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B. K. Zutshi

**SIMULATION: RULES NEGOTIATION:
ESM UNDER THE GATS**

COUNTRY A

- Continental-size developing country, with a huge internal market
- Services value added contribution to GDP around 50%
- Significant autonomous reform and liberalization programme in service under implementation, particularly in the infrastructure sectors like financial services, telecommunications, transport, ports etc.
- Looking for foreign direct investment in these sectors
- Aggressive export interest in several services sectors, particularly in professional services and knowledge-based sectors, which involve temporary outward movement of natural persons
- Current level of commitments under the GATS is modest and mostly confined to mode 3
- Increasingly interested in exports under mode 1.

COUNTRY B

- Large developed country with a huge internal market
- Services value added contribution to GDP over 70%
- More than 50% of total exports in the service sector
- Relatively open services economy, with special protective interests in some sectors like maritime transport and audiovisual
- Current commitments under the GATS, although relatively significant, are still way below the operating regimes
- Inward temporary movement of movement of natural persons as service providers is a politically sensitive issue

COUNTRY C

- Middle-size developing economy
- Services value added contribution to GDP around 30%
- Poor service infrastructure in financial services, telecommunications etc.
- Ambitious plans for policy reform and liberalization in the economy, particularly in the services sector
- Wants to attract foreign direct investment in the service sector
- Well educated middle class and professionals
- Potential for service exports under mode 4
- Limited current commitments, confined to a few sectors like tourism and banking services

COUNTRY D

- An economy in transition from central control and direction to a market-based one
- Services value added contribution to GDP around 25%; still very much an agrarian economy
- Poor services infrastructure
- Recent accession to the WTO
- Current commitments under the GATS rather significant covering most of the services sectors
- Transition period for full implementation of commitments ten years
- Interested in FDI across the board but particularly in services, response so far rather poor.

On the basis of the background information annexed, identify interests and concerns in an ESM provision in the GATS and develop a negotiating strategy for each of the four countries by identifying core issues in these negotiations. Is it in the interests of any of these countries to have such a provision, and, if so, what elements should it contain and what form should it take, and if not, what strategy will you adopt to avoid a positive outcome in the negotiations.

Annex to Simulation

Negotiating Mandate Article X : 1 of the GATS

Article X : 1 of GATS reads

There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement

Identification of the Issues

- The conceptual basis of ESM in services is the GATT EMS Paradigm, which is meant to address,
 - in fair trade conditions,
 - concerns about serious injury or threat of serious injury, to
 - domestic industry of similar or directly competitive products, from
 - import surges arising from GATT obligations.
- The permissible remedy in such circumstances is the application of temporary import control measures on a non-discriminatory basis

Issues to be addressed :

- Who to protect?
 - On whose behalf would emergency safeguard action be taken?
- Against what?
 - In what circumstances would emergency safeguard action be taken and what would be the purpose of such action?
- And How?
 - What approach should be adopted in respect of injury / adverse effect, and the relevant causal link between injury / adverse effect and commitment under the GATS? What measures would be undertaken under the emergency safeguard mechanism? Are some measures deemed more suitable than others?
- Desirability and feasibility of ESM in the GATS
 - ✓ Is there an economic case for any such provision?
 - ✓ Is it dictated by political necessity?