WHICH TOURISM RULES?
Green Standards and GATS

Jem Bendell
University of Nottingham, UK
Xavier Font
Leeds Metropolitan University, UK

Abstract: Programs to certify “green” or sustainable tourism standards are rapidly growing, and it is possible that certification might change in function and effect from awarding excellence to becoming de facto requirements to trade. Because certification often relies on governmental support, it could be perceived as an anti-competitive barrier to trade in the context of international practice such as the General Agreement on Trade in Services, which could reduce the appeal of standards as a self-regulatory method. This paper provides a pro-sustainability standards reading of the agreement and related World Trade Organization documents to discuss what policies and practices might be criticized as trade-restrictive and provides arguments against such criticisms. Keywords: sustainable, standards, certification, GATS, trade.


INTRODUCTION

The General Agreement on Trade in Services (GATS) is the first multilateral legally binding agreement covering the trade in tourism services. It provides a specific legal framework for ongoing negotiations and progressive liberalization aimed at eliminating barriers that discriminate against foreign service suppliers denying them market access and national treatment. The basic principles of GATS are trade without...
discrimination, transparent protection, and a stable basis for progressive liberalization, with the assumption that a level-playing environment exists or can be created in the short term (Kakabadse 1995). There are, however, inequalities in the ability of players to take advantage of this level playing field, most evident in the cases of developing countries and small firms in general (Fayed and Fletcher 2002), with the airline sector as a prime example (Fayed and Westlake 2002).

The process of negotiations takes place through the scheduling of commitments to liberalize certain sectors for market access (Article XVI) and national treatment (Article XVII), as well as additional commitments. This means that every country is meant to open its markets to foreign companies and give them the equivalent treatment to companies from this country by making commitments (in full, with limitations, or none) for a variety of modes of supply (cross-border, consumption abroad, commercial presence, and presence of natural persons) (Kakabadse 1995; WTO/OMC 1994a).

The GATS has antecedents in liberalization efforts in a variety of regional arrangements, such as the market integration of Europe, the North American Free Trade Agreement, Latin America’s MERCOSUR, and the Pacific’s ASEAN Free Trade Area (Fayed and Fletcher 2002). Larger companies and organizations, including those within the World Travel and Tourism Council, have advocated that greater liberalization of tourism worldwide would help promote the sustainability of the industry. Meanwhile, others point out that the social and environmental implications of liberalization are either negative or uncertain (see Hoad 2003 for supporters and critics).

Tourism has a relatively high level of liberalization, especially with respect to commercial presence, and has already received the largest number of commitments under the GATS classification of “tourism and related services” (Diamantis and Fayed 2000; Fayed and Fletcher 2002; Limam 1995). Liberalization will further facilitate increased foreign direct investment in destination countries and transport. Purported economic benefits include revenues, spending, and employment, as well as political stability (Fayed and Fletcher 2002; Hoad 2003). Yet, if development is induced by foreign investment, it is likely to mean increased economic leakages and less local control over the nature and limits of development (Díaz-Benavides 2001; Hoad 2003).

The fourth Ministerial Conference in Doha, Qatar, in November 2001 started a new round of negotiations called the Doha Development Agenda, and issues concerning the implementation of the agreements and all negotiations should be completed by January 2005 or before. The potential impact of liberalization commitments raised calls for further research before pursuing the Doha round of WTO/OMC negotiations, mainly regarding the position of developing countries (WTO/OMC 2001a; WWF 2001). Some might argue that limiting market access and foreign company entry is one of the mechanisms to ensure long term sustainability of the local resources (Woodroffe 2002), yet this would be against GATS’ principles, and WTO/OMC members are making requests for the removal of restrictions, such as those identified by Canada as common: “economic needs tests, cit-
citizenship requirements, size limitations for establishments, restrictive licensing practices, and fixed equity limits” (WTO/OMC 2001b:1). There is a fine line between allowing states to enforce reasonable measures necessary to protect the environment and encourage sustainable development, and using sustainability arguments as disguised means to discriminate against foreign companies.

Reaching agreements on commitments is a time consuming process, and the conclusions to the Uruguay Round of Multilateral Trade Negotiations were delayed considerably beyond initial expectations (Diamantis and Fayed 2000; Handszuh 1992). These Doha negotiations are likely to further liberalize tourism in a context of varying degree of development of services across countries, with challenges for developing countries in particular, as already acknowledged in the pre-amble of GATS (WTO/OMC 1994a). Several documents were prepared in preparation for this round of negotiations to explore the impact on less developed countries (Kalisch 2001; Woodroffe 2002) and to use as an opportunity to “counterbalance the asymmetries imbedded in the outcome of the Uruguay services negotiations” (Diaz-Benavides 2001:19).

