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THE WTO SCHEDULES

ABOUT THIS BOOK

This book is intended to help you find and interpret for your own purposes the lists of commitments made by World Trade Organization (WTO) members on the taxation and regulation of imported goods and on market access and national treatment in services. These documents, known as the goods and services Schedules, are an important part of the WTO Agreement; the commitments in the Schedules are negotiated by each WTO member government during rounds of multilateral trade negotiations or at the time it accedes to the WTO, and updated in various ways after that.

The WTO Agreement covers all trade in physical goods and, with limited exceptions, commercial services such as telecommunications, finance, transport and so on. The Schedules bind the actions of member governments with the same force as the Agreement; they represent, in some respects, its ‘cash value’. They deserve careful attention. But their volume (some 27,000 pages), the difficulty of consulting them, and the challenge of interpreting the meaning of entries in the Schedules, mean that many non-specialists shy away from consulting them. This *Handbook* is meant to help fix that.

‘Non-specialists’ could mean anyone who has not had to deal with the Schedules in the past, including some government officials. But the people who are likely to find this book most helpful are:

- business leaders and advisors, especially those with a role in industry or trade associations;
- importers and exporters who deal with customs matters or regulations affecting trade in services such as finance, transportation or communications;
- analysts who follow international trade who need to find the details of a member government’s legal commitments in the WTO.

In Chapter 1 of the *Handbook* we discuss the role of the WTO Schedules in the WTO and describe their content in general terms. We will look at where they come from and how WTO members modify them. We will consider their economic and policy significance, and their limits, including a brief discussion of significant information on duties that is **not** contained in the WTO Schedules.

Chapter 2 contains a detailed description of the tables that make up the goods Schedules, including brief descriptions of the Schedules attached to the Uruguay Round sector agreements on information technology and pharmaceuticals.

Chapter 3 tries to answer some basic questions readers may have about services Schedules, such as: What is a service Schedule?; What are its implications?; What is its main content?; What type of measures are not recorded?

Chapter 4 provides a ‘practical guide’ to finding data from the Schedules in a format that is useful for the different purposes of non-specialists. A slightly surprising corollary of the complexity and legal importance of the WTO Schedules is that it can be difficult to find authoritative, detailed information on Scheduled commitments in a useful format that is generally available. The most helpful sources are identified, along with some suggestions and tips for finding the data. Finally, there is a Glossary at the back of the *Handbook* that explains the meaning of some key terms used throughout the book.

THE PURPOSE OF THE SCHEDULES

The WTO is the only global international organization dealing with the rules of trade between economies. At its heart are the WTO agreements, signed by 151 governments.¹

One of the goals of the WTO is to minimize regulatory barriers to doing business across a border. That does not necessarily mean eliminating all barriers, although, usually, that is the objective. The Schedules record commitments regarding remaining barriers, including commitments to progressively eliminate a barrier leading to ‘duty-free’ treatment of imported goods. Where barriers remain, WTO rules attempt to ensure that they are at least transparent and that governments have an opportunity to negotiate further reduction of these barriers.

The Schedules serve these WTO objectives by setting an upper limit on the customs duties a member may charge on each imported product, and by defining the guaranteed opportunities the member will provide to foreign suppliers of services. This helps to show importers and exporters where they stand. The Schedules record the starting point for multilateral negotiations to reduce barriers, and they list the members who may have ‘paid’ for a tariff cut or services concession that all members enjoy under the most-favoured nation (MFN) rule. A member may have ‘paid’ for a concession in the sense that it has offered some reciprocal reduction in a bound tariff in return for the binding listed in the Schedule.

Under the WTO agreements, the MFN obligation means members cannot normally discriminate between their trading partners. Grant one member government

¹ As of July 2007.

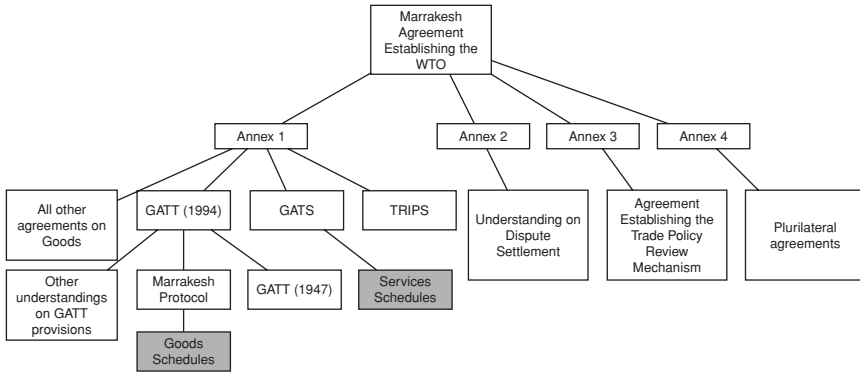


Figure 1.1 A chart of the WTO agreements

a special favour (such as a lower customs duty rate for one of their products), and you have to do the same for all WTO members.

SCHEDULES ARE PART OF THE WTO AGREEMENT

The Schedules are a *part* of the WTO Agreement. It is important to understand what this means, because it explains why members put so much effort into the negotiation and adoption of the Schedules, and it shows how crucial they are to the international contract that underlies the WTO. In brief, the Schedules are *part* of the Agreement and have the same legal status as any of the WTO agreements, such as the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS).

