Learning Objectives

This chapter is to help students understand:
1. Specific commitments under GATS compared with tariff binding under GATT;
2. Liberalizing method in service markets under GATS compared with that in goods markets under GATT;
3. Withdrawal or modification of specific commitments subject to compensatory adjustment;
4. Means by which member countries’ governments maintain measures providing more favorable treatment to their domestic industries compared with foreign entities in the service sector – specifically those committed to being liberalized;
5. Two kinds of annexes to GATS;

8.1 Specific Commitments

Specific commitments under GATS are registered in schedules. Each Member of the WTO is required to have a schedule in which it registers its commitments\(^1\) to provide market access\(^2\) and national treatment\(^3\) to services and service suppliers of

\(^1\) GATS, supra note 5. Arts. 16, 17. A member is not forced to make specific commitments in a certain sector or sub-sector. However, when the member chooses to do so, general obligations like MFN obligations attach to those commitments.

\(^2\) The purpose of Art. 16 Market Access is to eliminate measures that limit: (i) the number of service suppliers; (ii) the total value of service transactions; (iii) the total number of service operations or of people employed; (iv) the type of legal entity allowed to provide the service; and (v) the percentages of foreign capital shareholding or investment (Kraus 1994, cited by Ku 1999, supra note 30, at 118).

\(^3\) It should be noted that the national treatment obligation of GATS applies to those sectors scheduled, and subject to exceptions set forth in the schedule, which makes it be subject to further
other Members. When making a commitment, a Member binds the level of market access and national treatment specified in the schedule and undertakes not to impose any new measures that would restrict entry into the market or discriminate in favor of services or services suppliers of national origin.\(^4\)

A specific commitment thus has an effect similar to a tariff binding under GATT. Commitments can only be withdrawn or modified after negotiation and agreement with other Members on a compensatory adjustment through which the modifying Member offers alternative commitments. However, new commitments and improvements to existing ones can be added at any time.\(^5\)

A Member’s schedule of commitments is inscribed with the limitations on market access and national treatment that a Member imposes on foreign service suppliers.\(^6\) All schedules must specify: (1) terms, limitations, and conditions on market access; (2) conditions and qualifications on national treatment; (3) undertakings relating to additional commitments; (4) the time frame for implementation of commitments; and (5) the date of entry into force of commitments.\(^7\) Measures that are inconsistent with both Article XVI (market access) and Article XVII (national treatment) are to be inscribed in the column relating to market access limitations, in which case the inscription will be considered a condition or qualification on national treatment as well.\(^8\)

During the Uruguay Round negotiations participants agreed to follow a set of guidelines for the scheduling of specific commitments under GATS. The guidelines encouraged Members to use the SSC List developed during the Uruguay Round. This SSC List is based on the U.N. Provisional Central Products Classification negotiations, based on the sectors included in a country’s schedule, and further based on conditions or qualifications set out therein. GATS specifically provides that this obligation may be met by virtue of treatment that is different from the treatment applicable to domestic services and suppliers, which recognizes that national treatment is not necessarily identical treatment but, makes the applicable standard one of de facto rather than de jure national treatment (Trachtman 1995, supra note 9, at 68–69).

\(^4\) Regarding the developing process of the Schedules of Specific Commitments, it is explained: “Because the GATS negotiation process was based on a request-offer system, countries exchanged information about their proposed Schedules of Specific Commitments.... This permitted a country to know before it finalized its own Schedule... what it could expect from other countries. These Schedules were subject to fierce negotiations.... At a certain specified deadline, each country had to submit its final proposal including its Schedule of Specific Commitments” (Terry 2001, supra note 49, at 1004).

\(^5\) Most countries listed their current regulations in the Schedules, the consequence of which is that the current law need not comply with those aspects of GATS that applied to “scheduled” services. Thus, this structure has the effect of requiring a country’s future regulation of legal services to comply with GATS, and be no more restrictive than its current regulations, but “grandfathers” in the exiting set of regulations, which makes commentators often describe GATS as creating standstill provisions. Accord Cone (pp. 20–24, cited by Terry 2001, supra note 49, at 1004).

\(^6\) Kennedy (1998, supra note 1, 490).

\(^7\) GATS, supra note 5. Art. 20.1.

\(^8\) GATS, supra note 5. Art. 20.2, cited by Kennedy (1998, supra note 1, 490).