

**ANALYSIS OF GATS SECTORAL COMMITMENTS  
OF WTO MEMBER STATES  
UNDERTAKEN IN THE URUGUAY ROUND**

**INTRODUCTION ON HOW TO READ SPECIFIC COMMITMENTS BY SECTOR**

**1.0 INTRODUCTION**

This memo outlines a basic approach to help assess the commitments in the Services Negotiations made in schedules of commitments by the various WTO members at the end of the Uruguay Round and at the end of the sector specific negotiations which occurred afterwards.

There is a clear need to better understand how the WTO goes about recording commitments made by its members and for this, one will need to consider how the WTO classifies the services subject to the GATS agreement.

**2.0 SERVICES SECTORAL CLASSIFICATION**

**CATEGORIES OF SERVICES**

WTO classifies services using a list called the Services Sectoral Classification List, also known as W/120. The United Nations uses different categories called the Central Product Classification (CPC). Note that CPC references sometimes appear in WTO texts because the schedules of specific commitments mention the CPC reference.

There are twelve broad sectors in the W/120: (1) Business; (2) Communication; (3) Construction and Engineering; (4) Distribution; (5) Education; (6) Environment; (7) Financial; (8) Health; (9) Tourism and Travel; (10) Recreation, Cultural, and Sporting; (11) Transport; (12) "Other". The first chapter (Business Services) is further subdivided into various categories, amongst which Professional Services. The most relevant services under professional services are: Legal Services, Taxation Services, Accounting, Auditing and Bookkeeping Services, etc.

**MODES OF SUPPLY**

Another key element to understand the schedules of specific commitments undertaken by the WTO members is the mode of supply. These modes are defined in Article I of the GATS Agreements.

Mode 1: cross-border supply of services, where only the service crosses the national frontiers.

Mode 2: consumption abroad where a service is supplied from the territory of one WTO Member State to a consumer who is in another WTO Member State.

Mode 3: supply of a service through the commercial presence of the foreign supplier in the territory of another WTO Member.

Mode 4: supply through the presence of natural persons, i.e. the admission of foreign nationals to another country to provide the services there.

### **3.0 SCHEDULE OF COMMITMENTS**

#### **WHAT IS IT?**

Each WTO Member is required to have a Schedule of Specific Commitments. It is a document identifying the services sectors, subsectors or activities subject to Market Access<sup>1</sup> and National Treatment<sup>2</sup> obligations and any limitations attached to them. The necessary indications must be entered with respect to each of the four different modes of services supply.

When making a commitment a government therefore **binds** the specified level of market access and national treatment and undertakes not to impose any new measures that would restrict entry into the market or the operation of the service.

The national schedules all conform to a standard format, which is intended to facilitate comparative analysis. For each service sector or sub-sector that is offered, the schedule must indicate, with respect to each of the four modes of supply, any limitations on market access or national treatment which are to be maintained. A commitment therefore consists of eight entries, which indicate the presence or absence of market access or national treatment limitations with respect to each mode of supply.

In nearly all schedules, commitments are split into two sections: First, **horizontal commitments** which stipulate limitations that apply to all of the sectors included in the schedule; these often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. *Any evaluation of sector-specific commitments must therefore take the horizontal entries into account.*

The second section of the schedule contains the **sector specific commitments**, which apply to trade in services in a particular sector or sub-sector are listed.

#### **HOW TO READ THE INFORMATION THAT IS ENTERED IN THE COLUMNS OF A COUNTRY'S SCHEDULE**

**Sector or sub-sector column:** this column contains a clear definition of the sector, sub-sector or activity that is the subject of the specific commitment. Members are free, subject to the results of their negotiations with other participants, to identify which sectors, sub-sectors or activities they will list in their schedules, and it is only to these that the commitments apply. It will be seen that committed sectors are sometimes very broad, as in “banking and other financial services” and sometimes very narrow, as in “noise abatement services”.

In the great majority of schedules the order in which the sectors are listed corresponds to the WTO Secretariat classification (i.e. the W/120 classification).

**Market access column:** When a Member undertakes a commitment in a sector or sub-sector, it must indicate for each mode of supply what limitations, if any, it maintains on market access.

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<sup>1</sup> **Market Access:** granting market access is a negotiated commitment undertaken by individual Members in specific sectors. It may be made subject to limitations (see GATS Article XVI (2)).

<sup>2</sup> **National Treatment:** a Member is obliged to grant foreign services suppliers treatment no less favourable than that extended to its own like services and service suppliers, unless otherwise indicated in the schedule (after negotiations with the trading partners).

Article XVI:2 of the GATS lists six categories of restriction which may not be adopted or maintained unless they are specified in the schedule. All limitations in schedules therefore fall into one of these categories. They comprise four types of quantitative restriction plus limitations on types of legal entity and on foreign equity participation.

1. limitations on the number of service suppliers (numerical quotas, monopolies, exclusive suppliers, economic needs test);
2. limitations on the total value of service transactions or assets (numerical quota, economic needs test);
3. limitation on the total number of service operations or the total quantity of service output expressed in numerical units;
4. limitations in the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for or directly related to, the supply of a specific service;
5. measures to restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service;
6. limitation in the participation of foreign capital.