We begin by looking at where the Schedules are incorporated into the Agreement. The legal structure of the WTO Agreement turns out to be something like a Russian ‘matryoshka’ nesting-doll: we will have some ‘unpacking’ to do to find the Schedules. But first, you will notice that sometimes we talk of the WTO Agreement (singular) and sometimes of the WTO agreements (plural). The Agreement (singular) is the Marrakesh Agreement Establishing the World Trade Organization to which all the other WTO agreements (plural) and Decisions, such as the GATT, GATS and TRIPS,² are annexed. Strictly speaking, there is only one WTO Agreement (Marrakesh), but we find the ‘meat’ of the rules and the commitments in the individual agreements that are attached as annexes to the Marrakesh Agreement.

² The Agreement on Trade Related Aspects of Intellectual Property.

The Marrakesh Agreement, which governments adopted in Marrakesh, Morocco, in 1994 at the end of the Uruguay Round of negotiations, defines the scope of the WTO. Its four annexes contain the agreements that comprise the main body of WTO law: three annexes containing ‘multilateral trade agreements’ and a fourth annex containing ‘plurilateral’ agreements. The first annex contains agreements on goods, services and intellectual property, among which are the GATT (1994) and the GATS. The second and third annexes contain the Understanding on Dispute Settlement that applies across all the other areas of agreement, and the agreement to establish a Trade Policy Review Mechanism. Every member of the WTO, without exception, is bound by all of the provisions of the multilateral agreements contained in the first three annexes: that is what is meant when we say that the WTO is a ‘single undertaking’. The provisions of the plurilateral agreements in the fourth annex to Marrakesh apply only to those members who have signed them.

The GATT (1994) is a short agreement that contains, mostly, ‘house-keeping’ details. It imports into the WTO Agreement the provisions of the original GATT agreed in 1947, the Schedules of concessions on goods that were attached to the GATT (1947), several ‘decisions’ and ‘understandings’ of the WTO members that clarify or extend the application of the GATT rules, and the Marrakesh Protocol. The Marrakesh Protocol to the GATT (1994) attaches members’ goods Schedules containing concessions negotiated in the Uruguay Round ‘without prejudice to the rights and obligations of members’ under the agreements on goods, including the GATT (1947).

GATT ‘1947’ or ‘1994’? Which is which? Thanks to the ‘nested’ structure of the WTO Agreement, there is really only one body of trade rules known as the General Agreement on Tariffs and Trade (GATT). But WTO members have created it using a two-step process over forty-seven years, which involves two different documents that (now) call themselves the GATT (1994) and the GATT (1947). In this *Handbook*, we use the two different names, as the agreements themselves do, when it is necessary to avoid confusion about which of the two documents we mean.

The result of this ‘nesting-doll’ structure is that the articles of the GATT (1947) such as Article II, which has the title ‘Schedules of Concessions’, now apply to the goods Schedules incorporated by the Marrakesh Protocol, as well as to the original Schedules to the GATT (1947). It also means that the rights and obligations incorporated in Schedules to the GATT (1947) remain in force.³ The

³ Article I(b)(i) of the GATT (1994) specifically imports the Schedules of tariff concessions, as well as the pre-WTO Protocols of Accession that contain Scheduled concessions.

Uruguay Round negotiations made changes to most of the concessions in the GATT (1947) Schedules, recording the new concessions in the Schedules attached to the Marrakesh Protocol. As we will see later, the WTO Secretariat maintains a database that consolidates all of the concessions that are currently in force.

The incorporation of the services Schedules is a little more straightforward. Article XX:3 of the GATS reads: ‘Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.’

The most important consequence of making the Schedules an ‘integral part’ of the agreements is that every line in the thousands of pages of WTO Schedules is tightly woven into the whole fabric of the WTO Agreement. It has the same legal status and force as any other line or clause in the agreements, and can only be changed (or ‘unpicked’) with some difficulty; in effect, by the same kind of decision that it takes to make changes in the treaty itself. The WTO Appellate Body puts it this way: ‘Indeed, the fact that members’ Schedules are an integral part of the GATT 1994 indicates that, while each Schedule represents the tariff commitments made by *one* member, they represent a common agreement among *all* members.’⁴ For example, Article II:7 of the GATT (1947) makes the goods Schedules an integral part of Part I of the GATT, which otherwise contains only two articles: Article I (MFN) and Article II (Schedules). Article XXX of the GATT (1947) says that those articles – and by extension, the Schedules – may be changed only with the agreement of all of the members of the WTO.⁵ In other words, not a line of any of the Schedules may be introduced or changed without the approval of all of the members. This turns out to be a difficult provision to manage because members propose many changes to their Schedules every year – in particular, goods Schedules – often to introduce minor technical changes.

THE SCHEDULES AND THE ‘CONTRACT’

There is a logic to this ‘integration’ of the Schedules into the WTO Agreement. The Schedules record the market access terms of the contract formed by the WTO. Members therefore interpret and enforce the Schedules just as they would any other part of the WTO Agreement.