A number of governments proposed the introduction of an Annex on Tourism to GATS, in “view of its importance for every country in terms of job creation, the contribution made by foreign currency to the balance-of-payments, and the share of the gross domestic product” (WTO/OMC 2000a:1). At the time of writing this paper, the draft annex defined the sustainable development as the process of:

(a) Involvement of local communities in the conception, development, enhancement, management, and preservation of all destination resources used for tourism projects, in particular cultural and environmental resources;  
(b) Implementation of environmental and quality standards agreed by relevant international organizations for tourism projects, in accordance with the requirements of Article VI [Domestic Regulation]; and  
(c) Allocation of tourism revenues to prevent degradation of the destination resources and to meet the needs to supply tourism services in the future (WTO/OMC 2001e:2).

Standards are directly mentioned as important in the GATS text (WTO/OMC 1994a), and to tourism in particular (Diaz-Benavides 2001; Handszuh 1992). Adding to this the direct mention of environmental and quality standards in the proposed Tourism Annex suggested it is timely to undertake some analysis of their function as barriers or facilitators of the type of trade that is compatible with sustainable development.

Liberalization involves the elimination of barriers to trade, and there has been debate in the WTO/OMC Committee on Trade and the Environment as to whether sustainability standards might form such barriers to trade (WTO/OMC 1995). Barriers to trade for services are more subtle than for physical products because of their intangibility, with legislation and administrative practices as key instruments (Fayed and Fletcher 2002). The Technical Barriers to Trade Agreement of the World Trade Organization (WTO/OMC) prohibits governments from banning products on the basis of the way they are produced,
which could suggest that governments cannot give preferential support to sustainable tourism firms over non-sustainable ones. However, some disputes brought to this organization suggest that barriers introduced ostensibly for social or environmental reasons might in future be deemed to be compatible with the Technical Barriers to Trade Agreement if they are consistent with domestic regulations and international standards (Cameron 2000). Nevertheless, by 2003 this was still hypothetical; thus, most governments remained wary of introducing new social and environmental barriers that relate to production methods. Consequently, voluntary social and environmental standards with stakeholder participation have been argued to take on a prime role to “substitute for the inability of nations to exert control over the nature of products they import” (Conroy 2002:106). These discussions of the way the WTO/OMC mediates the relationship between governments, “green” standards, and trade have occurred within the context of the Technical Barriers to Trade for the General Agreement on Tariffs and Trade (WTO/OMC 1994b) and not GATS (WTO/OMC 1994a). Therefore, it is argued here that drawing lessons or precedents from official statements and decisions, such as the Second Triennial Review (a Technical Barriers to Trade Committee document outlining core principles to guide future committee procedures on international standard setting) is not appropriate for understanding the relationship between GATS and voluntary standards.

Voluntary standards have been recognized as a valuable method to improve industry performance (UNEP 1998; WTO 2002) and fears of incompatibility with trade rules might reduce their appeal as methods of self-regulation. It is believed that trade disputes relating to tourism standards are less likely than for other sectors (Buckley 2002) and that “diligent implementation of procedures that foster equity and fair play and standards that represent a true consensus of balanced interests can be some of the best defenses, would there be a lawsuit” (Toth 2002:96). To date, delegates at the WTO/OMC have not made strong attempts to undercut the growth of voluntary standards (Conroy 2002), although the precedents of past dispute settlements in other sectors “have consistently ruled against member countries employing general exceptions articles for environmental protection” (Hoad 2003:223). Despite believing that liability exposure is usually limited (Toth 2002) and no record of actions brought under WTO/OMC legislation (Buckley 2002), the main challenge remains that there is little evidence from which to draw conclusions and analysts have a propensity to speculate (Hoad 2003).