**National treatment column:** The national treatment obligation under Article XVII of the GATS is to accord to the services and service suppliers of any other Member treatment no less favourable than is accorded to domestic services and service suppliers. A Member wishing to maintain any limitations on national treatment — that is any measures which result in less-favourable treatment of foreign services or service suppliers — must indicate these limitations in the third column of its schedule

**Additional commitments column:** Entries in this column are not obligatory but a Member may decide in a given sector to make additional commitments relating to measures other than those subject to scheduling under Articles XVI and XVII, for example qualifications, standards and licensing matters. This column is to be used to indicate positive undertakings, not the listing of additional limitations or restrictions.

#### **HOW COMMITMENTS ARE RECORDED IN SCHEDULES**

The entries which constitute a legally binding commitment in a Member's schedule indicate the presence or absence of limitations on market access and national treatment in relation to each of the four modes of supply for a listed sector, sub-sector or activity.

- Where there are no limitations on market access or national treatment in a given sector and mode of supply, the entry reads **NONE**. This means that the country is **BOUND** by this commitment of no limitation. Therefore, in other term, **NONE** can also be read **BOUND**. However, it should be noted that when the term **NONE** is used in the second or sector-specific part of the schedule it means that there no limitations **specific to this sector**: it must be borne in mind that, as noted above, there may be relevant horizontal limitations in the first part of the schedule.
- All commitments in a schedule are bound unless otherwise specified. In such a case, where a Member wishes to remain free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment, the Member has entered in the appropriate space the term **UNBOUND**. It means that the country has stated that it does not take any commitment for this specific matter.
- In some situations a particular mode of supply — such as the cross-border supply of bridge-building services — may not be technically possible or feasible. In such cases the term

**UNBOUND\*** has been used, usually in conjunction with an explanatory footnote stating “Unbound due to lack of technical feasibility”.

In many cases it will be seen that there are textual descriptions of bound commitments which indicate limitations on market access or national treatment. Such entries, which vary in length considerably, do not use uniform terminology but are based on one of two **common approaches**:

- The entry describes in the appropriate space the nature of the limitation, indicating the elements which make it inconsistent with Articles XVI (Market Access) and XVII (National Treatment) of the GATS.
- In some cases, Members have chosen to indicate a limited commitment by describing what they are offering rather than the limitations they are maintaining. Such an approach is often used to indicate the market access opportunities for the entry of certain categories of foreign natural persons who supply services.

#### **4.0 LISTS OF ARTICLE II (MFN) EXEMPTIONS**

Most-favoured-nation treatment is a general obligation that applies to all measures affecting trade in services. However, it has been agreed that particular measures inconsistent with the MFN obligation can be maintained — in principle for not more than ten years and subject to review after a maximum of five years. Such measures must have been specified in a list of MFN Exemptions submitted by the end of the Uruguay Round of Multilateral Trade Negotiations or by the conclusion of extended negotiations on certain sectors for which the delayed submission of related exceptions was expressly authorised. Subsequently, requests for exemptions from Article II (MFN) can only be granted under the waiver procedures of the Marrakech Agreement.

In contrast to the complex nature of schedules of commitments, these lists are largely self-explanatory and are structured in a straightforward manner. In order to ensure a complete and precise listing of a country's MFN exemptions, each country is required to provide five types of information for each exemption:

1. Description of the sector or sectors in which the exemption applies;
2. Description of the measure, indicating why it is inconsistent with Article II;
3. The country or countries to which the measure applies;
4. The intended duration of the exemption;
5. The conditions creating the need for the exemption.

It is a basic principle of the Agreement that specific commitments are applied on an MFN basis. Where commitments are entered, therefore, the effect of an MFN exemption can only be to permit more favourable treatment to be given to the country to which the exemption applies than is given to all other Members. Where there are no commitments, however, an MFN exemption may also permit less favourable treatment to be given. It is not necessary to list measures providing for preferential liberalisation of trade in services among Members of economic integration agreements, such as Free Trade Areas; such preferential treatment is permitted under Article V of the GATS and must meet the criteria laid down in that Article.

## 5.0 WHERE TO FIND THE INFORMATION ON THE EXISTING SITUATION?

- The first possibility is to go through all schedules of GATS commitments of the WTO members, by downloading the information on the WTO web site. Go in the Doc On line section ([http://docsonline.wto.org/gen\\_home.asp?language=1&\\_=1](http://docsonline.wto.org/gen_home.asp?language=1&_=1)) and click on the search area.. In the “Document Symbol” window, type GATS/SC/1 to 132. SC means Schedule of Commitments. Each figure corresponds to a country. You may find some supplement or revision per country. They usually correspond to the supplementary commitments taken in July 1995 on Mobility of people (mode 4), and in 1997 and 1998 on telecommunications and financial services.
  - A second and probably more practical way is to consult the European Commission data base on GATS, called GATS –INFO and go in the legal text and commitments section. You can find information on each sector and sub-sectors (<http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=fff>). You then just need to select the country on which you look for information.
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