The global trading system that the WTO administers is based on a reciprocal exchange of rights and obligations among members. When governments join the WTO it is not sufficient for them merely to undertake to abide by its rules; they must ‘pay’ for the benefits they receive by opening their markets and by abiding by the rules. You can think of the WTO as a global contract that records the terms of

⁴ In their report on *EC – Computer Equipment*, WT/DS/62ABR para. 109 (<http://docsonline.wto.org/imrd/directdoc.asp?DDFDdocuments/t/WT/DS/62ABR.DOC>).

⁵ The requirement for unanimous agreement to a change in the Schedules is a higher ‘hurdle’ than applies to other changes, which may be adopted with only a two-thirds majority of members.

an exchange of rights and obligations among all of the parties (the members) and binds each of the parties to abide by its terms. The balance in this exchange might be struck, at first, in negotiations between just two economies. Country A might agree to open its market to the exports of Country B in return for a concession by Country B that benefits the exporters of Country A. The agreement emerging from this exchange creates an enduring ‘link’ between the two members. If either A or B later wishes to change the terms of the agreed access, the ‘link’ gives their trading partner the right to compensation that maintains the balance of benefits and obligations that the two struck in negotiation.

In large multilateral rounds of negotiation, members assess the balance of their rights and obligations on a broad scale, considering joint undertakings by many trading partners in different sectors. Although the scale is different, the nature of the agreement is the same as it was in our bilateral example: reciprocal exchange. In these multilateral rounds, the exchange is not limited to rights and obligations on market access. Members also exchange undertakings on other aspects of their trade and economic policies. They might agree, for example, to eliminate the use of subsidies or to simplify industrial standards or requirements for professional qualifications for a licence or accreditation. A multilateral round of negotiations results in a whole network of ‘links’.

The MFN principle of the WTO⁶ ensures that all of the ‘links’ from bilateral and multilateral negotiations form a single, vast fabric of reciprocal obligations. Changing the terms of just one exchange begins to affect the flow of benefits throughout the network. In our bilateral example, Country A must extend to all other members of the WTO the market access benefits it exchanged on a reciprocal basis with Country B. The benefit that A receives for this concession to the rest of the world is the right to similar MFN treatment in the markets of all other WTO members. So A’s benefits from the WTO include access to B’s market *and* access to C’s markets as a consequence of B’s negotiations with C. Furthermore, the markets of both B and C are richer and growing more quickly because both enjoy MFN access to the markets of E as a result of a reciprocal agreement that E negotiated with D . . . and so on.

Since the benefits of every member can be affected, even if only slightly, by changes in the obligations recorded in any of the Schedules of individual members, no changes may be made in any of them unless with the agreement of all members. Later, we will look at the practical implications of this requirement for approval by the whole membership.

A second effect of the ‘integral’ status of the Schedules is that compliance with Scheduled obligations may be enforced by the collective action of WTO members. Although Country A and Country B in the earlier example may have negotiated

⁶ Defined in Article I of the GATT (1947) for goods, and Article II of the GATS for traded services. The MFN obligation requires each member of the WTO to extend the same (GATT) or ‘no less favourable’ (GATS) treatment to imports from all other WTO members.

an agreement on a bilateral basis, once the results of the agreement appear in the Schedules, all of the members of the WTO acquire the benefits of the market access concession, and may act jointly through the WTO's Dispute Settlement provisions to protect the benefit. So, for example, if Country A defaults on the obligations in its Schedule, any other member has the right to seek redress.

A third consequence of the incorporation of the Schedules as an 'integral part' of the WTO agreements is that members must interpret the Schedules in the same manner as they interpret the agreements. Sometimes, individual members have different views of the meaning of a concession, especially when they refer themselves to the circumstances of the negotiation and the beliefs that they may have had at that time about what the concession covered, or did not cover. The Appellate Body (AB) of the WTO has clarified the procedure for interpreting Scheduled concessions, taking account of the 'integral part' the Schedules have in the agreements:

'The purpose of treaty interpretation under Article 31 of the *Vienna Convention* is to ascertain the *common* intentions of the parties. These *common* intentions cannot be ascertained on the basis of the subjective and unilaterally determined 'expectations' of *one* of the parties to a treaty. Tariff concessions provided for in a member's Schedule – the interpretation of which is at issue here – are reciprocal and result from a mutually – advantageous negotiation between importing and exporting members. A Schedule is made an integral part of the GATT 1994 by Article II:7 of the GATT 1994. Therefore, the concessions provided for in that Schedule are part of the terms of the treaty. As such, the only rules which may be applied in interpreting the meaning of a concession are the general rules of treaty interpretation set out in the *Vienna Convention*.'⁷

(Appellate Body Report on *EC-Computer Equipment*,
WT/DS/62ABR para. 84)

As we will see, this interpretive approach has produced some very important, and surprising, results.⁸

A fourth consequence of the 'integral' status of the Schedules is that changes are registered with the United Nations, like other treaties and international obligations, in accordance with Article 102 of the UN Charter. The registration of the Schedules and any changes made to them is the final step in their adoption, and ensures that they figure in the body of international law.

⁷ The AB is referring here to some GATT (1947) disputes, where members claimed that their 'legitimate expectations' about the meaning of a Scheduled concession at the time of its negotiation should be taken into account when determining what the concession meant.