The purpose of this paper is to provide a synthesis of the position of tourism standards in the context of multilateral trade negotiations, based on an exploratory analysis of the WTO/OMC documentation. The methodology is loosely framed within the subjectivist approach of legal hermeneutics, used here in its broad sense of theory and philosophy of the interpretation of meaning, rather than a prescriptive set of techniques. The sources of enquiry of knowledge have evolved to embrace more subjectivist methods in disciplines such as political science and economics despite earlier positivist positions (Lavoie 1990;
Leyh 1992) that allow arguing that legal texts can be open to several interpretations and that interpreting them is a key part of political science. As a tool for trade negotiations, the GATS documents are open to different interpretations so as to justify different positions and requests from governments, and thus interpreting documentation for a specific purpose is fully justified.

VOLUNTARY STANDARDS

In the last ten years, there has been an explosion in the range of voluntary standards and number of companies adopting them (Bendell 2000; Haufler 2001; Webb 2002). Many studies suggest this is a logical response to the ambiguities and uncertainties of the current global system, responding to societal pressure while avoiding rigid government interference (Haufler 2001). The international integration of markets has changed the ability and willingness of states to intervene in economic affairs, or at least, in the affairs of multinationals. This governance gap is being filled to a greater or lesser extent by the activism of groups in civil society and the leadership of some forward-looking firms, which are constructing their own framework of social and environmental rules for the global economy. The United Nations Research Institute for Social Development identified the role of civil society in affecting the reputation and performance of companies to be so significant that they suggested voluntary standards can better be understood as civil regulation: the quasi-regulation of business by civil society (Murphy and Bendell 1999).

Tourism is behind by several years in the adoption of standards and it is useful to learn about the lessons elsewhere when envisaging changes (Font and Buckley 2001; Font and Tribe 2001). In the last ten years, there has been an explosion in the range of programmes certifying to sustainability standards (Font 2002; Honey 2002; WTO 2002). This follows an earlier growth in other industries such as forestry, social accounting, fisheries, and cross-industry standards, including those from the International Organization for Standardization (Bendell 2000; Haufler 2001; Webb 2002).

These have evolved from codes of conduct with the addition of measurement and monitoring methods (Synergy 2000; WTO 2002) and they are acknowledged as a valuable tool to define and communicate sustainable and responsible business practice (UNEP 1998). Despite the growing number, the coverage is not even (Font and Buckley 2001; Font and Bendell 2002; WTO 2002). The issues covered are mainly environmental, with few considering social issues, the latter mainly in developing countries. Initiatives are generally directed to the hospitality sector, easier to target because business units are more defined and standardized. Most programs are based in Europe (78% according to WTO 2002), with many subregional labels with similar aims but different operating procedures and criteria. The majority of programs are less than ten years old and the percentage of certified companies is estimated to be below 2% of their target markets. Despite consistent growth in the early years of operations, only 20% of those
between 5 and 7 years old noticed significant increase in the number of their applicants every year (WTO 2002).

There are few certified companies per program, and companies are generally small. Very few programs have more than 5% of the market share of companies for a tourism subsector in a given destination. This might be an acceptable share in retailing fair trade, environmentally friendly, or organic products, but not in services that are consumed where they are produced, and therefore cannot be transported to discerning target markets. Blue Flag, having certified over 2,700 beaches and marinas, is the only program that has a large market share of its niche target market. Most acknowledge they could not manage an increase in the number of applicants because their fees would not cover the costs. This suggests the need for additional resources (arguably government funds) or increased application fees, which would limit the number of applicants or require greater incentives to apply.

The small size of the current programs reasonably suggests that they are creating anti-competitive practices, but this may change if these programs grow (Kahlenborn and Domíne 2001). Increasing market share beyond the committed few currently applying might require broadening the selling propositions, which can be classified under internal (management) and external (marketing) benefits (Font 2001). Better management, usually leading to eco-savings and increased productivity and efficiency, tends to attract applicants in the short term, but once expertise has been absorbed and implemented, marketing benefits are expected or applicants threaten to withdraw. Marketing benefits from consumer marketing are not clear. There is mixed evidence regarding whether consumers are or are not willing to pay extra for holidays that are sustainable, and it has also been reported in other industries that inconsistencies exist between claims on willingness to pay for sustainability and actual behavior (NCC 1996; Mihalič 2001). However, a growing acceptance of corporate responsibility by tour operators could lead to the introduction of sustainability purchasing policies and clauses in contracts, and in the UK there are already some moves in this direction from the Federation of Tour Operators through the umbrella of the Sustainable Tourism Initiative. Tour operators could use certification programs as the seal of approval for operationalizing sustainability purchasing commitments while putting certification programs in a much more prominent position (TOI 2001; 2002). At the same time, it would show the weaknesses mentioned above in a different light, and making certification a requirement to trade would open the door to complaints as happened earlier in other industries such as forestry (Bass, Font and Danielson 2001).

