

GATS CASE STUDY - DISTRIBUTION SERVICES

The Utopian People's Republic, a fast growing middle income country with a population of 85 million, has applied to accede to the WTO, and it is now assessing its domestic goods and services regulations in preparation for bilateral market access negotiations. The Prime Minister has made it a high priority to accede to the WTO as soon as possible. You are the legal adviser to the Utopian WTO accession negotiation team.

Utopia is aware that the other countries that have acceded to the WTO have all made extensive commitments for services liberalization. In fact, WTO Members regularly demand and get commitments from acceding countries that are far more extensive than the commitments that they themselves made in the Uruguay Round.

Like many other countries, Utopia has a complex regulatory regime governing its distribution sector. Key measures include the following:

- a. Foreign equity participation in department stores is limited to 49%.
- b. Foreign-affiliated department stores may only operate in three major coastal cities, not in the interior.
- c. Department stores with selling space in excess of 10,000 square meters must undergo a special licensing process, in which the applicant must show that the local population is large enough in relation to the existing number of retail outlets that there is room for another large department store.
- d. Retail operators owned by citizens of the country of Dementia, a low-income neighboring country, are exempt from the licensing process, because Dementia has exempted Utopian-owned companies from a similar licensing scheme in Dementia.
- e. In Utopia, special permission is required in order to engage in importing and exporting. The only entities that have permission to engage in foreign trade generally are state-owned trading companies. Foreign investors have been permitted to engage in trade to a limited extent, but only to import inputs for their own use and to export their own production. Foreign investors are not permitted to import products for resale to the general public or to sell in Utopia the products they manufacture in Utopia.

Utopia's Minister of Trade and Industry is aware of the strong political interests that support retaining the existing regime in the distribution sector. However, the Prime Minister's Council of Economic Advisers has urged the Minister to use WTO accession to streamline existing restrictive regulations that add to domestic price inflation, reduce competition in the domestic market, and indirectly act as a tax on exporters. A number of WTO Members have stated that they will block Utopia's WTO accession unless the market for distribution services undergoes significant liberalization.

The Minister seeks your advice in scheduling Utopian commitments on distribution services under the GATS. Among the key questions you are asked to comment on are the following:

- a. How should the Utopian government use the WTO accession process as part of domestic economic/regulatory reform?
- b. Can Utopia provide an unlimited (bound) market access and national treatment commitment in the distribution sector, as its trading partners have requested?
- c. What limitations would need to be scheduled?
- d. Does Utopia need to negotiate an MFN exemption?
- e. What kind of insurance mechanism can be built into the liberalization process so as to address the domestic competitive dislocations that might arise from distribution market liberalization?
- f. From the standpoint of Utopia's trading partners, what obstacles do existing restrictions present to effective market access, and how important is it to remove them? Rank the measures by level of restrictiveness (most to least restrictive)?