Scheduling of Specific Commitments

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Structure

- Framework Articles (I - XXIX)
- Annexes covering certain sector or policy-related issues
- Schedules of Specific Commitments (one Schedule for each WTO Member)

Scope and Coverage

- Measures affecting trade in services at all government levels
- All services except governmental services and air traffic rights
- 4 modes of supply
  - Cross-border supply
  - Consumption abroad
  - Commercial presence
  - Movement of natural persons

Classification of Services

The role of classification

- Advantages of a common approach
- Current situation
  - Sectoral Classification List (MTN.GNS/W/120) based on Central Product Classification (prov.)
  - Sector-specific schemes (finance, telecom, maritime transport)
  - Some progress in updating classification with minimum success.

Definition of Trade in Services

Mode	Example
Cross-border consumption	Tele-diagnosis from country B into country A.
Consumption abroad	Country A's resident obtains hospital treatment in country B.
Commercial Presence	Hospital operation from country B has a subsidiary in country A.
Movement of natural persons	Physician from country B practices in country A.

Some Suggestions

Before devising new commitments

- Verify whether a service is actually tradable under a particular mode
- Try to avoid uncertainties related, for example, to the distinction between modes 1 and 2

See Scheduling Guidelines (S/L/92)

Relevance for Individual Sectors

Three Scenarios:

I. Not covered: (A) Governmental services and (B) air traffic rights

II. Application of “unconditional” disciplines: All other services

III. Full application (“conditional” and “unconditional” disciplines): Services covered by Specific Commitments

Scenario I(A): Government Services

Excluded from coverage are "services provided in the exercise of governmental authority" which, in turn, are defined as services that are supplied "neither on a **commercial basis**, nor in **competition** with one or more service suppliers". (Article I:3

Some examples of government services:

- Police, fire protection, infrastructural services (roads, etc.), monetary policy operations, customs administration, …
- …and any other public service (health, education, etc.) meeting the relevant criteria

Scenario I(B): Air Transport Services

Excluded from coverage are measures affecting "traffic rights" and "services directly related to the exercise of traffic rights."

However, the GATS applies to:

(a) aircraft repair and maintenance;

(b) selling and marketing of air services;

(c) computer reservation systems.

Scenario II: Some general (unconditional) obligation apply

- Most-Favoured-Nation Treatment
- Transparency obligations
- Some other “good governance” provisions (availability of legal remedies, etc.)

- Note: There is no obligation to open markets!

Most-Favoured-Nation Treatment

"… each Member shall accord **immediately and unconditionally** to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country" (Article II:1)

Exemptions could have been sought at the date of entry of GATS for periods not exceeding ten years in principle.

Scenario 3: Sector is subjected to specific commitments

The GATS requires each Member to submit a Schedule of Specific Commitments that lists the sectors in which it grants **Market Access (MA)** and **National Treatment (NT).**

General obligations ("conditional" and "unconditional") apply in addition.

Conditional Obligations

- Transparency* (Art. III)
- Domestic Regulation* (Art. VI)
- Monopolies* (Art. VIII)
- Payments and Transfers (Art. XI)

* These article contain both unconditional and conditional obligations

Schedule of Specific Commitments

Sector or Sub-sector	Limitations on Market Access	Limitation on National Treatment	Additional Commitment
All Sectors	1) 2) 3) 4)	1) 2) 3) 4)	
Sector A (Corresponding CPC)	1) 2) 3) 4)	1) 2) 3) 4)	
Sector B (Corresponding CPC)	1) 2) 3) 4)	1) 2) 3) 4)	

Main Elements

Market Access: Absence of quota-type and similar restrictions

National Treatment: Non-discrimination with regard to all measures modifying the conditions of competition

Note: Any limitations must be inscribed in Schedules under the relevant modes(s).

How can national policy/interest be protected under GATS?

Market Access (MA) and National Treatment (NT) obligations are incurred only:

- in scheduled sectors; and
- to the extent that no limitations have been inscribed.

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Preparing a Schedule

Step 1: Select sectors and sub-sectors for inclusion

Relevant considerations [underlying objectives]:

- Attract foreign investment [employment],
- foster competition [efficiency], broaden product
- choice and improve quality [consumer welfare], etc.

Step 2: Consider need for modal exclusions or limitations

- Relevant considerations [type of limitation]:
- Promote know how transfer [joint venture requirements (mode 3)], protect domestic employment
- [quantitative limitations (modes 1,2,4), subsidies],
- prevent market disruption [phase-in commitments], etc.