**Government Support**

Since the widespread development and uptake of standards has been a relatively recent phenomenon, and because this has often happened without the involvement of governments, the question of how governments relate to these is fresh and not well studied (Webb and Morrison
The small body of research that exists, scattered among disciplines such as business management, economics, political science, and law, suggests that standards have implications for governmental regulatory frameworks. For example, Virginia Haufler (2001) notes that governments will need to consider how industry self-regulation with voluntary standards affects domestic regulatory capacity, because it can compete with or supplement national regulatory norms.

Standards have implications for governmental regulatory frameworks by the way they relate to the enforcement of the law through the courts. For example, in regulatory enforcement actions undertaken by government, the existence of a standard can assist in obtaining convictions or avoiding penal liability. In addition, consumers or affected members of a community may be able to use the existence of a standard in a legal suit in contract or tort to establish liability and obtain remedies against individual firms and even the state. Similarly, firms may be able to bring legal actions in tort or contract against other firms on the basis of a standard (Webb and Morrison 1999). In some cases, courts can impose a “voluntary” standard on a company as part of a legal settlement (Webb 1999).

The future development of government support for standards is currently the topic of policy discussions around the world. For example, the European Commission Green Paper on Corporate Social Responsibility suggested that it would not consider legislating to compel companies to adopt this, although it might seek to ensure meaningful and transparent information in this area (COM 2001). It suggests companies should produce social and environmental reports with sufficiently uniform information to allow comparisons. Users of such reports need the assurance of external input and verification to be able to rely on the information presented. Similarly, consumers who want to buy responsibly produced products need simple, authoritative labeling, and investors who want to back responsible companies need clear criteria that can be consistently applied. The European Commission paper stresses the importance of transparency and dialogue, with the need for developing multi-stakeholder consensus on the way forward.

Tourism certification relies to a great extent on government support, generally active support through running schemes and facilitating applications. The authors estimated that without such support two thirds of schemes would not survive, and it would not be possible for these to be introduced in many countries (Font and Bendell 2002). Yet, there is little evidence of government support going beyond this enabling framework through measures such as changing legislation, providing incentives financial or otherwise, or making certification mandatory.

Font and Bendell used data from WTO (2002) to map out how governments take actions to enable the operation of certification programs, and the rest of this section outlines the scope of such actions to consider the elements that can be in conflict with GATS. Twenty of the 59 schemes in the WTO report are led by government agencies, and a further 18 have government involvement either through direct financial support, marketing support, expert know-how in standard set-
ting, verification procedures, or surveillance of procedures being followed by the certification body. Government agencies involved generally include both environmental ministries (or equivalent) and tourism boards; in fewer cases standards institutes have an involvement. Government financial support is crucial to half the programs, and grants or loans are available through a variety of support measures for consultants and assessment processes (Font and Bendell 2002).

Thirty-eight out of the 59 programs have government involvement in highlighting and advising on best practice. Marketing is a key benefit promoted to applicants of most schemes, and government support can be the single most important incentive to apply (Font and Bendell 2002). Several programs have government support through the inclusion of the certificate in accommodation listings (Green Tourism Business Scheme) and even separate, preferential marketing (Nature and Ecotourism Accreditation Program and Austrian Ecolabel for Tourism). Governments also promote them at travel fairs and on the official tourism boards’ websites. The Green Tourism Business Scheme reports that accommodation providers certificated by them have occupancy rates up to 10% higher than non-certified companies, according to statistics from the Scottish Tourism Board (Font and Buckley 2001). Cases such as the above-mentioned could lead to arguing that marketing support to certification programs could be partly instrumental in this higher occupancy rate. Preferential marketing is an area for debate, with strong arguments against it from those companies that do not have the capacity to apply in the first instance, such as small and ecotourism firms (Maccarrone-Eaglen and Font 2002; Sallows and Font 2004).

Contention between Standards and GATS

Certification is likely to be subject to trade practices legislation in many jurisdictions (Buckley 2002) and “any organization that sponsors programs that dictate how businesses will operate, has the potential to restrict trade or increase prices, or establish criteria that affect safety and health eventually can expect to wind up as defendant or codefendant in a legal action” (Toth 2002:96). From the comparison between criteria in certification programs, and the GATS documentation on liberalization of trade, three areas of possible contention can be highlighted.

