

# Sectoral Issues in Services Negotiation

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# Contents

1. Audio-visual
2. Distribution
3. Energy Related Sectors
4. Telecommunications
5. MFN exemption
6. Liberalization under the GATS

## Audio-visual

### 1. Industry status and Legal Framework

### 2. Entries in the National Schedule of Specific Commitment

- Quite comprehensive offer, including radio and TV. Only transmission service excluded.
- 'contract with a local legal entity must be signed'.
- No other restrictions

### 3. Korean case

- Korea made commitments in production/distribution(not for CATV) and sound recording
- Maintains a screen quota of 143 days under GATT

### 4. Other WTO members' case

- Only 22 members have made commitments
- No current EU members (all 27 of them) have made commitments before
- Georgia without transmission (almost same as Azer), Kyrgyz with full commitments

### 5. Points to be discussed

- If you have EU accession later, withdrawal may be needed, but would require further concessions in other sectors
- Not many members have made commitments

# Distribution

# Distribution

## 1. Industry status and legal framework

## 2. Entries in the National Schedule of Specific Commitment

- Retail was completely excluded: concern for gas stations or small retail shops and discount stores
- All sectors have no MA or NT restrictions

## 3. Korean case

- Several advanced commitments were made:
- 1) economic needs tests were in wholesale, and retail ,
- 2) restriction of floor space,
- 3) exclusion of agricultural items from wholesale, animals from retail
- 4) time bound commitments from 1996
- Actual experience shows orderly transition, albeit some resistance

## 4. Other WTO members' case

- Complete exclusion of retail service is rare.
- Georgia full commitments; Kyrgyz with limitations for items in wholesale and retails mainly on alcohol and tobacco (almost the same as Azer except retail)

## 5. Points to be discussed

- Without opening, fast and effective development cannot be expected.

# Energy Related Sectors

## Energy Related Sectors

In pluri-lateral approach, these include (**bold faced sectors were excluded**)

1. **Services incidental to mining:** CPC 883+5115
2. **Related scientific and technical consulting services:** CPC 8675
3. *Wholesale trade services:* CPC 62271\*
4. **Retailing services:** CPC 63297\*
5. *Engineering services, **Integrated engineering services:*** CPC 8672+8673
6. *Management consulting service, Services related to management consulting:* CPC 865+866
7. *Maintenance and repair of equipment:* CPC 633, 8861-8866
8. *Technical testing and analysis services:* CPC 8676
9. *Other construction services:* CPC 518-Onstruction and decomposition of facilities
10. *Other construction services:* CPC 511-518- construction and related engineering services
11. **Services incidental to energy distribution: CPC 887**

### 1. Industry status and legal framework

# Energy Related Sectors

## 2. Entries in the National Schedule of Specific Commitment

- Complete absence of certain sectors; but not all the related sectors were excluded.
- Pipeline services are not included in energy distribution...
- Reliance on the oil sector is understandable; however, non-liberalization is not the answer for the development or protection of local industries

## 3. Korean case

- Commitments in almost all of the sectors; excluded were incidental services to mining

## 4. Other WTO members' case

- Quite liberal in general...
- Kyrgyz and Georgia with full commitments (Kyrgyz; without integrated engineering)

## 5. Points to be discussed

- Member would consider Azerbaijan is competitive in these sectors, and economic interests are rather high.

# Energy Related Sectors

## Services incidental to mining (CPC 883+5115)

CPC 883: services rendered on a fee or contract basis at oil and gas fields, e.g. drilling services, derrick building, repair and dismantling services, oil and gas well casings cementing services. (exclusion: mineral prospecting services, oil and gas field exploration and geophysical (e.g. seismic) and geological surveying services are classified in class 8675 (engineering related scientific and technical consulting services)).

CPC 5115: Tunneling, overburden removal and other development and preparation work of mineral properties and sites, except for mining oil and gas. (exclusion: construction services incidental to oil and gas mining are classified in subclass 88300 (services incidental to mining)).

## Services incidental to energy distribution (CPC 887)

CPC 887: transmission and distribution services on a fee or contract basis of electricity, gaseous fuels and steam and hot water to household, industrial, commercial and other users. (exclusion: transport services via pipeline on a fee or contract basis of petroleum and natural gas are classified in subclass 71310).

# Telecommunications

## 1. Industry status and legal framework

- Currently, competition is allowed, but not real competition is incurring, as Baktelecom and Aztelecom are virtual monopolies in local and long distance/international calls.

