

Guidelines for Scheduling of Specific commitments under GATS- S/L/92, March 2001

A
Presentation
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Objective

- To explain in a concise manner, how specific commitments shd be set out in schedules in order to achieve precision and clarity.
- Based on the view that a common format for schedules as well as standardization of terms used in schedules necessary to ensure comparable & unambiguous commitments.

GATS Provisions

- Two sorts of provisions:
- 1. General obligations, some of which apply to all service sectors (e.g. MFN, transparency) and some only to scheduled specific commitments (e.g. Article XI: Payments and Transfers).
- 2. Specific commitments which are negotiated undertakings. Specific commitments recorded in national schedules an integral part of GATS. By virtue of Article XX, every signatory must attach to GATS its national schedule..

What Items should be scheduled?

- Since schedules, incl. footnotes, headnotes & attachments - a record of legal commitments, nothing shd appear which a Member does not intend to be legally binding.
- A schedule contains the following main types of information: 1. a clear description of the sector or sub-sector committed, 2. limitations to MA, 3. limitations to NT, and 4. additional commitments other than MA & NT.
- The term “limitations” refer to the "terms", "conditions", "limitations", and "qualifications" used in Arts XVI and XVII.

What Items should be scheduled?

- If a Member undertakes a commitment in a sector - it must indicate for each mode of supply that it binds in that sector:
- what limitations, if any, it maintains on MA;
- what limitations, if any, it maintains on NT; and
- what additional commitments, relating to measures affecting trade in services not subject to scheduling under Articles XVI and XVII, to undertake under Article XVIII.

Limitations on MA- Art. XVI

- The measures listed comprise 4 types of QRs (sub-paras a-d) and limitations on forms of legal entity (sub-para e) and on foreign equity participation (sub-para f).
- List exhaustive - includes measures which may also be discriminatory according to the NT standard (Art. XVII).
- All measures listed (Art. XVI:2) must be scheduled, whether or not such measures discriminatory according to the NT standard of Art. XVII.

MA Limitations

- MA limitations, such as numerical ceilings or ENTs, the entry shd describe each measure concisely indicating the elements which make it inconsistent with Art. XVI.
- Numerical ceilings shd be expressed in defined quantities in either absolute nos. or percentages;
- ENTs entry shd indicate the main criteria on which the test is based, e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely.

MA Limitations

- Approval procedures or licensing and qualification requirements, such as financial soundness or membership in a professional organization, are frequently stipulated as conditions to obtain a licence.
- If they are of a non-discriminatory nature, and therefore to be applied equally to nationals and foreigners, shd'nt be scheduled under Art. XVII. Nor shd they be scheduled under Art. XVI as long as they do not contain any of the limitations specified in Art. XVI.

MA Limitations

- However, if such approval procedures or licensing and qualification requirements are discriminatory, they shd be scheduled as NT limitations. If approval procedures or licensing and qualification requirements contain any of the limitations specified in Art. XVI, they shd be scheduled as MA limitations.

Examples of limitations on MA drawn from the schedules of commitments

Limitations on the number of service suppliers:

1. Licence for a restaurant based on an ENT
2. Annually established quotas for foreign medical practitioners.
3. Govt or privately owned monopoly for labour exchange agency services.
4. Nationality requirements for suppliers of services (equivalent to zero quota).

- Limitations on total value of transaction/assets - foreign bank subsidiaries ltd to x % of total dom. assets of all banks.
- Limitations on total no. of service operations or quantity of service output - restrictions on broadcasting time available for foreign films.
- Limitations on total no. of natural persons - foreign labour shd 'nt exceed x% and/or wages xy % of total.
- Restrictions or requirements reg. type of legal entity or joint venture - commercial presence excludes representative offices, foreign companies required to establish subsidiaries, in sector x, commercial presence must take the form of a partnership.
- Finally, limitations on participation of foreign capital - foreign equity ceiling of x % for a particular form of commercial presence.

Limitations on NT Art. XVII

Examples of limitations on national treatment

- (a) Dom suppliers of audiovisual services given preference in allocation of frequencies for transmission within the national territory. (discriminates explicitly on the basis of the origin of the service supplier and constitutes formal or *de jure* denial of NT.)
- (b) Prior residency is required for the issuing of a licence to supply a service. (Although the measure does not formally distinguish service suppliers on the basis of national origin, it *de facto* offers less favourable treatment to foreign service suppliers as they are less likely to be able to meet a prior residency requirement than like service suppliers of national origin.)

Exs of NT Limitations from Schedules

- Subsidy measures
- Tax measures
- Other financial measures (fees, charges, etc.)
- Nationality/ Residency requirements
- Licensing and Qualification requirements
- Registration requirements
- Authorisation requirements
- Technology transfer/training requirements
- Local content requirements
- Ownership of property/land

Additional Commitments- Art. XVIII

- A Member may make commitments wrt measures affecting trade in services not subject to scheduling under Articles XVI and XVII.
- Include undertakings wrt qualifications, technical stds, licensing requirements or procedures, and other dom regulations consistent with Art VI.
- Addl commitments are expressed in the form of undertakings, not limitations.
- Addl Commitments column wd only include entries where specific commitments r being undertaken, and needn't include those modes of supply where no commitments undertaken.

Exceptions

- All measures falling under Article XIV (General Exceptions) excepted from all obligations and commitments and shouldn't be scheduled.
- Any prudential measure taken in accordance with the Annex on FS constitutes an exception and shouldn't be scheduled.
- Measures falling under Article XII (Restrictions to Safeguard the BOP) also exceptions and shouldn't be scheduled.