The first is where standards require firms or destinations to know (or identify) and operate within the environmental carrying capacity of a destination. For example, some programs restrict the number and type of diving boats on coral reefs. Carrying capacity could conflict with Article XVI (market access) since it means that the right of new firms to enter the market may be restricted (Waskow and Yu 2001). In this context, Equations, an Indian nongovernmental organization, has raised the example of biodiversity in the Western Ghats forest in India. It fears that the unlimited GATS commitments made by the government mean that it will not be able to manage the extent of hotel development if foreign multinationals want to operate in that area.
Such development would have far reaching social and environmental impacts (Equations India 2002).

Significantly, in this context GATS Article XIV on “General Exceptions”, states that “nothing in this agreement shall be construed to prevent the adoption or enforcement by any Member of measures... necessary to protect human, animal, or plant life or health” (WTO/OMC 1994a:294–295). This statement should be understood as meaning the protection of human, animal, or plant life, or human, animal, or plant health. To assume that “health” only relates to humans would be unfounded. Environmental science demonstrates that human, animal, and plant life and their health cannot be meaningfully separated from the health of the ecosystem they depend upon. Therefore, the different aspects of GATS can be seen to conflict, creating uncertainty.

The second area of possible contention is due to the fact many programs include criteria on the creation of local employment, the use of locally sourced and produced materials and food, the involvement of local communities, and the support of networks of “green businesses” within a given destination. These criteria are important since local economic empowerment is an aspect of sustainability, even though, on average, between 60 and 90% of the price that tourists pay for their holidays goes to those multinational companies that own the airlines and run the hotels (Consumers International 2000). It is interesting to note at this stage different interpretations of the meaning of sustainable development held by trade delegations to the WTO/OMC. For example, in the communications from the European Communities (WTO/OMC 2000b) and Switzerland (WTO/OMC 2001c), sustainability was discussed in the context of the environmental impacts of developing facilities, with no mention of wider issues such as economic sustainability, social development, and leakages. However, the United Nations Conference on Trade and Development has argued that “If the local linkages of [domestic] acquired firms are weak or inefficient, [mergers and acquisitions] will lead to a switching of supply chains abroad, with lower diffusion of new technologies locally” (UNCTAD 2000:176). In addition, the environmental benefits of supporting appropriate local trade should not be overlooked.

The problem is that such considerations may conflict with Article XVII on “National Treatment”, which requires treating foreign suppliers of services as nationals. Professionals in India have expressed concern that a policy established by the authorities in Goa, reserving restaurant and taxi concessions for local people, could be challenged under GATS, because India has not listed these as exceptions to its commitments (Equations India 2002). In addition, Consumers International (2000) has expressed concern that governments might no longer seek to stipulate that food for hotels is sourced from local farmers. This issue is important in ensuring that tourism is a supporter of the sustainable development of the whole local community, and does not create food insecurity. In this case, it is important to note the communication of Costa Rica on the problems faced after the September 11th terrorist attacks in the United States (WTO/OMC 2001d).
This said that arrivals can decline abruptly and therefore if tourism development does not support local food production, and even undermines it by taking people from agriculture into tourism, it is not helping food security, an important aspect of sustainable development in rural areas.

The third area of contention arises from those programs requiring that the operation of services, including facilities such as hotels and other buildings, be compatible with the local culture, heritage, landscape, and architecture. Although most programs relate to management rather than development, the Convention on Biological Diversity Guidelines (UNEP 2001), which deals in detail with standards to develop tourism businesses, could be directly affected. Taking criteria on building restrictions first, footnote 10 of GATS states that “Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers” (WTO/OMC 1994a:298). This means that de facto discrimination arising from the foreign nature of a firm is not included. Therefore, criteria on what is permissible to build should not be challengeable. However, in possible contravention to this footnote, recent documents from the WTO/OMC secretariat concerning Articles XVI on “Market Access” and XVII on National Treatment suggest otherwise. For example, the WTO/OMC Secretariat queried whether restrictions on the size of the retail outlets that directly limit output could violate market access commitments (WTO/OMC 1998).