## 2. Entries in the National Schedule of Specific Commitment

- Unbound, 'exclusive rights on international organizations' Even after 11 years
- Exclusive rights may include settlement rate, satellite.
- None, 11 years after WTO accession . No MA restrictions.
- Distinction between domestic and international calls. Simple resale is not allowed at the moment

## 3. Korean case

- Commercial arrangement was required for mode 1
- Foreign governments were not allowed for mode 3, radio licensing was also restricted
- Gradual elimination of foreign equity limitation; still remaining limitation for major suppliers

# Telecommunications

## 4. Other WTO members' case

- Benchmarking offers by Kyrgyz and Georgia: transition economies, but the offers are “None” without reservation at all
- Not all the members have made full commitment for Reference Paper
- For Asian countries, only Korea, Japan, Singapore, Sri Lanka, etc have made full commitments, while Bangladesh, China, Cambodia, Nepal, Thailand and Vietnam did not make commitments at all. India, Indonesia, Malaysia, Pakistan and the Philippines have made partial commitments. Mostly, they were concerned on the independent regulator, competition safeguard, interconnection and spectrum allocation.
- Some form of restrictions remain: foreign ownership, radio license, commercial presence required, sale and shared use of lease lines, economic needs test...

## 5. Points to be discussed

- Withdrawal of any commitments may bring repercussion: retreating may not be feasible
- Careful drafting and thorough preparation seems to be the only alternative.
- Special attention to negotiation of settlement rates, and allowance of ISR
- The determination of the settlement rate.

# Telecommunications

	Telecommunication Annex	Current Legislation	Comments
3.b	Intra-corporate communications	Not defined	Resale or shared use?
4	Transparency	In general	Gazette? Public notice?
5.a	Access to and use of PTTN/PTTS on reasonable and non-discriminatory terms and conditions	In general	Principles...
5.b (i)	Free attachment of terminal equipment	Not defined	Needs clarification
5.b (ii)	Interconnection of leased circuits	Not clearly defined	Needs clarification
5.b (iii)	Free choice of operating protocols	Not defined	Need to guarantee
5. c	Free movement of information	Not defined	Need to guarantee
5.d	Security and confidentiality of information	Not clearly defined	<i>Rights</i>
5.e (i)	Safeguard the public service responsibilities	-	<i>Rights</i>
5.e (ii)	Protect technical integrity	-	<i>Rights</i>
5.e (iii)	Prohibition of non-committed services	Not needed	<i>Rights</i>
5.f (i)	Restriction on resale or share use	Not clearly defined	<i>Rights</i>
5.f (ii)	Use of specified technical interface (protocols)	Not clearly defined	<i>Rights</i>
5.f (iii)	Inter-operability	Not clearly defined	<i>Rights</i>
5.f (iv)	Type approval	Not clearly defined	<i>Rights</i>
5.f (v)	Restrictions on the interconnection of private leased lines	Not clearly defined	<i>Rights</i>
5.f (vi)	Notification, registration and licensing	Not clearly defined	<i>Rights</i>

# Telecommunications

	Reference Paper	Current Legislation	Comments
	Essential facilities	Not defined	Need definition, somehow
	Major supplier	Not defined	Need definition
1	Competition safeguards	In general	
1.1 (a)	Anti-competitive cross-subsidization	Not defined	Need provisions
1.1 (b)	Using information obtained from competitors	Not clearly defined	Needs provisions
1.1.(c)	Availability of information on a timely basis	Not clearly defined	Needs clarification
2	Interconnection	Not clearly defined	Need clarification
2.2 (a)	Non-discriminatory terms, no less favorable	Not clearly defined	Is this guaranteed?
2.2 (b)	Timely, cost-oriented, sufficiently unbundled	Not clearly defined	Is this guaranteed?
2.2 (c)	Charges that reflect the cost of constructions	Not clearly defined	Is this guaranteed?
2.3	Public availability of the procedures for interconnection negotiations	Not clear	Is this provided?
2.4	Transparency of interconnection arrangements	In principle	Need clarification
2.5	Interconnection: dispute settlement	Not clearly defined	Who has the jurisdiction?
3	Universal service: transparent, non-discriminatory, competition neutral	Not clearly defined	Need clarification
4	Public availability of licensing criteria	Not clearly defined	Is it fully known?
5	Independent regulators	Not clear	When to establish?
	Legal authority and enforcement powers		
	Financial resources and autonomy		
	Knowledgeable but independent staff		
	For licensing, interconnection, leased lines, universal service, tariffs, numbering, frequencies, granting non-discriminatory use of rights of ways		
6	Allocation and use of scarce resources, including frequencies	In principle	Is this guaranteed?
	Notification, registration and licensing	Not clearly defined	Rights

