

Working Party on GATS Rules

PATTERNS OF LIMITATIONS SCHEDULED UNDER MODE 2

Background Note by the Secretariat

A. INTRODUCTION

1. This Note responds to a request by the Working Party on GATS Rules at its meeting of 4 and 5 May 2000. It is intended to give an overview of the types of limitations which Members have entered in their schedules of specific commitments under mode 2. Given the Working Party's interest in illustrative examples of such limitations, an attempt has been made to identify broad patterns of exemplary cases, rather than giving an accurate account of individual entries. For the same reasons, no distinction has been made between limitations scheduled in the market access and national treatment columns.

2. The following overview seeks to capture and categorise all limitations scheduled under mode 2, although there may be doubts in individual cases about their relevance for this mode. Repetitive entries are particularly frequent; limitations may have been scheduled as applying to all four modes or, more often, to modes 1 and 2, which may reflect Members' difficulties in some cases to delimit precisely the respective scope of individual modes. The only omissions concern entries which have not been expressed in terms of limitations, but of entitlements (for instance, "soliciting is allowed"), one or two reciprocity-type clauses, as well as a few provisions of a very specific nature which proved difficult to interpret. All other entries have been treated the same way, regardless of whether they were confined to mode 2 or repeated under some or all other modes.

3. When the same limitation appears under various sectors or sub-sectors in a given schedule, it has been counted each time. Thus, the number of limitations indicated in square brackets refers to the measures and not to the Members actually maintaining them. Moreover, the figures should be considered only as rough estimates as quite a few entries are simply too vague to be categorised with certainty.

4. Finally, Members may have different legal interpretations of some of the limitations identified below (for instance in relation to GATS Articles VI or XI). However, the purpose of this Note is simply to reflect actual entries in schedules, regardless of their legal status.

B. HORIZONTAL LIMITATIONS

5. More than twenty Members have scheduled horizontal limitations under mode 2. As already noted, these limitations are not necessarily specific to mode 2, but often extend to mode 1 or even to all four modes of supply. Three main types of limitations have been found:

- (a) **Restrictions on transfers, payments or capital transactions abroad.** The implementing measures may take the form of a special authorization or a fee to be paid. Some countries have reserved the right to apply such measures across the board, others have limited it to specific types of financial operations. [9]

- (b) **Discriminatory subsidy regimes.** These limitations generally apply to the four modes of supply or have been entered only with respect to modes 1 and 2. [6]
- (c) **Discriminatory taxation of services provided from, or consumed abroad.** [4]

C. SECTORAL LIMITATIONS

6. More than sixty Members have scheduled sector-specific limitations under mode 2. The vast majority of these limitations are to be found in the area of financial services and to a significant degree in business services. In communication services, the most common limitation pertains to call-back restrictions. It is worth noting that some entries, including residence requirements, may amount in fact to a prohibition on the consumption abroad of the services concerned and, thus, be economically equivalent to scheduling "unbound".

1. **Business Services**

- (a) **Commercial presence or residence requirements.** Such limitations have been found in the sub-sectors of real estate services; placement and supply services of personnel; investigation and security services; and legal services. [10]
- (b) **Authorization and/or licensing requirement.** Relevant criteria include minimum qualification, local training or citizenship requirements. These limitations exist mainly in the areas of auditing services; scientific and technical consulting services (related to investigation and security services); R&D services on natural, social sciences and humanities; and services related to hunting. [9]
- (c) **Requirement that legal services be supplied by a natural person.** [6]
- (d) **Registration or notification requirements.** Relevant entries exist in rental/leasing services without operators (relating to aircrafts and ships), and in architectural services. [4]
- (e) **Discriminatory taxation.** Two such entries have been found for convention services. [2]
- (f) **Exclusions of services consumed abroad from insurance coverage.** Public medical insurance programmes do not cover costs of private medical services consumed abroad, including dental services and services provided by midwives and nurses. [2]

2. **Communication Services**

- (a) **Requirement to supply services only through a given network and/or operator, and under specified conditions.** Relevant limitations concern in general long-distance and international traffic and prohibitions of call-back services. [20]
- (b) **Licensing, authorization and registration requirement.** These limitations pertain to the installation and use of telecommunications equipment and networks, and the provision of telecommunication services. [3]
- (c) **Local establishment as a prerequisite for obtaining licenses or concessions.** [1]

3. Construction and Related Engineering Services

No limitations found.

4. Distribution Services

No limitations found.

5. Educational Services

- (a) **Exclusion of services supplied or consumed abroad from public support schemes.** [3]

6. Environmental Services

No limitations found.

7. Financial Services¹

- (a) **Licensing, registration and/or authorization requirements governing purchases and/or consumption of financial services abroad.** The activities subject to authorization or approval include, in particular, opening bank accounts, requesting loans, borrowing in foreign currency, purchasing "new financial products" such as derivatives, or purchasing unrefined gold. [39]
- (b) **Services consumed abroad may be subject to discriminatory taxation.** [20]
- (c) **Licensing, registration and/or authorization requirements for the foreign-based financial service provider.** The measures concerned may consist of an obligation on the foreign service supplier to be licensed or approved, be subject to regulatory supervision, or to have complied with relevant deposit requirements. [44]
- (d) **Requirement on the supplier to be locally established** (permanent residence or commercial presence). This category includes citizenship requirements or requirements that the supply of a service be undertaken jointly with established companies. [80]
- (e) **Limitations on compulsory insurance.** A number of entries provide that compulsory insurance (insurance of risks, motor vehicle third-party liability, for instance) have to be concluded with companies established in the territory of the Member and/or with authorized, exclusive or licensed suppliers. [12]
- (f) **Limitations on the quantity of services which can be supplied and/or consumed abroad.** Relevant measures may take the form of quantitative restrictions (for instance, only 25 percent of the risk can be covered by a non-resident insurer) or, more frequently, provisions that insurance can be contracted abroad only if no home country company is prepared to handle the risk in question. [27]

¹ Some entries of a prudential nature have been ignored for the purpose of this Note. However, the borderline between prudential measures and market access or national treatment limitations is not always clear and it could be argued that additional entries should have been disregarded in the present context (see in particular 7(c)).

- (g) **Restrictions on transfers, payments or capital transactions.** Three Members have scheduled limitations relating to exchange controls of various types. [3]

8. Health Related and Social Services

- (a) **Exclusions of medical treatment obtained abroad from insurance coverage.** This type of limitation may cover all types of medical services or be limited to private health services. [6]

9. Tourism and Related Travel Services

- (a) **Limitation on the amount of currency (local and foreign) that permanent residents are entitled to take abroad.** This foreign exchange restriction was entered by one Member with respect to "Hotels and restaurants, including catering". [1]
- (b) **Commercial presence requirement.** This type of limitation has been found with respect to for travel agencies and tour operators. [1]

10. Recreational, Cultural and Sporting Services

- (a) **Discretionary authorizations.** The relevant entry relates to "access to management functions in news agencies". [1]

11. Transport Services

- (a) **Requirement of commercial presence or (permanent) residence.** Such limitations have been scheduled with respect to some auxiliary services. [3]
 - (b) **Authorization or registration requirements.** Such entries have been found with respect to maintenance and repair of vessels. [2]
 - (c) **Prior notification requirements.** An entry of this type has been found for chartering of ships for "Internal waterways transport, rental with operators". [1]
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