A related issue here is the focus of many standards on ensuring tourism developments do not undermine local cultures and traditions. Friends of the Earth (US) warn that a government’s efforts to protect the right of local communities to live off their land could be threatened as the granting of preferential resource extraction licenses (such as for fishing) to local communities could be prohibited (Waskow and Yu 2001). Similarly it could be contentious if a government mandated or supported a standard that included an assessment of impacts on traditional livelihoods. In this regard, another aspect of GATS Article XIV on “General Exceptions” states that “nothing in this agreement shall be construed to prevent the adoption or enforcement by any Member of measures... necessary to protect public morals...” (WTO/OMC 1994a:294). There has been little discussion about this concept, but it would be entirely unfounded to assume a Judeo-Christian interpretation of “public morals”. The term “moral” signifies different things in different cultures. In some indigenous cultures, public morals are understood as living traditional livelihoods in harmony with the environment. In some Buddhist traditions, the important “moral” is to become aware of yourself and others, and thus the protection of public morals could imply the protection of formal and informal systems of education and of the community.

This discussion shows that there is inconsistency in the GATS text, which increases if read through a non-Western frame of mind. Therefore, it is difficult to assess incompatibility when standards are backed by government measures. The discussion is not comprehensive, since
there are other areas where GATS might have an implication. For example, some have raised concerns that regulations on water and air quality might be open to challenge (Woodroffe 2002), and yet water consumption is included in most programs.

**GATS and Government Support for Voluntary Standards**

GATS is an agreement concerning (WTO/OMC) member-government regulation. The WTO/OMC does not have any direct jurisdiction over the activities of companies, citizens or nongovernmental organizations, and hence has no direct jurisdiction over voluntary standards developed and adopted by them. However, GATS does establish a framework for what government measures a member can undertake including any in support of or against a voluntary service-related standard. Therefore, it is the government support that is under scrutiny, not the standard itself (Conroy 2002). GATS Article XXVIII on “Definitions” states that a “measure” means “any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form” (WTO/OMC 1994a:302). Article I/3/A further specifies that “measures by Members” means those taken by:

- central, regional, or local governments and authorities; and non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities (WTO/OMC 1994a:286).

Recognizing how a government might delegate powers is the first way that GATS could relate to voluntary service-related standards. It could also relate in other ways: by requiring members to take action to promote activities in accordance with GATS, even if they are not delegating powers; by making special reference to the standards of relevant international organizations at various points in the agreement, including the proposed Tourism Annex; and by the fact that standardization and related activities such as training, accreditation, and certification are themselves services and thus covered by all provisions of the GATS. Each of these forms is discussed in turn. In the first case, GATS states that the agreement applies to any organization that exercises powers delegated by government; thus, if a government has mandated the use of a voluntary standard, it is effectively delegating authority to the standards body. In this case, the nature of that standard is key to determining the compatibility of that government measure and Articles VI and VII are particularly relevant, among others. Article VI, “Domestic Regulation”, seeks that technical standards, including other measures (qualification requirements and procedures, licensing requirements) “do not constitute unnecessary barriers to trade in services”, and do not “nullify or impair [such] specific commitments” (WTO/OMC 1994a:290). Article VII, “Recognition” deals with “standards or criteria for the authorization, licensing, or certification of services suppliers,” in which case “recognition should be based on multilaterally agreed criteria” (WTO/OMC 1994a:291). If the exercise
of powers delegated by governmental authorities is cause for complaint under these articles, and this is upheld, then this could be addressed either by changing the delegation of powers by governmental authorities or the exercise of those powers by the standards organization. In other words, the organization operating the certification program would not necessarily have to change its practices; the delegation of powers could be changed instead. It is important to be clear on this so as not to give a false impression of the extent of jurisdiction over voluntary standards. Clearly, this also raises the issue of what constitutes “delegation of powers.”

This is linked to the question of “measures”. Given the broad, perhaps vague, definition of government measure, some might argue that any government action in relation to voluntary standards could be assessed in terms of GATS. However, government measures that provide incentives for voluntary standards are distinct from those that make them mandatory. The latter could certainly be covered, the former arguably not. Many government measures in support of voluntary standards aim to improve the level of information within the market, for consumers, staff, investors, and regulators, and as such support the expression of social and environmental preferences within the marketplace (see Font and Bendell 2002 for a typology of government measures). Therefore, even if the certification program operated in ways that did not correlate with principles in GATS, such government measures should not be within its scope. Some measures creating direct incentives for the uptake of voluntary standards, such as tax breaks, or allowing access to limited resources only to certified companies, could be areas for debate over whether the measure-standard relationship could be assessed for compatibility. However, as stated earlier, these are not the norm.