# MFN Exemption

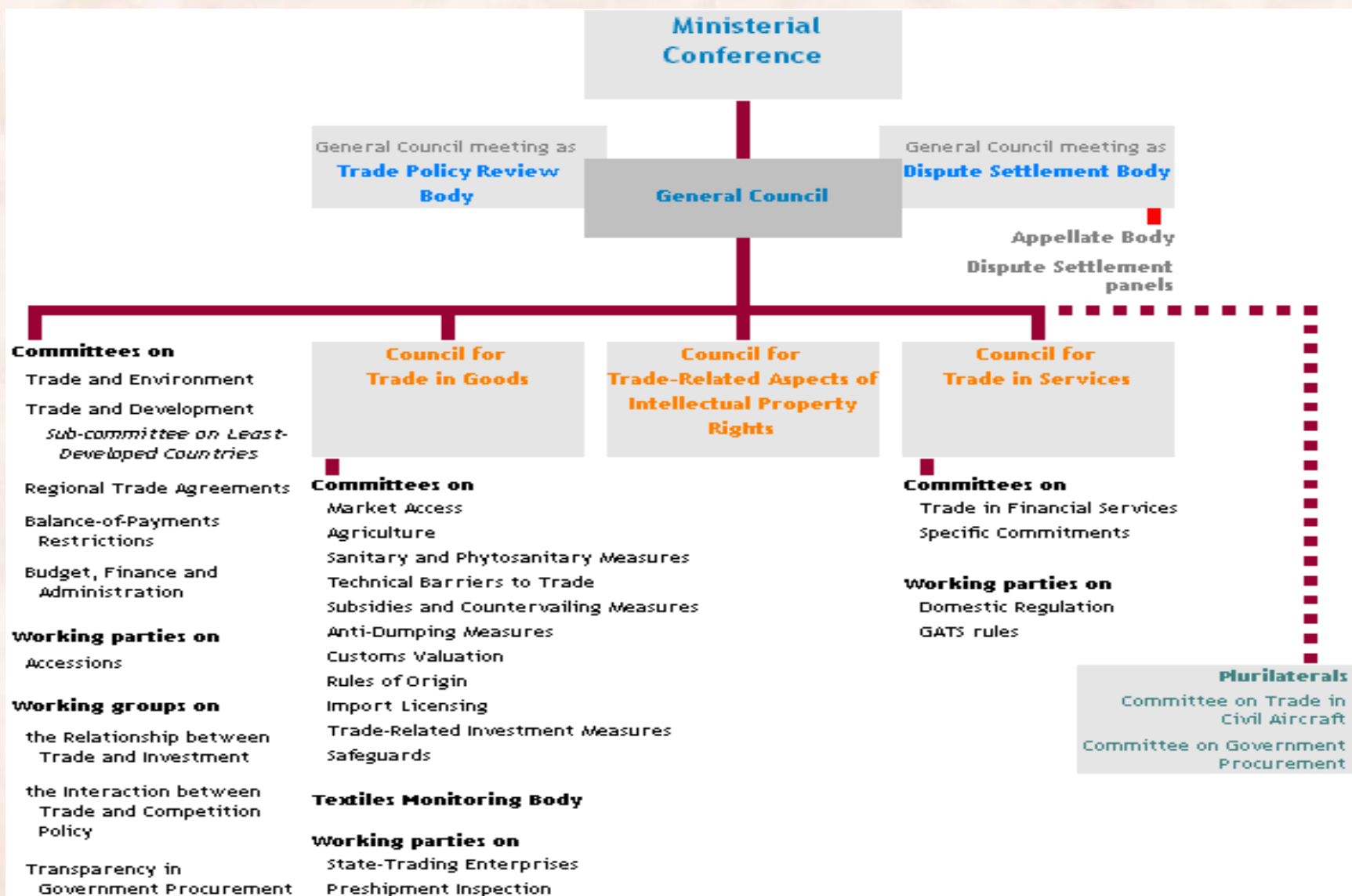
## Korean Case

- Korea has sought only one: not much economic interest but due to international obligation
- Any real benefit from such exemptions

## Azerbaijan Case

- Legal service: local license
- Marketing, and CRS: agreements for these services
- Printing, publishing: any need or agreements. Relationship with EU commitments
- Education (exchange students): MA or NT limitations
- Road transport: existing agreements
- Other arrangements; e.g. film production or work permits