Six Types of MA Limitations

(a) Number of service suppliers (e.g. new entries subject to economic needs)

(b) Value of transactions or assets (e.g. assets of foreign banks limited to x percent of total bank assets)

(c) Total number of operations or quantity of output (e.g. restrictions on broadcasting time for foreign films)

(d) Total number of natural persons (e.g. no more than x foreigners per outlet)

(e) Type of legal entity or joint venture (e.g. foreign presence only via subsidiaries)

(f) Foreign capital participation (e.g. foreign equity limited to 49 percent)

Sample of NT Limitations

- Discriminatory subsidies and other fiscal measures
- Nationality and residency requirements (mode 3)
- Discriminatory licensing/registration/qualification/training requirements
- Technology transfer requirements
- Local content provisions
- Prohibitions on land/property ownership
- Limitations on insurance portability, education grants
- Language requirements

Some Suggestions

- Limitations should cover only measures falling under Articles XVI:2 and XVII
- Avoid overlap with Articles VI (Domestic Regulation), XI (Payments and Transfers), XIV (General Exceptions) and relevant Annexes (e.g. prudential carve-out in financial services)
- Avoid vague and unclear terminology.
- According to Article XX:1, in committed sectors the schedule shall specify:
  - terms, limitations, conditions on MA,
  - conditions and qualifications on NT,
  - timeframe for implementation (where appropriate), ...

Some Suggestions

- Limitations should cover only measures falling under Articles XVI:2 and XVII
- Avoid overlap with Articles VI (Domestic Regulation), XI (Payments and Transfers), XIV (General Exceptions) and relevant Annexes (e.g. prudential carve-out in financial services)
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- According to Article XX:1, in committed sectors the schedule shall specify:
  - terms, limitations, conditions on MA,
  - conditions and qualifications on NT,
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Overlap between MA & NT

GATS Article XX:2:

Relevant measures (e.g. joint venture requirements, discriminatory quotas) shall be inscribed in the column relating to Article XVI (MA). This provides a condition and qualification to Article XVII (NT) as well.

Additional Commitments

Covers measures not subject to scheduling under Articles XVI or XVIII.

Such measures may relate to qualifications, standards, licenses, competition disciplines, etc.

Example A

Sector or Sub-sector	Limitations on Market Access	Limitation on National Treatment	Additional Commitment
Medical Services	1) Unbound* 2) None 3) None, other than the number of new foreign doctors registered each year may be limited depending on the total supply of doctors 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound	

* Unbound due to lack of technical feasibility

Example B

Sector or Sub-sector	Limitations on Market Access	Limitation on National Treatment	Additional Commitment
Hospital Services (CPC 9311)	1) Unbound 2) Unbound 3) Only through incorporation with a foreign equity ceiling of 51 percent 4) Unbound except as indicated in the horizontal section	1) Unbound 2) Unbound 3) None 4) Unbound except as indicated in the horizontal section	

Some Suggestions

- Avoid confusion between Horizontal (applying to all scheduled sectors) and Sectoral Commitments
- Specify limitations as precisely as possible
- No general references to domestic laws and regulations
- No unspecified economic needs tests
- Avoid definitional uncertainties about sector coverage
- Use of CPC-numbers whenever possible
- Clearly define exclusions if sector coverage is limited

Commitment vs. Actual Conditions

- Commitments guarantee **minimum** levels of MA and NT
- Members remain free to offer better conditions (subject to MFN principle)
- Commitments may be upgraded at any time to reflect the improved conditions

Measures not affected by commitments

- Non-discriminatory domestic regulation (standards, licensing requirements, etc.)
- Government procurement
- Private commercial actions
- Measures beyond the scope of GATS

What has been achieved in services scheduling to date?

- The GATS provides a reliable and predictable framework for world services trade
- The focus of the Uruguay Round was on rule-making rather than on actual liberalization
- Many commitments have been "overtaken" since by (autonomous) liberalization measures

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The Way Ahead

Article XIX of GATS - Basic Mandate:

- Successive rounds of negotiations, starting no later than January 2000 to achieve a progressively higher level of liberalization
- Respect for national policy objectives and development levels
- Flexibility for developing countries to liberalize fewer sectors and transactions

Article IV:1:

- Increasing participation of developing countries in world trade

Annex on Article II Exemptions:

- Negotiation of existing MFN Exemptions

The Way Ahead

- Submission of initial requests by 30 June 2002
- Submission of initial offers by 31 March 2003
- Conclusion not later than 1 January 2005

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CURRENT POSITIONS

Director of Economic Stability Analysis Division

Macroeconomic Policy Bureau

Fiscal Policy Office, Ministry of Finance

PRIOR EXPERIENCE

- Department of Trade Negotiations, Ministry of Commerce
- Office of the Public Sector Development Commission
- Agricultural Futures Exchange of Thailand
- Siam Commercial Bank

EDUCATION

- Ph.D. in Public Policy and Economics, University of Michigan
- M.S. in Manufacturing Systems Engineering, Stanford University
- B.S. in Mechanical Engineering, University of Pennsylvania
- B.S. in Finance, The Wharton School
- Candidate for LL.B., Sukhothai Thammathirat Open University