



# **Training Workshop on Trade in Services Negotiations for AU-CFTA Negotiators**

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**Understanding, Preparing and Interpreting  
Schedule of Commitments for Services**



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## Outline

- Part I: Key provisions in the GATS regarding scheduling
- Part II: Scheduling under the GATS
  - How is a schedule organized
  - Expressing levels of commitment
- Part III: Preparing offers
  - Strategic considerations
  - Examples



## Why does Scheduling Matter?

- Schedules are an integral part of the GATS;
- Schedules set out the degree of liberalization a country commits to (e.g., requirements for certain domestic measures affecting trade in services);
- Schedules create “legal predictability”;
- Schedules are legally binding & enforceable,
- Schedules allow to liberalize, while preserving the RtR;
- Schedules are detailed documents (sectors/measures);
- Scheduling requires information/data & technical knowledge;



# Part I

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Key provisions in the GATS regarding scheduling



## Types of obligations:

### 1. General obligations

- Most-favored nation treatment (MFN)

### 2. Specific obligations

- Market access (based on a positive list approach)
- National treatment
- Additional commitments



## 1.- General obligations

### Most-Favoured-Nation Treatment (Article II)

- Each Member to 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
- MFN exemptions are possible
- They must be listed, last in principle not more than 10 years and are subject to future rounds of trade liberalization



## 2.- Specific obligations

### Market Access (Article XVI)

- General rule: each Member shall accord services and service suppliers of any other Member treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule
- Article XVI provides a list of measures which a Member shall not maintain or adopt in sectors where market-access commitments are undertaken, unless otherwise specified in its Schedule



## Types of limitations - Market access

1. Number of service suppliers
  2. Value of transactions or assets
  3. Number of operations or quantity of output
  4. Total number of natural persons
  5. Type of legal entity or joint venture
  6. Foreign capital participation
1. Annually established quotas for foreign medical practitioners
  2. Foreign bank subsidiaries limited to x percent of total domestic assets of all banks
  3. Restrictions on broadcasting time available for foreign films
  4. At least half of the personnel of subsidiaries, branch offices and agencies (of foreign financial institutions) must be Angolan citizens
  5. Banks must be established in the form of public limited companies with fixed share capital (Benin)
  6. Foreign portfolio investors can hold up to 40% of the shareholding of a locally listed company (Kenya)





## 2.- Specific obligations

### National Treatment (Article XVII)

- Concept:
  - Treatment of foreign services/services suppliers
  - In terms of conditions of competition
  - Is no less favorable (sector/mode of supply)
  - Than accorded to local services/services suppliers



## Possible limitations - National Treatment

- Subsidy measures
- Tax measures
- Other financial measures
- Nationality requirements
- Residency requirements
- Licensing and qualification requirements
- Registration requirements
- Technology transfer requirements
- Ownership of property/land
- Examples:
  - Domestic suppliers of audiovisual services are given preference in allocation of frequencies for transmissions within the national territory
  - Prior residency is required for the issuing of a license to supply a service



## 2.- Specific obligations

### Additional Commitments (Article XVIII)

- Commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters
- E.g. Telecom Reference Paper commitments



## Flexibilities for DC and LDCs (Article XIX)

- Due respect for national policy objectives and level of development
- Appropriate flexibility = opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation
- DC can use conditions aimed at achieving transfer of technology, employment, training, joint ventures, etc.