⁸ The AB's reports contain detailed guidance on the correct interpretation of the agreements. You can find a summary in the AB Repertory that is available on the WTO website: www.wto.org/english/tratop_e/dispu_e/repertory_e/i3_e.htm#1.3.7.4.

WHY THE SCHEDULES MATTER

The WTO exists, not only because members want to open markets to trade,⁹ but also because they want the rule of law in international trade to prevail over power-based politics. The Schedules are crucial because they record legally binding commitments made by WTO members on access to their markets for the products and services and service providers of other WTO members. They are also valuable for the stability that they bring to trade policies and the greater certainty that the commitments offer to consumers, traders and investors.

WHAT A SCHEDULED COMMITMENT MEANS

WTO Schedules contain the market access ‘concessions’ that a member makes to other members at the time of accession to the WTO, or in trade negotiations – such as those in a round of WTO trade negotiations.

In WTO jargon, a ‘concession’ means an undertaking given to another WTO member to set a level of restriction that is bound in the WTO. We say that WTO members make concessions in goods or services negotiations in response to ‘requests’ from their trading partners and in exchange for a reciprocal concession. Concessions on access to goods markets take the form of undertakings to bind duties against increase – usually, but not necessarily, cutting the duty rate at the same time. Concessions on access to services markets take the form of commitments that bind the member to allow greater access for a service or service supplier or to extend national treatment for services and service suppliers.

To many people, the word ‘concession’ suggests that the government is *reluctantly* accepting a loss: removing a tariff or other restriction that was otherwise to its benefit. However, economists consider that there are few circumstances in which a border barrier or a restrictive measure adds to the national economic welfare, so the measure was probably an economic burden in the first place. Why talk about a ‘concession’ when you stop hurting yourself? The traditional WTO usage reminds us that at one time there was a positive benefit for *someone* from the barrier; that is why the government created the barrier in the first place. But the true meaning of the ‘concession’ is that the government is accepting a limit on its future *freedom of action*. The binding means that neither this government nor its successors can choose to raise the barrier beyond a certain level without compensating other WTO member governments.

⁹ From the Preamble to the Marrakesh Agreement: ‘Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.’

The GATT explains what the Scheduling of these concessions means for goods in Article II. It says:

‘The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein.’

(Article II.1(b))

In other words, the Scheduled rate of duty is the maximum rate of duty that may be levied on imports of the goods described in the member’s Schedule, subject to any conditions or qualifications in the Schedule (more about these later).

The provisions of Article XVI of the GATS say something very similar about the services Schedules of specific commitments: ‘With respect to market access through the modes of supply identified in Article I, each member shall accord services and service suppliers of any other member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule’ (Article XVI.1).

The WTO Schedules list only negotiated concessions, so they are not an inventory of trade barriers or a gazette where changes to barriers might be listed. They do not necessarily record the applied level of protection because, in goods, they may list a customs duty, for example, at a higher rate than the member actually applies to imports. Likewise, in services, they may list a bound foreign equity level or a binding on a specific number of suppliers allowed to enter the market, but the actual equity limits or numerical quotas in place under domestic law might be more generous. The goods Schedules need not mention tariff lines where there is no duty binding; nor do the services Schedules need to list services markets where no commitment has been made. For goods, WTO member governments have a separate *national* tariff Schedule, used by their customs agency, that covers all imports and actual customs duties. National customs tariffs contain the rates of duty that *actually apply* at the border (the ‘applied rate’), which may be *lower* than the bound rates in the WTO Schedule. Often the customs tariff includes preferential rates of duty – available, for example, to developing country exports or to the exports of partners in a ‘free trade’ agreement – that never appear in the MFN-based WTO Schedules. The national customs Schedule might contain information on anti-dumping duties and, if the government allows exceptions to duties on some products, or ‘duty drawbacks’ for products that are re-exported – for example from an export-processing zone – these may also appear in the national Schedule.¹⁰

¹⁰ The last section of this chapter contains a brief guide to help you find copies of national tariff Schedules.

Here is an example of the differences between a goods Schedule and a national customs tariff. It concerns Brazil's Schedule on motor vehicle tyres. In the Uruguay Round, Brazil made bound concessions on imports of so-called 'camel-back' strips for re-treading rubber tyres (HS 40.06) and on imports of re-treaded rubber tyres (HS 40.12), but not on the main tariff classification for motor vehicle tyres (HS 40.11). In its WTO Schedule, which it submitted in the French language, Brazil cut previously unbound duties ('NC') on the strips and re-treads from 85 per cent and 70 per cent to a bound rate of 35 per cent. The Schedule is as shown in Figure 1.2.¹¹

Brazil's national customs Schedule, however, covers many more products associated with motor vehicle tyres, including many tariff lines that do not appear in the WTO Schedule because the duty is not bound or, possibly, because of changes in the structure of the tariff Schedule in the twelve years between the 1994 WTO Schedule and the 2006 national tariff. Furthermore, the national customs Schedule contains much lower *applied* rates of duty on the tariff lines that appear with bound duty concessions in the WTO Schedule: 14 per cent and 16 per cent versus 35 per cent. An extract from Brazil's 2006 customs Schedule for tyres appears in Figure 1.3.¹²

For the sake of simplicity, we have included only the 'MFN' rates in Brazil's tariff. Because Brazil belongs to the MERCOSUR (a Regional Trade Agreement among Argentina, Brazil, Paraguay and Uruguay) common market, it uses MERCOSUR's 'common external tariff' as its MFN rate of duty. Brazil also has preferential rates of duty for its MERCOSUR partners that are not shown in this illustration, but are included in Brazil's national customs tariff.