# 6. Liberalization under the GATS



## Structure of GATS

- What are usually considered as services?
- W/120 classification based on CPC
  - Business services(legal, computer, advertising,...)
  - Communication services(telecom, postal, Audio-visual)
  - Construction and related engineering services
  - Distribution services(wholesale, retail, franchising)
  - Education services(primary, secondary, tertiary,...)
  - Environmental services
  - Financial services(banking, securities, insurance,...)
  - Health related and social services
  - Recreational, cultural and sporting services
  - Tourism services (tourism, hotels, restaurants,...)
  - Transport services(road, rail, shipping, air, space,...)
  - Other services not included elsewhere

## Structure of GATS

- Importance of service ...
  - Size of the services sector in the economies and also increase in trade
  - Many infrastructure services
- WTO structure: three pillars
  - Goods, Services and IPR
  - Common Dispute Settlement Body
- GATS: General Agreement on Trade in Services
  - A young and ambitious agreement
    - 1) One agreement versus 13 agreements in goods trade, reflecting 50 years of experience
    - 2) “trade” is defined in a different manner

## Structure of GATS

- How to define 'trade in services'?
  - For goods trade, it is 'cross-border' supply
  - Suppliers and consumers stay where they are and only goods move around
  - For services trade, you may define the same way, as suggested by developing countries during UR
  - Most of the cases, suppliers and consumers must be at the same place at the same time
- In GATS, however, four modes of supply are *defined* as 'trade in services'
  - It is defined here...
  - Cross-border, consumption abroad, commercial presence, movement of natural persons...

# Structure of GATS

## *Four modes of supply in GATS*

### 1. Cross-border supply

- Suppliers and consumers stay in their respective territory
- Services provided over int'l network, E-Commerce?

### 2. Consumption abroad

- Consumers move abroad
- Tourism, studying abroad, repair of aircrafts and vessels

### 3. Commercial presence

- Movement of factors of production
- Most frequent forms of service provision
- Simply put, it is Foreign Direct Investment

### 4. Presence of natural persons

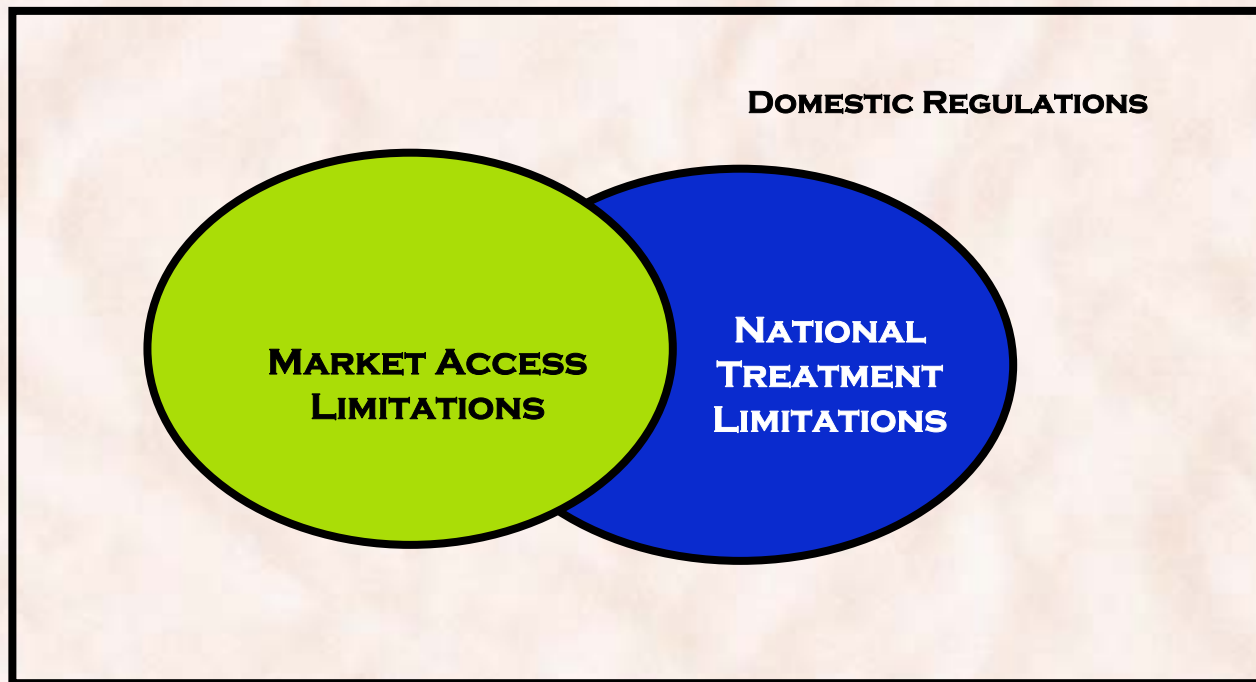
- Movement of factors of production
- Immigration? Visa? Employment?
- Simple job-seekers are not allowed