The second area concerns those programs that do not exercise delegated powers. Article I/3/A states that “In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by… nongovernmental bodies within its territory” (WTO/OMC 1994a:286). Therefore, the issue is what measures “may be available” that would be considered “reasonable” by member delegations, the WTO/OMC secretariat, and dispute resolution bodies. Given that this clause effectively refers to the relationship between a nation state and its citizens, these considerations should be informed by the international law that deals with such issues. Article XXVI makes it clear that the General Council of the WTO/OMC will seek “consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations” (WTO/OMC 1994a:301). In this particular instance, the UN’s High Commission on Human Rights and the Universal Declaration of Human Rights would be particularly relevant. From this, governmental intervention to prevent citizens’ freedom to develop, express, and implement their opinions on services-related matters would not be a reasonably available measure. Therefore, legislation to control the activities of nongovernmental organizations operating voluntary trade-related standards could
not be reasonably expected from members. Instead, it is possible to argue that members might reasonably be expected to promote non-governmental organizations’ conduct in accordance with GATS, through information dissemination and in guidelines for its own funding activities.

The third way GATS relates to voluntary standards is by its direct reference to those developed by relevant international organizations. For example, Article VII/5 on “Recognition” states the importance of international initiatives while Article VI/5/B on “Domestic Regulation” reads that “in determining whether a Member is in conformity with [an]... obligation... account shall be taken of international standards of relevant international organizations applied by that Member” (WTO/OMC 1994a:290). Its footnote 3 says that the term “relevant international organizations” refers to international bodies whose membership is open to the relevant bodies of at least all members of the WTO/OMC. This seems to assume that relevant organizations will be those formed by the international cooperation of national standards organizations. By implication, bodies like the International Organization for Standardization would be the preferred choice, and in the administration of the separate Technical Barriers to Trade Agreement, it is nominated by WTO/OMC to host the register of standards bodies that have accepted the Code of Best Practice for standards organizations contained in Annex 3 of that Agreement (WTO/OMC 1994b).

Two reasons for specifying why international standards organizations are given this status: First, because if a standard is international, some might assume that it does not discriminate among different member territories (an assumption that can be challenged); second, texts often use concepts that are in themselves quite unspecific, such as “objective” and “reasonable”. Clearly, such terms necessitate further explanation, and “internationality” is seen to provide a reference point to help WTO/OMC substantiate what these might mean in practice (an approach that can also be questioned). One key issue in this regard, which was recognized during a review of the Technical Barriers to Trade Agreement, is the low level of developing country and civil society participation in much international standards setting. For example, only 3% of the delegates at a conference reviewing proposals for a new standard on corporate responsibility from the International Organization for Standardization were from NGOs (Rotheram 2002).

Furthermore, neither the International Organization for Standardization nor any bodies that could accept the Technical Barriers to Trade Code of Best Practice have standards specific to the tourism industry, yet there were references in the proposed Tourism Annex to “environmental and quality standards agreed by relevant international organizations” (WTO/OMC 2001e:2). Since the situation is complex and unclear, more work is required to determine what is a credible standards body and system of certification. This needs to be done with the full participation of civil society. Once this process is undertaken, a comparison with the provisions in WTO/OMC agreements would be appropriate. In undertaking this comparison, it should be remembered that at this point the recommendations from the WTO/OMC
concerning standards are based on the Technical Barriers to Trade and not the GATS.

A fourth and final point in this paper, and one not mentioned in the literature to date, is that standardization and its related services are themselves a services industry, and may thus be covered by GATS themselves. The emphasis on consolidating standardization processes that has come from Technical Barriers to Trade-related discussions could be reassessed in light of the provisions on anti-competitive business practices set out in Article IX of the GATS. This is not fully developed here, but it does open further avenues for analysis of the relationship between standards and multilateral trade negotiations.

