

## GUIDE TO READING THE GATS SCHEDULES OF SPECIFIC COMMITMENTS AND THE LISTS OF ARTICLE II (MFN) EXEMPTIONS<sup>1</sup>

### Introduction

The General Agreement on Trade in Services consists of the framework agreement - the Articles of the Agreement - and its Annexes, and the schedules of specific commitments and the lists of exemptions from MFN treatment submitted by member governments. The schedules and the exemption lists are integral parts of the Agreement. At the time of the signature of the Final Act of the Uruguay Round, on 15 April 1994, 95 schedules of specific commitments in services and 61 lists of derogations from the MFN principle had been submitted and agreed.

It is only by reference to a country's schedule, and (where relevant) its MFN exemption list, that it can be seen to which services sectors and under what conditions the basic principles of the GATS - market access, national treatment and MFN treatment - apply within that country's jurisdiction. The schedules are complex documents in which each country identifies the service sectors to which it will apply the market access and national treatment obligations of the GATS and any exceptions from those obligations it wishes to maintain. The commitments and limitations are in every case entered with respect to each of the four modes of supply which constitute the definition of trade in services in Article I of the GATS: these are cross-border supply; consumption abroad; commercial presence; and presence of natural persons:-

**Cross-border supply** - the possibility for non-resident service suppliers to supply services cross-border into the Member's territory.

**Consumption abroad** - the freedom for the Member's residents to purchase services in the territory of another Member.

**Commercial presence** - the opportunities for foreign service suppliers to establish, operate or expand a commercial presence in the Member's territory, such as a branch, agency, or wholly-owned subsidiary.

**Presence of natural persons** - the possibilities offered for the entry and temporary stay in the Member's territory of foreign individuals in order to supply a service.

In order to determine the real level of market access represented by a given schedule it is therefore necessary to examine the range of activities covered in each service sector and the limitations on market access and national treatment pertaining to the different modes of supply. In addition, in cases where a country has also tabled a list of MFN exemptions, this must be examined in order to assess the extent to which the country gives preferential treatment to, or discriminate against, one or more of its trading partners.

The purpose of this introduction is to assist users to read and interpret the schedules and exemption lists and to assess their commercial significance.

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<sup>1</sup> This note is intended to assist in reading and understanding schedules of commitments. The information contained herein should not be considered an authoritative legal interpretation of the GATS.

## A. Schedules of Specific Commitments

A specific commitment in a services schedule is an undertaking to provide market access and national treatment for the service activity in question on the terms and conditions specified in the schedule. 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. Specific commitments thus have an effect similar to a tariff binding - they are a guarantee to economic operators in other countries that the conditions of entry and operation in the market will not be changed to their disadvantage. Commitments can only be withdrawn or modified after the agreement of compensatory adjustments with affected countries, and no withdrawals or modifications may be made until three years after entry into force of the Agreement. Such modifications of commitments may not affect the application of most-favoured-nation (MFN) treatment. Commitments can however be added or improved at any time.

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. The first column in the standard format contains the sector or subsector which is the subject of the commitment; the second column contains limitations on market access; the third column contains limitations on national treatment. In the fourth column governments may enter any additional commitments which are not subject to scheduling under market access or national treatment.

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. In the second section of the schedule, commitments which apply to trade in services in a particular sector or subsector are listed.

The terminology used in schedules has also been standardized wherever possible. What follows is a description of the information which has to be inscribed in each column of the schedules and a summary of the terminology used.

### The information that is entered in the columns

- **Sector or sub-sector column:** this column contains a clear definition of the sector, subsector 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, subsectors 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 GATT Secretariat classification which lists twelve broad sectors as follows: 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". Furthermore, in most cases, the sectoral entries are accompanied by numerical references to the Central Product Classification system of the United Nations which gives a detailed explanation of the services activities covered by each listed sector or

subsector, and on which the secretariat list is based. Where this was not possible, listings are to provide a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment.

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

In essence, 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. In the following cases the entries use uniform terminology:

- Where there are no limitations on market access or national treatment in a given sector and mode of supply, the entry reads NONE. 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 are 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.
- 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 and XVII 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.

### **B. 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 not more than 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 authorized. Subsequently, requests for exemptions from Article II (MFN) can only be granted under the waiver procedures of the Marrakesh 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:

- (i) Description of the sector or sectors in which the exemption applies;
- (ii) Description of the measure, indicating why it is inconsistent with Article II;
- (iii) The country or countries to which the measure applies;
- (iv) The intended duration of the exemption;
- (v) 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 liberalization 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.