## Structure of GATS

- Examples through 'education'
- Significance of movement of 'factors of production'
- GATS = Agreement on Investment ?
- Different meaning of liberalization
  - 'Liberalization of trade' means removal of any restrictions on four modes, including commercial presence
  - For commercial presence, all domestic regulations are possible restrictions!
  - Restrictions-limitations

## *How to liberalize numerous domestic regulations?*

Measures = **Market Access Limitations**  
**+National Treatment Limitations**  
**+Domestic Regulations**



- 6 types of Market Access Limitations (these are *exhaustive*)
  1. *Number* of suppliers
  2. *Value* of transactions or assets
  3. Total number of operations or total *quantity* of service output
  4. *Number* of employees
  5. *Types* of legal entity
  6. Foreign *equity* participation
  
- Any *discriminatory* measures are National Treatment Limitations
  - If a measure is both MA and NT limitations, then list it as a MA limitation

## Article 17 Market Access

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- (a) limitations on the *number of service suppliers* whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the *total value of service transactions or assets* in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the *total number of service operations or on the total quantity* of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (d) limitations on the *total number of natural persons* that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require *specific types of legal entity* or joint venture through which a service supplier may supply a service; and
- (f) limitations on the *participation of foreign capital* in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

- The rests are Domestic Regulations
  - *In sectors where commitments were made, all measures are administered in a reasonable, objective and impartial manner.*
  - *Licensing requirements should be*
    - (a) based on objective and transparent criteria, such as competence and the ability to supply the service;*
    - (b) not more burdensome than necessary to ensure the quality of the service;*
    - (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service*
  
- Liberalization commitment is made as follows...
  - Select a sector to make commitments
  - Identify measures which fall under MA and NT limitations
  - Through negotiations, maintain part of MA and NT limitations
  - Remaining measures are subject to DR

## *Article VI*

### *Domestic Regulation*

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.
  2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.
  - (b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that *measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services*, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

*(a) based on objective and transparent criteria, such as competence and the ability to supply the service;*

*(b) not more burdensome than necessary to ensure the quality of the service;*

*(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.*

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.

(b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations<sup>3</sup> applied by that Member.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

- Agreement and National Schedules
  - *General obligations* in the Agreement
  - *Specific Commitments* in National Schedules: positive list on sectors, negative on measures
- General Obligations
  - MFN, Transparency, Domestic Regulation, General Exceptions, ...
- Specific Commitments
  - Market Access(6 types), National Treatment, additional commitments

# Horizontal Commitments and MFN Exemption

- Horizontal Commitments
  - Specific commitments which apply to all sectors
  - Mostly on movement of natural persons, foreign equity holdings, land use, etc
- MFN Exemptions
  - MFN is a cornerstone of multilateralism
  - Unconditional extension of any benefit conferred to any *country* even without commitments to all *members*
  - Due to technical, historical, geographical reasons, some sectors cannot be subject to MFN: air transport, former colonies, road transport...
  - But strategic consideration stepped in, and this exemption was abused
  - In principle, only 10 years were given, and only once
  - Special review sessions and subsequent negotiation

**SECTOR-SPECIFIC COMMITMENTS**

Malaysia

WTO Services Database Output

Page 1 of 5

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	Notes
<b>Audiovisual Services</b>				
Motion picture, video tape and audio recording distribution services (CPC 98113)	1)	Commercial presence is required	1)	Unbound
	2)	None	2)	None
	3)	Only through a locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding shall not exceed 30 per cent	3)	None
	4)	Unbound except as indicated in 1 a) and b) and 2 a) and c) in the horizontal section	4)	Unbound except for the categories of natural persons referred to under market access
Broadcasting services covering transmission from foreign broadcast station of foreign broadcast matter from foreign territory through television or radio (CPC 7524*)	1)	20 per cent of total screening time; and  Dubbing into the national language may be required	1)	Unbound for government channel
	2)	None	2)	None
	3)	Unbound due to lack of technical feasibility	3)	Unbound due to lack of technical feasibility
	4)	Unbound due to lack of technical feasibility	4)	Unbound due to lack of technical feasibility