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*Series on General Agreement on Trade in Services: Part 4*

## General Obligations (Part II)

### - Mutual Recognition Agreements, Competition Issues and Progressive Liberalisation

#### • MUTUAL RECOGNITION AGREEMENTS

Recognition disciplines in Article VII set out the criteria for arrangements to facilitate the authorization, licensing or certifying of services suppliers from foreign countries. It clarifies both the flexibility available to Members in concluding mutual recognition agreements with one another, or enacting similar unilateral measures related to recognizing certifications, education and other qualifications that the supplier has obtained abroad as well as the disciplines they must observe to minimize any potential discriminatory effects. Such arrangements most commonly deal with professional services, hence these disciplines probably have less impact on other services sectors.

The GATS stipulates that recognition arrangements must not be exclusive to one or a specified list of Members. This means that other Members must be given the opportunity to negotiate accession to any agreement pertaining to 'recognition'. In short 'recognition' should not be used as a form of discrimination or as a disguised trade restriction.

Transparency is also an important aspect of recognition whereby Members are specifically obliged to notify the Council for Trade in Services of existing agreements, in advance of new agreements, and when any existing agreements have been modified (VII:4(a), (b), and (c)).

Finally, Article VII directs Members to base any mutual recognition agreements on multilaterally agreed criteria and to work toward establishing "common international standards and criteria for recognition" for the relevant services trades and professions.

#### • COMPETITION ISSUES

##### *Monopolies*

The GATS does not forbid governments to establish or maintain monopoly service providers. It does however set out the obligations for the Members to ensure their monopoly providers conform with the MFN obligation and do not operate in a manner that interferes with specific commitments made by their government. Also, it is the responsibility of the government to ensure that a service supplier

does not abuse its monopoly position in the market.

If a Member believes that a monopoly service provider in another Member is not complying with MFN or any specific commitments it can ask the Council for Trade in Services to request specific information about the relevant operations. Note: A monopoly supplier as defined in the GATS is any person (natural or juridical), public or private that is authorised by the government to be the sole supplier of the service (Art XXVIII(h)).

##### *Business Practices*

Article IX refers to business practices other than article VIII monopoly providers that restrict competition and hence restrict trade. This article provides for consultations on anti-competitive practices of companies and requires Members, when requested, to eliminate these types of practices.

#### • PROGRESSIVE LIBERALISATION

Members have committed themselves to enter into successive rounds of trade negotiations with the goal of achieving progressively higher levels of liberalisation of services trade. The relevant provisions stipulate that this process of progressive liberalisation is to take place with due respect for national policy objectives and the level of development of individual Members. The GATS thus recognises that services trade liberalisation cannot be achieved at a stroke nor under a generally applicable one-size-fits-all approach, but needs to take into account the situation of individual Members and sectors. Developing countries are also to be granted appropriate flexibility for opening fewer sectors, liberalising fewer types of transactions and progressively extending market access in line with their development situation.

The rounds of negotiations are intended to result in more commitments (i.e. not previously committed) and/or improved commitments (more liberal). Each country identifies the sectors and modes on which it is willing to negotiate on the basis of requests and offers made by their trading partners and their own policy objectives. Although much less common, commitments may also be improved autonomously outside the context of a designated round of negotiations. Sometimes this is done when a major reform is enacted in a sector in which a Member could not have committed during a previous round. Also, such autonomous improvements have been seen by some governments as enhancing the investment climate in sectors important to their economy.

*Next week: "GATS Commitments"*