

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Services

**SCHEDULING OF INITIAL COMMITMENTS IN
TRADE IN SERVICES: EXPLANATORY NOTE**

Addendum

At the informal GNS meeting on 29 October 1993, the Chairman invited delegations to submit to the secretariat questions identifying common scheduling problems which, in their view, affect the clarity and legal certainty of commitments. This secretariat note, which has been prepared at the request of delegations, provides answers to the questions which were received by 15 November and which were discussed at the informal GNS meeting of 18 November 1993. References in this addendum to the scheduling guide are based on the latest version of the text entitled Scheduling of Initial Commitments in Trade in Services: Explanatory Note contained in document MTN.GNS/W/164 (scheduling guide).

1. Is it necessary to schedule approval procedures or licensing requirements which have to be met in order to supply a service?

The requirement to obtain an approval or a licence is not in itself a trade restriction and therefore does not need to be scheduled. However, if the criteria for granting licenses or approval contain a market access restriction (e.g. economic needs test) or discriminatory treatment, the relevant measures would need to be scheduled if a Member wishes to maintain them as limitations under Article XVI or XVII. It has been pointed out that in some offers the granting of licences is subject to review, meaning they are granted on a discretionary basis. In such a case the right to supply the service is unbound.

2. With respect to national treatment, does a "no limitations" entry in the National Treatment column refer to the whole mode of supply or only to what may be bound in the Market Access column?

When a Member undertakes a commitment in a sector or sub-sector then it must indicate for each mode of supply that it binds in that sector what limitations, if any, it maintains on market access, and what limitations, if any, it maintains on national treatment. Regardless of what is inscribed in the market access column, a "no limitations" entry in the National Treatment column (expressed as "None") would mean that national treatment is bound for the entire mode; it is not limited to what may be bound in a market access commitment with limitations. Thus, if a Member makes a commitment under Article XVI in a sector, where commercial presence is limited to partnerships, an entry "None" or any other entry in the national treatment column would refer to the whole mode of supply and not only to partnerships. (See also paragraphs 3 and 7 of the scheduling guide.) Measures which are inconsistent with both Articles XVI and XVII should be inscribed, according to Article XX:2, in the market access column; in such cases the entry will be considered to provide a national treatment limitation as well.

3. With regard to market access limitations, such as numerical ceilings or economic needs tests, how detailed should the entries in schedules be?

The entry should describe each measure concisely indicating the elements which make it inconsistent with Article XVI. Numerical ceilings should be expressed in defined quantities in either absolute numbers or percentages; regarding economic needs tests the entry should 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.

4. What are the implications if a schedule, in the horizontal entry relating to the presence of natural persons, does not specify the duration of that presence?

With respect to the fourth mode of supply, many participants have chosen to inscribe their bound commitments in the form of undertakings rather than in the form of market access limitations. In such cases the bound measures affecting the entry and temporary stay of natural persons are explicitly stated. Thus, in the absence of a reference to a specific duration for the temporary stay of a foreign service supplier, no binding is being undertaken in this respect. However, in such cases a Member's regulatory measures would still be subject to the general requirement, in paragraph 4 of the Annex on the Movement of Natural Persons, that they do not nullify or impair the benefits accruing to any other Member under the terms of a specific commitment.

5. Is it necessary in a schedule to describe the geographical scope of limitations to market access and national treatment where they exist at regional or sub-federal level?

In a committed sector if a Member wishes to maintain a measure which is inconsistent with Article XVI or XVII, it must be entered as a limitation in the appropriate column. As measures, for the purpose of this Agreement according to Article I:3(a)(i), include measures taken by central, regional or local government, the entry should describe the geographical scope of measures where they do not cover the entire national territory.

6. Is it necessary to reserve the right to impose customs duties and regulations on the movement of goods in relation to the supply of a service?

There is no requirement in the GATS to schedule a limitation to the effect that the cross-border movement of goods associated with the provision of a service may be subject to customs duties or other administrative charges. Such measures are subject to the disciplines of the GATT.

7. How relevant is a reservation for a residence requirement, nationality condition or commercial presence requirement under cross-border trade: does that not rather imply that cross-border trade is not allowed and therefore the correct entry should be "unbound"?

It is correct to use the term "unbound" for a mode of supply in a given sector where a Member wishes to remain free to introduce or maintain measures inconsistent with market access or national treatment. However, it has been pointed out by participants that in some cases there is advantage in inscribing a particular limitation (e.g. a residency requirement or a commercial presence requirement) instead of the term "unbound" in that trading partners have the certainty that there are no other limitations with respect to the cross-border mode. (See also paragraph 8 of the scheduling guide on residency requirements, and paragraph 6 on nationality requirements.)

8. What is the meaning in the "all sectors" part of the offers of indications that the commitments are subject to different laws of general application such as the constitution, investment regimes/laws, company laws and labour laws?

As is stated in paragraph 20 of the scheduling guide, a commitment in the "all sectors" or horizontal part of the schedule is a binding of the presence or absence of limitations to market access or national treatment. To the extent that domestic laws of general application contain measures which constitute limitations, and if the Member wishes to maintain them, the commitment should describe the measures concisely. According to the agreed scheduling procedures, schedules should not contain general references to laws and regulations as it is understood that such references would not have legal implications under the GATS.

9. Should foreign exchange control restrictions be scheduled?

Exchange control restrictions are subject to the general disciplines of Articles XI (Payments and Transfers) and XII (Restrictions to Safeguard the Balance of Payments) of the GATS. Foreign exchange control restrictions which fall under Article XII are exceptions from the obligations and commitments of the GATS and therefore should not be scheduled. As explained in paragraph 13 of the guide, Article XII provides for separate disciplines for such measures including notification and consultation procedures.

10. Where a national schedule refers to foreign companies and national companies, is it necessary that the schedule also defines what is to be understood by a national or foreign company?

It is necessary to offer a definition for those cases where a Member uses terms which are not covered by the common definitions contained in Article XXXIV of the GATS.

11. Are limitations on purchase, lease or use of real estate, connected with the supply of a service inscribed in a schedule, a restriction on trade in services? If such restrictions do constitute barriers to trade in services, are they restrictions on market access or national treatment?

Restrictions on the purchase, lease or use of real estate, connected with the supply of a service inscribed in a schedule, are national treatment limitations to the extent that different conditions apply to foreign service suppliers which alter the conditions of competition in favour of service suppliers of the Member compared to like service suppliers of any other Member.

12. How should situations where a particular mode of supply is technically not feasible be addressed in schedules?

In cases where a particular mode of supply is technically not feasible e.g. the cross-border supply of construction services, as explained in paragraph 28 of the scheduling guide, the term UNBOUND* should be inscribed under the mode where the supply of the service is technically not feasible. The term may not be used as an entry in the national treatment column for modes 1 and 2 when, for the same service, there is a market access commitment.

13. What types of measures should be entered in schedules under mode 2, consumption abroad?

According to paragraphs 18 and 19 of the scheduling guide, limitations in the schedule of a Member - if any - with respect to mode 2 on market access and/or on national treatment should only relate to measures affecting the consumers of that Member, and not to measures affecting consumers of another Member, in the territory of that Member.