A 'concession' made in WTO negotiations does not necessarily mean a reduction in the level of the barrier. It *may* include a reduction; it often does. But the kernel of all WTO 'concessions' is the binding of the terms of access to a product market or services market or of national treatment for services and services suppliers. A binding is a contract to make market access *no more restrictive*¹³ than the level specified in the WTO Schedule without compensation for affected trading partners as prescribed in the WTO.

It is important to understand, too, that a binding applies to all the terms of market access specified in the Schedule of the member offering the binding. The most important of these terms in most goods Schedules is the bound – or 'maximum' – customs duty. But other access terms in addition to, or modifying, the duty may be included in a bound 'concession'. These are the 'terms, conditions or qualifications' mentioned in Article II. In practice, the terms and conditions on a

¹¹ This extract is taken from the WTO's CD-ROM entitled 'Results of the Uruguay Round'; see Chapter 4 for more details of the CD-ROM.

¹² This extract is taken from the Brazil customs Schedule available for download from the International Customs Tariff Bureau (BITD) at www.bitd.org/.

¹³ GATT Article II:1 refers to access terms that are 'no less favourable'.

Numéro du tarif	Désignation des produits	Taux de base du droit		C/NC	Taux consolidé du droit	Droit de négociateur primitif	Autres droits et impositions
		Ad valorem	Autre				
1	2	3	4	5	6	7	8
	Autres formes (baguettes, tubes, profilés, par exemple) et articles (disques, rondelles, par exemple) en caoutchouc non vulcanisé:						
40.06	40.06 exemple) en caoutchouc non vulcanisé:	85		NC	35		
40.06.10.0000	40.06.10.0000 Profilés pour le rechapage						
	Pneumatiques rechapés ou usagés en caoutchouc; bandages, bandes de roulement amovibles pour pneumatiques et 'flaps', en caoutchouc:						
40.12	40.12 pneumatiques et 'flaps', en caoutchouc:	85		NC	35		
40.12.10.0000	40.12.10.0000 Pneumatiques rechapés						
40.12.20.0100	40.12.20.0100 Pneumatiques usagés:	85		NC	35		
40.12.20.9900	40.12.20.9900 autres	85		NC	35		
40.12.90.0000	40.12.90.0000 autres	70		NC	35		

Figure 1.2 Extract from Brazil's GATT Schedule

40.06 Other forms (for example: Rods, tubes and profile shapes) and articles (for example: Discs and rings), of unvulcanized rubber:	common external tariff
4006.10.00 - "Camel-back" strips for retreading rubber tyres	14
4006.90.00 - Other	14
<i>[Several lines omitted]</i>	
40.11 New pneumatic tyres, of rubber:	
4011.10.00 - Of a kind used on motor cars (including station wagons and racing cars)	16
4011.2 - Of a kind used on buses or lorries:	
4011.20.10 - - Measuring 11.00-24	16
4011.20.90 - - Other	16
4011.30.00 - Of a kind used on aircraft	0
4011.40.00 - Of a kind used on motorcycles	16
4011.50.00 - Of a kind used on bicycles	16
4011.6 - Other, having a "herring-bone" or similar tread:	
4011.61.00 - - Of a kind used on agricultural or forestry vehicles and machines	16
4011.62.00 - - Of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61 cm:	16
<i>[Several lines omitted]</i>	
40.12 Retreaded or used pneumatic tyres of rubber; solid or cushion tyres, tyre treads and tyre flaps, of rubber:	
4012.1 - Retreaded tyres:	
4012.11.00 - - Of a kind used on motor cars (including station wagons and racing cars)	16
4012.12.00 - - Of a kind used on buses or lorries	16
4012.13.00 - - Of a kind used on aircraft	16
4012.19.00 - - Other	16
4012.20.00 - Used pneumatic tyres	16
4012.9 - Other:	
4012.90.10 - - Tyre flaps	16
4012.90.90 - - Other	16

Figure 1.3 Extract from Brazil's national customs tariff (2006)

Scheduled commitment often circumscribe the breadth of the concession by, for example, applying a rate of duty on imports of a seasonal fruit that is higher during the harvest season than during the fallow season of the year. The rule is that a member may include in its Schedule any additional terms on a bound rate of duty that yield rights or grant a benefit to its trading partners, but it may not make any additions that diminish its obligations under the agreements.¹⁴

Governments sometimes impose duties or charges on imports in addition to the customs duty. Where these Other Duties or Charges (ODCs) apply to a bound tariff item, they must be listed in the goods Schedule.¹⁵ They become part of the duty binding: i.e. any increase may result in a breach of the binding. Other conditions, including benefits that are not in the nature of duties or charges, may also affect a binding. For example, the seasonal change mentioned above in duties on imports of fruits must be listed in the column of the GATT Schedules headed ‘Other Terms and Conditions’.¹⁶