## Schedules of Specific Commitments (Article XX)

Each Member has a schedule the specific commitments  
With respect to sectors where commitments are  
undertaken, the Schedule specifies:

- Terms, limitations and conditions on market access;
- Conditions and qualifications on national treatment;
- Undertakings relating to additional commitments;
- The time-frame for implementation of such commitments, where appropriate; and
- The date of entry into force
- WTO document S/L/92



## Part II

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### Scheduling under the GATS



## The structure of schedules

- Structure:
  - Horizontal section
  - Sectoral section
    - Identification of sectors and subsectors based on Services Sectoral Classification List (WTO Document MTN.GNS/W/120)
- Each section contains information about
  - How to treat each mode of supply
  - Whether there are limitations (Market access and National Treatment)
  - Level/depth of commitment



# How is a schedule organized?

## 1.- Horizontal section

- Issues dealt with in this section:
  - Taxation issues
  - Land ownership
  - Real estate ownership or lease
  - Subsidies and incentives
  - Movement of natural persons (with list of specific categories)





## How is a schedule organized?

### Example of Horizontal Commitments

<b>All Sectors included in this schedule</b>		<u>Land Ownership</u> 3) 4) Foreign natural persons may not own land.  3) Authorization for purchase or lease of state owned lands is restricted to... nationals.  <u>Subsidies</u> 1) 2) 3) 4) Unbound with respect to subsidies	
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# How is a schedule organized?

## Horizontal and sectoral parts

1. Business services
2. Communication services
3. Construction services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health-related and social services
9. Tourism and travel-related services
10. Recreational, cultural and sporting services
11. Transport services

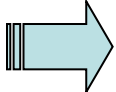
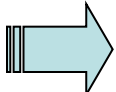


# Expressing Modes of supply

Supplier Presence	Service delivery / consumption	Mode
Service supplier <u>not present</u> within the territory of the member	Service delivered <u>within</u> the territory of the Member, from the territory of another Member	(1) Cross-border supply
	Service delivered <u>outside</u> the territory of the Member, in the territory of another Member, to a service consumer of the Member	(2) Consumption abroad
Service supplier <u>present</u> in the territory of the member	Service delivered within the territory of the Member, through the commercial presence of the supplier	(3) Commercial presence
	Service delivered within the territory of the Member, with supplier present as a <u>natural</u> person	(4) Presence of Natural persons



## Expressing levels of commitment - 1

- Members have total discretion in respect to the degree of trade liberalization they commit under sectors/subsectors or modes of supply
  - a) **“None”**
    - = Full commitment
    - = No limitations (= liberalized)
    -  Does not have or will not introduce measures that restrict Market Access or National Treatment
  - b) **“Unbound”**
    - = No commitment in a mode of supply
    -  Free to impose limitations at a later stage



## Expressing levels of commitment -2

### c) Partial commitment

= commitment with limitations

Market access or national limitations exist / inscribed in the schedule

Description of (inconsistent measure):

- None, except that in foreign insurance companies employees of Ecuadorian nationality must account for at least 50 per cent of the total amount of salaries and commissions.
- Unbound except indicated in the horizontal section

### d) Unbound \*

= No commitment because it's not technically feasible



# Example of schedule of commitment

## (Kenya - Financial Services - extract)

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

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
7.B. Banks and other financial services g) Participation in securities and provision of related services (except underwriting)	1) Securities issued in a foreign jurisdiction cannot be offered in the Kenyan market 2) None 3) Foreign portfolio investors can hold up to 40% of the shareholding of a locally listed company. They can also take up to 40% of any additional public offering by a foreign convened listed company. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) None 3) Unbound 4) Unbound, except as indicated in the horizontal section	



## Part III:

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### **Preparing offers: Strategic considerations and examples**



## Start with the end in mind...

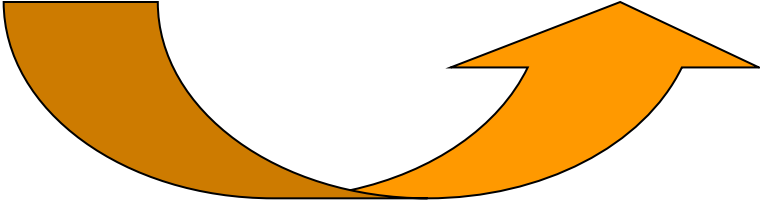
- “Countries rarely liberalize for the benefit of trading partners, though they may do so to elicit reciprocal benefits.