How to describe committed sectors/sub-sectors

- Legal nature of a schedule & need to evaluate commitments, require greatest possible degree of clarity in the description of each sector or sub-sector scheduled.
- In general classification of sectors and sub-sectors shd be based on W/120. Each sector identified by the corresponding CPC number.
- Where it is necessary to refine further, this shd be done on basis of CPC or other intly recognised classification (e.g. Financial Services Annex).
- Ex- "Other Business Services"- Map-making services (86754)

How to describe committed sectors/sub-sectors

- If a Member wishes to use its own sub-sectoral classification or definitions it shd provide concordance with CPC.
- If this is not possible, it shd give a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment.

How to treat the modes of supply?

- All four modes essentially defined on basis of origin of service supplier and consumer, and degree and type of territorial presence which they've at the moment the service is delivered.
- **1. Cross-border supply** -Intl tpt, supply of a service thru telecom or mail, and services embodied in exported goods (i.e. supplied in or by a physical medium, such as a computer diskette or drawings), since the service supplier is not present within the territory of the Member where the service is delivered.

Consumption abroad

- Refers to as "movement of the consumer". Essential feature of this mode – service delivered outside the territory of the Member making the commitment. Often the actual movement of the consumer necessary as in tourism. However, activities such as ship repair abroad, where only property of consumer "moves", or is situated abroad, also covered.
- A Member may only be able to impose restrictive measures affecting its own consumers.

Commercial Presence:

- Covers not only presence of juridical persons in strict legal sense, but also that of legal entities which share some of the same characteristics and includes corporations, joint ventures, partnerships, representative offices and branches.

Presence of natural persons

- Covers natural persons - themselves service suppliers, as well as natural persons - employees of service suppliers. Commitments shd include duration of temporary stay of natural persons for the purpose of supplying a service.

Relationship between modes of supply

- Where a service transaction requires use of more than one mode of supply, coverage of the transaction only ensured when there are commitments in each relevant mode of supply.
- Ex: A Member has made a commitment in the cross-border supply of architectural services (e.g. by telecom or by mail). This commitment alone does not extend to the presence of natural persons (e.g. visits by architects). A separate commitment wd've to be taken to cover this case.

Horizontal commitments

- Horizontal commitment applies to trade in services in all scheduled services sectors. It is in effect a binding, either of a measure which constitutes a limitation on MA or NT or of a situation in which there are no such limitations.
- It is desirable to enter these commitments in a separate section at beginning of schedule according to the four modes of supply.

Examples

1. Legislation may refer to foreign investment, formation of corporate structures or land acquisition regulations. Such measures affect above all commercial presence.
2. Legislation may stipulate requirements regarding entry, temporary stay and right to work of natural persons; categories of natural persons covered by a particular offer may also be specified. Such measures affect above all the presence of natural persons.

Level of Commitments

- Terms used in a schedule create legally binding commitments - those expressing presence or absence of limitations to MA & NT be uniform and precise. Depending on the extent to which a Member has limited MA & NT, for each commitment wrt each mode of supply, four cases can be foreseen: full, with limitations, no and technically not feasible commitments.
- Full- Member does not seek in any way to limit MA & NT in a given sector and mode of supply thru measures inconsistent with Arts XVI and XVII. Member shd mark in appropriate column: NONE.

- With limitations - Member must describe in appropriate column measures maintained - inconsistent with Arts. XVI or XVII.
- No commitment - Member remains free in a given sector and mode of supply to maintain measures inconsistent with MA or NT. In this situation, the Member must record the word: UNBOUND.
- No commitment technically feasible -In some situations, a particular mode of supply may not be technically feasible. Ex- cross-border supply of hair-dressing services. The term UNBOUND* shd be used with a footnote.

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
I. HORIZONTAL COMMITMENTS		
ALL SECTORS INCLUDED IN THIS SCHEDULE		<p>3) In case of collaboration with public sector enterprises or government undertakings as joint venture partners, preference in access will be given to foreign service suppliers/entities which offer the best terms for transfer of technology.</p> <p>4) Taxation law for domestic and foreign service suppliers, as per the provisions of the Income tax Act, 1961, shall apply</p> <p>5) Subsidies, where granted, shall be available only to domestic service suppliers.</p>

How Schedules of Commitments are structured: India/Health

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
8. HEALTH RELATED AND SOCIAL SERVICES A. <u>Hospital Services</u> (CPC 9311)	1) Unbound 2) Unbound 3) Only through incorporation with a foreign equity ceiling of 51 per cent 4) Unbound except as indicated in the horizontal section	1) Unbound 2) Unbound 3) None 4) Unbound except as indicated in the horizontal section	

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
<p>Banking and other financial services (excluding insurance)</p> <p>Acceptance of deposits and other repayable funds from the public</p> <p>5 (a) (v)</p> <p>Lending of all types, including consumer credit, mortgage credit, Factoring and financing of commercial transactions</p>	<ol style="list-style-type: none"> 1) Unbound 2) Unbound 3) In each of the services given below in which commitments are being undertaken for Banking and non-banking financial services companies, <u>access is subject to fulfillment of minimum capitalization norms.</u> For all activities listed in this section of the Schedule excluding factoring and venture capital <p>(i) Through branch operations and as a wholly owned subsidiary of a foreign bank licensed and supervised as a bank in its home country and subject to regulations of the Reserve Bank of India.</p>	<ol style="list-style-type: none"> 1) Unbound 2) Unbound 3) For all activities listed in this section of the Schedule excluding factoring and venture capital



THANK

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