We will discuss the rules on bindings for goods (Article II of the GATT) and services (Articles XVI and XVII of the GATS) in more detail later. For now, we should note that the rules in Article II prevent *circumvention* of the bound rate by the introduction, on top of the bound duty, of additional charges, fees or terms not listed in the goods Schedule. Naturally, it would be a ‘breach of a binding’ to apply any duty that is higher than the bound duty. It would *also* be a breach of a binding to:

- increase any associated import levies such as an ‘import surcharge’ or a ‘luxury tax’; or
- allow an import monopolist to impose an additional charge or ‘mark-up’ on the price of imports; or
- reduce the rate of excise on competitive domestic products.

A binding of a services commitment protects against adverse changes in the committed terms of access for services and for service suppliers. Because of the many different ways that services are traded, it is more complex in the case of services than it is in the case of goods to categorize ways in which a member may breach a binding. We will look at the market access and national treatment

¹⁴ This clarification derives from a dispute under the GATT (*United States – Restrictions on Sugar*, BISD/36S/331 or L/6514 adopted in June 1989, para. 53). It is not yet clear that this rule also applies to the GATS Schedules, but it probably does.

¹⁵ For many years, there was no explicit obligation to list ‘other duties and charges’. But an understanding incorporated into the WTO obliges members to list them or lose them. Listing an ‘other duty or charge’ does not, in itself, mean that it is consistent with WTO obligations.

¹⁶ The ‘Other Terms and Conditions’ column is included in the proposed Doha Development Round Schedules but does not appear in the Uruguay Round Schedules; there, terms and conditions are typically listed in a footnote to the Schedule.

obligations and related restrictions that governments are required to list, when applicable, in more detail in Chapter 3.

THE ECONOMIC VALUE OF BINDINGS

Governments often have several different reasons for joining the WTO, but improved access to foreign markets or higher shares of world trade are not necessarily the main reasons. Government officials and members of the business community often say something like: ‘We joined the WTO because membership is the “gold standard” for modern trade policy.’ Rapidly growing and reforming economies, and even small, isolated and poor countries that can scarcely afford the resources, put huge efforts into joining the WTO as part of their development strategies because membership shows that the country has *arrived* at a stage of policy and administrative control of its economy where it can deal on an equal basis with the rest of the world, even with the most powerful economies.

One benefit of being on the ‘gold standard’ is that foreign business and foreign investors will be more comfortable about a government’s economic policies. They read WTO membership – and the WTO Schedules that accompany membership – as guarantees of basic rights for them and of the direction and stability of trade policies. They may begin to cut the risk premiums that they formerly expected for doing business in the economy. Local businesses, in turn, will find it easier to build profitable links to the rest of the global market.

The domestic economy also benefits from the policy stability of bound terms of access for foreign competition and supply. Observers often refer to the WTO concessions as being ‘locked in’, or to the ‘ratchet effect’ of bindings that, once committed to in the WTO, cannot be reversed or withdrawn, at least not without compensation. Businesses prefer fixed costs, such as taxes on imported components and other barriers to market entry, to be lower. But the reality is that consumers usually end up bearing the fixed costs. What business finds still more troublesome is when fixed costs become unpredictable. It is difficult to plan a profitable enterprise in those circumstances; business investment may go ‘on strike’. Analysts note that WTO compliance strengthens national institutions and may contribute to the security of property rights – including business investments – that seems to characterize successful economies.¹⁷

Bound obligations are an important way to assure the rest of the world and domestic business of the stability of trade policies. They are highly credible because the incentive to live up to the obligation – potential reciprocal action by trading partners – is independent of domestic politics and endures through

¹⁷ D. Rodrik, ‘Trade policy reform as institutional reform’, in B. Hoekman, A. Mattoo and P. English, eds., *Development, Trade and the WTO: A Handbook* (World Bank, Washington, 2002).

changes of government. WTO bindings often endure for decades: longer than most governments and parliaments. Finally, bound WTO commitments contribute to the transparency and stability of domestic economic policy because they are necessarily published in the WTO Schedules, and they are considered concrete because their interpretation is not a matter for any individual WTO member government – including the government maintaining the commitment – but for the WTO membership as a whole. In the event of a disagreement leading to a dispute, the interpretation is determined through the WTO's impartial dispute settlement process.

The economic value of the binding is greatest in goods trade when the bound and applied rates of duty are the same. In that case, the commitment of the member maintaining the binding is given effect at the border. But this is often not the case, especially in agricultural tariff lines. The WTO Secretariat's 1999 study entitled *Market Access: Unfinished Business* examined the state of market access against commitments that members made in the Uruguay Round, most of which remain as they were in 1994. It found that 'Available evidence suggests that for industrial countries the gap between bound and applied tariff rates on agricultural products is not important, but that for some developing countries it is quite significant.'¹⁸

The gap between a high bound rate of duty and a low applied rate – often called the 'overhang' of the bound rate – is due, in some cases, to the tariff-cutting formulas for agricultural products that members adopted in the Uruguay Round.¹⁹ Many developing countries took advantage of the opportunity to adopt 'ceiling' bindings well in excess of applied duties on previously unbound agricultural tariffs as an alternative to cutting their tariffs. Table III.5 of the WTO's 1999 study illustrates the resulting 'overhang' of bound duties – see Table 1.1.