They do so in order to increase the supply and quality of services in the domestic market”

(COMESA Training Manual)



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- What are your priority services sectors?
    - Development plans
    - Laws, regulations
  - (Internal) services import needs
  - (External) services export needs

- Obtain/Share information
  - Organize consultations with key stakeholders
  - Building capacity
  - Research and analysis
  - Prioritize among policy objectives
- 



## Strategic considerations - What?

- What is the scope of the “offensive agenda”?
  - Areas where liberalization may be sought
    - Key infrastructure services
  - Areas where commitments with respect of regulatory cooperation may be sought
    - Sectors identified for development and reform
    - Sectors where technical assistance and capacity building are needed
- What is the scope of the “defensive agenda”?
  - Areas where regulatory reform must be completed before liberalization is undertaken
  - Universal service obligations
  - FDI subject to conditions?



## Strategic considerations - How? - 1

- HORIZONTAL SECTION
  - Are there issues whose treatment are NOT sector specific?
    - Horizontal (for all sectors)
      - Investment?
      - Movement of natural persons?
      - Procurement?
- SPECIFIC COMMITMENTS (SECTOR SPECIFIC)
  - How much are you willing to commit?
    - In which areas would you wish not to commit
    - In which areas would you wish to commit subject to limitations
  - How do you translate that commitment into offers?
    - What kind of limitations could be more suitable to match your offensive/defensive objectives?



# Market Access: Example: Limitation regarding type of legal entity (Brazil)

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

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
07.A.a. Direct Insurance (including co-insurance) Insurance on freight (CPC 81293)	1) Imports can only be insured with established companies 2) Unbound 3) The formation of a specific type of legal entity is required, in the form of a Sociedade Anônima, with registered stocks. The establishment of new branches and subsidiaries of foreign insurance companies, as well as increases in the percentage of the participation of foreign persons and firms in the capital stock of Brazilian insurance institutions with headquarters in Brazil, is not permitted. 4) Unbound, except as indicated in the horizontal section	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the horizontal section	Brazil will introduce into its schedule commitments relating to the participation of foreign capital in the Brazilian insurance market, within two years after the adoption by the National Congress of legislation permitting such participation.



## Examples:

### National Treatment limitations - 1

- Technology transfer/training requirements
  - The foreign service supplier shall use appropriate and advance technology and managerial experience and shall have the obligation to transfer its technology and pass on its experience to national personnel
  - The foreign service supplier must prove commitment to recruit and develop more local human resources
  - Foreign service suppliers, in the context of ... are required to offer on-the-job training for national employees
  - Skilled foreign employees required to provide training to locals



## Examples

### National Treatment limitations - 2

- Local content requirements
  - Preferential use of local services to the extent that they are available under conditions of quality, price and delivery equivalent to those of like services of foreign origin
  - With regard to personnel, material, equipment, facilities and services required in the petroleum operations, priority shall be given to the employment of national subcontractors, provided that they are competitive in delivery, time, price and quality



## Examples

### National Treatment limitations - 3

- Subsidies
  - Eligibility of subsidies reserved to nationals
- Licensing and qualifications
  - 3 years of prior professional practice in the country is required
  - In order to work as a mountain guide or ski instructor passing an examination is required, access to such exams for foreigners may be restricted
  - Lawyers are required to graduate from national universities



## Conclusions

- GATS provisions contain obligations regarding:
  - Key principles enshrined in the WTO legal system
    - Non discrimination (MFN and national treatment)
  - Progressive liberalization:
    - Commitment: not imposing new measures that will restrict entry into market or operation of the service
- Services schedules :
  - Contain terms and conditions under which market access and national treatment will be provided for services activities
    - Allow flexibilities in specific sectors/subsectors/modes of supply:
      - Possibility of not undertaking commitments
      - Possibility of introducing limitations
- When preparing your offer remember:
  - Strategy comes first
    - What are your priorities and objectives in terms of:
      - Horizontal issues
      - Sectors, subsectors and modes of supply
  - Then, you translate this priorities into specific language (services jargon)





# Thank you

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