CONCLUSION

The exploratory analysis in this paper raises a number of issues for discussion on areas of possible contention between “green” or sustainable tourism standards, if and when supported by government, with the principles of the World Trade Organization’s GATS. The process of developing, implementing, and monitoring sustainable tourism standards is instrumental in improving the long-term viability of this industry. The elements of sustainable tourism standards most likely to be contentious are those that can be perceived to reduce market access (Article XVI) and not provide national treatment to foreign providers (Article XVII). Carrying capacity limits, demands for local employment and purchase of locally produced goods, and the compatibility of services with local culture—key to sustainability standards—are the most likely to be questioned by liberalization advocates and lobbyists. Environmental standards that apply in the same way to both local and foreign companies are less contentious since there is less potential to perceive them as discriminatory, except when these relate to environmental carrying capacities that can be deemed to imply limits to market access.

Standards only come into consideration under GATS in those cases where they benefit from government measures that make these mandatory; in other cases of governmental support the relevance of GATS is less clear. Indeed, it is questionable whether government measures enabling or providing incentives to such standards are under the jurisdiction of GATS. In their present form, it can be argued that none of the sustainable tourism standards has reached a stage of maturity that has a serious impact on trade. However, those governments that support certification programs should be aware of the implications of making them de facto requirements to trade in ways that could benefit national over foreign companies, since this may create conflict. If this was the case, the government could change the type of support, rather than having to change the nature of the standard itself. This leaves scope for growth for certification and room for manoeuvre on the type of support given.

The main conclusion is that there is an urgent need to reach a consensus on what is best practice for the setting, implementation, monitoring, certification, and review of sustainable tourism standards. Only
then will governments be able to engage effectively with international trade negotiations, such as the Doha round, in order to protect and enhance the role they play in sustainable development. If this does not happen, then best-practice in this field may be determined by those without knowledge of or direct interest in tourism certification, with resulting negative implications for those creating a more sustainable form of tourism. Both GATS and standards provide rules for the conduct of tourism. Which of these sets of rules will become more influential may determine which form of tourism—sustainable or unsustainable—will rule the industry’s future. The possibility of compatibility between effective and widespread green standards and the GATS does remain, but will require further work from academics, managers, policymakers, and activists.

Acknowledgements—The authors would like to thank Henryk Handszuh, Chief of Quality of Tourism Development at the World Tourism Organization, for allowing the use of material commissioned by the WTO for this paper.

REFERENCES

Bass, S., X. Font, and L. Danielson

Bendell, J., ed.

Buckley, R.

COM

Cameron, J.

Conroy, M.

Consumers International

Diamantis, D., and H. Fayed

Diaz-Benavides, D.

Equations India
Fayed, H., and J. Fletcher
Fayed, H., and J. Westlake
Font, X.
Font, X., and R. Buckley, eds.
Font, X., and J. Tribe
Font, X., and J. Bendell
Handszuh, H.
Hautler, V.
Hoad, D.
Honey, M., ed.
Kahlenborn, W., and A. Domíne
Kakabadse, M.
Kalisch, A.
Lavoie, D., ed.
Leyh, G., ed.
Limam, A.
Maccarrone-Eaglen, A., and X. Font
Mihalić, T.
2001 Environmental Behaviour Implications for Tourist Destinations and Ecol-

Murphy, D., and J. Bendell

NCC

Rotheram, T.

Sallows, M., and X. Font

Synergy

TOI


Toth, R.

UNCTAD

UNEP


Wasikow, D., and V. Yu

Webb, K.

Webb, K., and A. Morrison

Webb, K., ed.
2002 Voluntary Codes: Private Governance, the Public Interest and Innovation Ottawa, Canada: Carleton University Research Unit for Innovation, Science and the Environment.

Woodroffe, J.

WTO/OMC
1998 Distribution Services-Background Note by the Secretariat (S/C/W/37, June 10).
2000a Communication from the Dominican Republic, El Salvador and Honduras: Replies to the Comments on the Proposed Annex on Tourism (S/CSS/W/9, October 27).
2000b Communication from the European Communities and their Member States: Reaction to the Communication from the Dominican Republic, El Salvador and Honduras on the Need for an Annex on Tourism (S/CSS/W/5, September 28).
2001a Assessment of Trade in Services: Communication from Cuba, Dominican Republic, Haiti, India, Kenya, Pakistan, Peru, Uganda, Venezuela and Zimbabwe. Council for Trade in Services—Special Session (S/CSS/WII4, October 9).
2001b Communication from Canada: Initial Negotiating Proposal on Tourism and Travel-Related Services (S/CSS/W/54, March 14).
2001e Communication by Bolivia, Dominican Republic, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Peru and Venezuela: Draft Annex on Tourism (S/CSS/W/107, September 26).