Although major developed economies, such as Japan, the EC and the United States, have bound rates and applied rates of duty that are very closely aligned, they also have bound rates in some tariff-quota products that have large amounts of 'water' in these bound rates: that is, the domestic market is priced well below the level implied by the bound/applied duty. This phenomenon of 'water' in the tariff, which indicates that the bound rate provides 'excess protection' to the domestic industry, also reduces the economic value of the binding.

¹⁸ WTO, *Market Access: Unfinished Business*, Special Studies No. 6, page 51 (but see below for another view on the 'gap' in developed countries).

¹⁹ In agriculture, the actual market access 'formulas' were rather informal, based on suggestions by the then Director-General of the GATT (Arthur Dunkel) that were not formally adopted. For detailed information, see A. Hoda, *Tariff Negotiations And Renegotiations Under The GATT And The WTO: Procedures And Practices* (Cambridge University Press, Cambridge, 2001). The author points out that the practice of implementing ceiling bindings was common in protocols of accession accepted in the last years of the GATT.

Table 1.1 *Average applied and bound tariff rates for agriculture (%)*²⁰

Country	Simple average MFN applied tariff	Simple average bound tariff	Apparent bound rate overhang
Australia	1.2	3.3	2.1
Bangladesh	25.1	188.3	163.2
Bolivia	10.0	40.0	30
Egypt	64.9	84.1	19.2
Indonesia	8.6	47.3	38.7
Jamaica	20.2	100.0	79.8
Kenya	16.7	100.0	83.3
Peru	17.8	31.1	13.3
Poland	34.2	55.5	21.3
Singapore	0.0	9.6	9.6
Trinidad and Tobago	19.1	100	80.9
Thailand	32.1	32.0	-0.1
United States	10.7	8.2	-2.5
Uruguay	13.0	35.2	22.2

Extract from WTO, *Market Access: Unfinished Business*, Special Studies No. 6, Table III.5.

The ‘overhang’ of bound rates of duty is much smaller in non-agricultural goods tariff lines, but it is sometimes significant, especially in developing country markets in Latin America.²¹

MODIFICATIONS OF THE WTO SCHEDULES

Although the WTO Schedules represent important, binding commitments by WTO members, most of them are, to some extent, a ‘work in progress’.

Members change their GATT Schedules:

- to reflect the results of negotiations in a multilateral round, such as the current Doha Development Round (the most common case);
- to make corrections (‘rectifications’) or to record the modifications flowing from a plurilateral negotiation after the completion of a round of negotiations – for example to implement the changes brought about by membership of the Information Technology Agreement (ITA) or the Pharma Agreements;

²⁰ Simple averages must be treated with care. The ‘bound-tariff overhang’ of agricultural tariffs in OECD countries is also significant in some cases. OECD Economic Study No. 36, 2003/1, shows that European Free Trade Association (EFTA) countries (Iceland, Norway, Switzerland) and Japan have large bound-tariff overhangs for nine broad food commodities (meat, dairy, sugar, grains, oilseeds, etc.).

²¹ See Table II.4 from the WTO market access study cited above.

- to reflect the results of bilateral negotiations – undertaken for various reasons – that require a change in bindings in accordance with the procedures of Article XXVIII of the GATT (see the Glossary for an explanation of the provisions of Article XXVIII);
- to implement a change in classifications flowing from an update in the Harmonized System (HS); there were updates requiring some ‘transposition’ of items in the Schedules in 1992, 1996 and 2002. Article 3 of the HS Convention requires parties to the Convention to ensure that their customs and statistical systems are up to date with changes in the HS. Only 78 members of the WTO were parties to the HS Convention as of March 2006, but all WTO members apply the HS, even if they are not parties to the Convention.

Members may modify their GATS Schedules in accordance with Article XXI of the GATS, which, like Article XXVIII of the GATT, provides for the compensation of other affected members should any member wish to withdraw or modify a bound commitment. See the Glossary for an explanation of the GATS Article XXI.

The WTO uses a ‘certification’ procedure to obtain approval of any changes to a Schedule. The Secretariat of the WTO circulates a member’s proposed changes to all WTO members, who may notify objections depending on the context in which the modifications are proposed. For example a member might consider that its rights to compensation under GATT Article XXVIII have not been met or that a negotiated concession has not been accurately reflected in the changes to the Schedule. The concerned members must negotiate a satisfactory basis for overcoming any objections before the Director-General of the WTO can certify the proposed changes to a Schedule as final and binding. The results of this negotiation, if reflected in further proposed changes to the Schedule, must themselves be submitted to all WTO members for verification prior to certification. Only when there are no outstanding objections may a change to a Schedule be certified and become legally ‘binding’. This laborious process is necessary because the Schedules, as we have seen, are ‘integral’ parts of the WTO Agreement whose amendment must be approved by a decision of all members.

