arbitrary
- A member may impose import restrictions on agricultural or fisheries products to control the domestic market in like products and to control the production of animal based domestic produce

The treatments accorded by the WTO framework to some special sectors (agriculture & textile)

- Two special regimes because of:
- Problem of national protectionism
- Refer to:
- The Agreement on Agriculture
- The Agreement on Textiles and Closing
- The Plurilateral Agreements related to agriculture: the International Diary Agreement and the International Bovine Meet Agreement
- Main focus
- Free market orientation and regulation in that light in the sectors
- Facilitation of cooperation and coordination of policies, including price stabilization in the sectors
- Dismantling barriers to trade in the sectors
- Reduction of support to domestic producers in the sectors
- Establishing fair system of export competition in the sectors
- Integrating the regulation of international trade in the sectors into the WTO framework
- Scheduling members' commitments to realize these

The regime for liberalization of Trade in Services (GATS)

- The General and Specific Obligations in the GATS
- The General Obligations
- MFN Treatment
- Full transparency
- Council for trade in services to ensure, by issuing disciplines, that qualification requirements and procedures, technical standards and licensing arrangements do not constitute unnecessary barriers to trade.
- Members to establish administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers that are inconsistent with the MFN standard (and specific commitments given by the member).
- Members to enter into consultation, upon request of another member, to eliminate business practices of suppliers which restrict and restrain trade in services and competition.

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- The Specific Obligations
- Respecting market access commitments
- Respecting National Treatment Standard (in committed sectors).
- Notification of new measures that have significant impact on trade (in committed sectors).
- Avoidance of restrictions on international current payments and transfers (in committed sectors).
- Administering domestic measures (in respect of committed sectors) in objective, reasonable and impartial manner.

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- The Basic Principles in Detail
- 1. All internationally-traded services are covered by the GATS
- Four modes of supply
- “Mode 1” “cross-border supply” - services supplied from one country to another (e.g. international telephone calls),
- “Mode 2” “consumption abroad” - consumers or firms making use of a service in another country (e.g. tourism)
- “Mode 3” “commercial presence” - a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country)

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- “Mode 4” “presence of natural persons” individuals traveling from their own country to supply services in another (e.g. fashion models or consultants)
- Governmental services (i.e. services that are not supplied commercially and do not compete with other suppliers e.g. central bank services) are explicitly carved out of the GATS
- There is nothing in GATS that forces a government to privatize services industries .

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2. Most-favored-nation treatment (MFN) applies to all services,

- One-off temporary exemptions can be provided
- Economic and labor market integration agreements are not barred.
- 3. Transparency of regulations is required, inquiry points need to be established.
- 4. Market access and National treatment are to be negotiated and committed sector by sector.
- Members are not obliged to commit on the whole universe of services sectors.
- National treatment applies in the areas where commitments are made.

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5. Domestic regulations have to be objective, reasonable and impartial

- GATS does not require any service to be deregulated. Commitments to liberalize do not affect governments' rights to set levels of quality, safety, or price, or to introduce regulations to pursue any other policy objective they see fit.
- 6. Recognition agreements regarding qualifications should not deny other members the chance to negotiate comparable pacts
- They must not be discriminatory; they must not amount to protectionism in disguise.
- 7. International payments for current transactions should normally be unrestricted for a committed services sector
- except in time of balance-of-payments difficulties in

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- 8. Individual countries’ commitments are negotiated and binding
- 9. Progressive liberalization is sought through further negotiations
- Uruguay Round was only the beginning; goal is to take the liberalization process further by increasing the level of commitments in schedules.
- Progressive liberalization takes place with due respect for national policy objectives and members' development levels, both overall and in individual sectors; Developing countries are thus given flexibility for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation; they are also entitled to receive technical assistance from the WTO Secretariat.
- 10. Special treatments for least-developed countries are sought
- Members are to establish “modalities” on how to give special treatments to least-developed countries during negotiations.

The Exceptions/Restrictions Recognized by the GATS

- General
- The MFN (Article II) exemptions
- Economic and labor market integration agreements
- Measures necessary to:
- Protect public morals or maintain public order,
- Protect human, animal or plant life or health, or
- Secure compliance with laws or regulations not inconsistent with the GATS including, among others, measures necessary to prevent deceptive or fraudulent practices.

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- Specific
- Temporary and non-discriminatory restrictions on international payments for current transactions or trade in committed services sectors during serious balance-of-payments difficulties.
- Measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system - the Annex on Financial Services.
- Government procurement of services
- Measures to ensure effective collection of direct taxes and implementation of double taxation avoidance agreements.
- Measures regarding natural persons seeking access to a member’s employment market.

The Regimes for Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Trade-Related Investment Measures (TRIMS)

- Objectives of the TRIPS agreement
- To establish regime of minimum protection of intellectual property rights in member countries.
- To reduce distortions and impediments to international trade due to national intellectual property protection.
- To make the national intellectual property protection regime contributory to promotion of technological innovation and transfer and dissemination of technology.

The intellectual property rights covered by the TRIPS agreement

- Patent
- Industrially applicable invention - solution to a specific technological problem, which may be a product or a process
- Copy right and related right
- Artistic or literary work
- Industrial design
- Shape, configuration or composition of pattern or color, or combination of pattern and color containing aesthetic value. Can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft.
- Trademarks
- recognizable sign, design or expression which identifies products or services of a particular source from those of others

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- Geographical indications – trade dress
- characteristics of the visual appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers
- Undisclosed information – trade secrete
- Formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers
- Certain anti-competitive practices in contractual licenses

The obligations and framework set by the TRIPS agreement

- Requirement of adoption of certain provisions from international conventions in the field of intellectual property.
- MFN treatment standard
- National treatment standard
- Framework for the enforcement of intellectual property rights which members need to introduce in their domestic system.

Objectives of the TRIMS agreement

- To facilitate international investment and increase economic growth of trading partners while avoiding trade-restrictive and distorting effects and ensuring free competition – Preamble to TRIMS Agreement.
- To ensure that TRIMS are not used to undermine:
- The national treatment standard (Article III of GATT 1994), and
- The elimination of quantitative restrictions (Article XI of GATT 1994)

The matters covered and obligations set by the TRIMS agreement

- The matters covered
- TRIMS applies only to measures that affect trade in goods .
- See illustrative list of prohibited measures in the annex to the agreement.
- Local content requirements (investor to use local inputs).
- Export performance requirements (investor to export certain portion of its production).
- Trade balancing requirements (investor’s use of domestic products to bear relationship with its use of domestic products for export).

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- The obligations
- Avoid TRIMS that are inconsistent with basic provisions of GATT 1994 (in particular, the provisions on national treatment and quantitative restrictions)
- Notify all non-conforming TRIMS and eliminate them within two years (for developed countries), within five years (for developing countries) and within seven years (for least-developed countries) from date of entry into force of GATS
- But, trade and investment are also treated in the context of GATS
- Note: the foreign investment of services as one of the four modes of supply of services (“Mode 3”) and the obligations throughout the GATS
- However, no international rules on investment yet

The drawbacks in the TRIPS and TRIMS agreements vis-à-vis least developed and developing countries

- Do least developed and developing countries benefit from protection of intellectual property given their context?
- How do least developed and developing countries want to regulate investment?