Fortunately, the WTO website keeps everyone abreast of the current status of all proposed changes to members’ Schedules in a table that can be accessed at: www.wto.org/english/tratop_e/Schedules_e/goods_Schedules_table_e.htm. This table is a valuable reference point because it includes links or references to the documents containing the pre-Uruguay Round Schedules, the current WTO Schedules, the status of transpositions due to changes in the HS, and notifications of ‘rectifications’, ‘modifications’ and ‘renegotiations under GATT Article XXVIII’.

You can check this table to be sure you know of any outstanding changes proposed, but not yet certified and included in the Schedules.

WHAT IS NOT IN THE WTO SCHEDULES

The Schedules do not tell you everything that a government may be obliged to do under WTO rules, or even about all its obligations on border barriers. For example, the goods Schedule focuses on border taxes and on maximum levels of agricultural subsidies. But it makes no mention of obligations that are triggered once the import has crossed the border, such as the powerful ‘National Treatment’ rule that prohibits regulations that disadvantage imports competing with goods produced locally. Goods Schedules make no mention, either, of rules on industrial standards or intellectual property aspects of trade that might affect the treatment of goods both at the border and, again, after they have crossed the border. Finally, they make no mention of services that might also be traded with the goods (such as after-sales service obligations) or that are usually necessary to complete the trade (such as transport, information and financial services), where each member may also have WTO obligations.

Services Schedules are not intended to be a complete description of barriers to access, or other regulations related to trade in services. A service does not appear at all in the Schedule unless a member has made some commitment in that sector. We will look more clearly at what is included and what is left out of services Schedules in Chapter 3.

Applied duties on goods do not appear in the Schedules but they *are* subject to the MFN provisions of the GATT. All goods imports also benefit from the GATT’s National Treatment rule, whether imports enter under bound or applied rates of duty, and in cases where there is no bound duty at all. Also, non-reciprocal tariff preferences for developing countries that do not appear in a member’s WTO Schedule are governed by the provisions of the Enabling Clause²² of the GATT.

PREFERENTIAL ACCESS CONCESSIONS

For all practical purposes, preferential rates of duty are *applied* rates of duty; that is, they do not constitute bound MFN commitments of the kind found in WTO Schedules.

Most preferences for developing countries, such as the Generalized System of Preferences, are *unilateral* concessions by the preference-giving member to developing countries. This means that they are not a part of the WTO’s binding *contract*, and may be subject to unilateral revision or withdrawal.

²² The Enabling Clause, officially called the ‘Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries’, was adopted under the GATT in 1979 and enables developed WTO members to give differential and more favourable treatment to developing countries.

In general, *non-reciprocal preferences* for developing countries are made under the terms of two broad exceptions to the WTO's MFN rule, known as the Enabling Clause and the Waiver on Preferential Tariff Treatment for Least-Developed Countries. You can find more about these provisions, and about the decisions of the WTO on how they should apply, by consulting the WTO's *Analytical Index* on-line: www.wto.org/english/res_e/booksp_e/analytic_index_e/index_e_e.htm (scroll down until you find the heading 'Enabling clause').

Most *reciprocally negotiated* trade preferences are part of a Regional Trade Agreement (RTA) that has been negotiated outside the WTO. Although members' participation in RTAs is subject to WTO rules (Article XXIV of the GATT and Article V of the GATS), the preferences do not appear in a WTO Schedule. Some preferential arrangements for developing countries – such as the EC's Cotonou Agreement with African, Caribbean and Pacific states – may contain a mixture of reciprocal and non-reciprocal provisions.

Any member may have, in Part II of its WTO Schedule, some commitments concerning bound preferential rates. But this part of the Schedules refers to historical preferential arrangements – such as colonial trade arrangements – some of which pre-dated the GATT (1947). All of these preferential agreements have disappeared or have been replaced.

SIGNIFICANCE OF APPLIED TARIFF RATES

For commercial and analytical purposes, applied rates of duty matter much more than the bound rates of duty. This is because the tax impact of a duty on imports, and the tax revenue collected by government on imports, is determined by the duty actually applied and not by the commitment made to the WTO.

Competitive analysis of market access – for example, whether your terms of access to an export market are as good as or better than those of a third-country competitor – is also based on applied rates. Given the MFN rule, any advantage or disadvantage on access is probably due to a preference maintained under the Enabling Clause or GATT Article XXIV or GATS Article V.

Another reason that the applied rate of duty is significant is that all non-WTO trade negotiations, such as the negotiation of regional trade agreements (RTA) – 'free trade' agreements and the like – are based on the elimination of the *applied* rate of duty, not the WTO bound rate, unless it happens to be the same rate. The objective in an RTA is to eliminate duties, so there is no point in starting the preferential duty cut from any point other than the level that actually applies.

Although applied rates of duty have no *contractual* significance in the WTO, the Secretariat tracks applied rates of duty in its Integrated Database (IDB), to which members contribute data. The modalities for the Non-Agricultural Market Access (NAMA) negotiations in the Doha Development Round will take applied

rates of duty into account in certain circumstances; for example to define a ‘base rate’ for unbound tariff lines that will be ‘marked-up’ before the application of a tariff-cutting formula. Under the NAMA modalities for the Doha Development Round, these duties would be bound after the application of the agreed formula.