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**1 ARTICLE XX**

**1.1 Text of Article XX**

Article XX

Schedule of Specific Commitments

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the time-frame for implementation of such commitments;
- and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.



5. In the same Report, the Appellate Body also explained that the notation "None" is "the

that temporal elements are not part of the substantive elements that can be market access limitations under Article XVI:2. <sup>10</sup>

### 1.2.2 Article XX:1(d)

9. The Panel in Mexico – Telecoms examined the term "time-frame" in Article XX:1(d) of the GATS, and found:

"A 'time-frame' is defined as 'a period of time especially with respect to some action or project'. The term does not require the setting of a precise date, but it does imply a beginning and an end of a time period. Where not expressed by beginning and end dates, a timeimnsf46 (e)0.6 (per e.213 Td [(G)-2]TJ -6.9 (c1r.6 (ex943)11.a366.9 (c1 6e24 0.51)20.3 t0( )Tj EMC



further observed that "the basic scheduling rule in Article XX:1 [...] does not determine how a Member should inscribe a limitation in such a case" but that, "[i]nstead, a special scheduling rule in Article XX:2 aims to resolve this lack of clarity".<sup>18</sup>

15. The Panel inferred from the wording of Article XX:2 that this provision "confirms the basic point that measures exist that are inconsistent with both market access and national treatment obligations", thus indicating that "the scope of Article XVI and the scope of Article XVII are not mutually exclusive". Rather, according to the Panel, "[b]oth provisions can apply to a single measure".<sup>19</sup> The Panel explained:

"As Article XX:2 makes clear, a single measure can contain or give rise to two simultaneous inconsistencies: one with respect to a market access obligation, the other with respect to a national treatment obligation. To maintain or introduce such a measure, the normal rule for inscribing commitments in Article XX:1 might suggest that a Member needs to enter an explicit limitation in both the market access and national treatment columns. In such cases however, the special rule in Article XX:2 provides a simpler requirement: a Member need only make a single inscription of the measure under the market access column, which then provides an implicit limitation under national treatment."<sup>20</sup>

16. The Panel in *China – Electronic Payment Services* discussed whether the scheduling rule in Article XX:2 of the GATS applies to an "Unbound" inscription in the market access column or whether this rule applies only when "measures" are inscribed in that column. The Panel stated:

"We see nothing in the text of Article XX:2 that would constrain the latitude of a Member to inscribe the 'measures' excluded from Article XVI:2 either individually or collectively. In our view, it would be incongruous if an inscription of 'Unbound' had an effect different from that of inscribing individually all possible measures within the six categories foreseen under Article XVI:2. To take a different interpretation would be to elevate form over substance. In our assessment, therefore, an inscription of the term 'Unbound' in the market access column should be viewed as an inscription of 'measures', specifically of all those defined in Article XVI:2, which a Member may not maintain or adopt, unless otherwise specified in its schedule. For this reason, we find that Article XX:2 does apply to situations where a Member has inscribed 'Unbound' in the market access column."<sup>21</sup>

18. The Panel clarified that its findings "imply that a measure that is inconsistent with both Articles XVI and XVII, and that is inscribed in the market access column of China's Schedule, could not be found to be in breach of China's full national treatment commitment. The relevant measure would not be subject to China's full national treatment commitment as it would be covered by the market access limitation."<sup>23</sup> The Panel made the following concluding remarks:

"In the present case, we consider that our interpretation of the meaning of 'Unbound' when inscribed in the market access column of a schedule gives full meaning to that term. By inscribing 'Unbound' under market access, China reserves the right to maintain any type of measure within the six categories falling under Article XVI:2, regardless of its inscription in the national treatment column. We observe, however, that our interpretation also gives meaning to the term 'None' in the national treatment column. Due to the inscription of 'None' in the national treatment column, a measure that is inscribed in the market access column of a schedule is not subject to the national treatment obligation under Article XVII:1(c)."

The Panel in *China – Publications and Audiovisual Products*, referring to Article XX:3 and prior Appellate Body pronouncements, stated that "[w]e recognize that GATS schedules are an integral part of the GATS<sup>26</sup>, and are thus legally part of the WTO Agreement. Consistent with Article 3.2 of the DSU, we interpret commitments in schedules according to the 'customary rules of interpretation of public international law' which include Articles 31 and 32 of the Vienna Convention."<sup>27</sup>

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China. To that extent, we see some merit in China's concerns about relying on such sources, without more. Nevertheless, we see no basis to completely disregard industry sources as potential relevant evidence of an ordinary meaning of a specific term in a particular industry. Indeed, we see no reason why a panel's search for the ordinary meaning of any term should always be confined to regular dictionaries. A panel's initial task in interpreting treaty provisions is to determine the ordinary meaning of the words used. If industry sources can be shown to assist with this task in a particular dispute, we see no reason why a panel should not refer to them. As with a panel's consideration of dictionary definitions, however, panels must be mindful of the limitations, such as self-interest, that industry sources may present and should govern their interpretative task accordingly."<sup>31</sup>

23. In EU – Energy Package, the Panel stated that like the panel in China – Electronic Payment Services, it would use industry sources and specialized publications to determine the meaning of a term appearing in a GATS Schedule. However, it cautioned that in doing so, panels should be mindful of the limitations, such (io)121-7 (s)l (l)-7 (f)JTJ 0 h

#### 1.4.4 Instruments potentially relevant for the interpretation of GATS Schedules

26. In *China – Publications and Audiovisual Products*, the Panel summarized the guidance provided by the Appellate Body on instruments that have potential value in the interpretation of GATS Schedules:

"Apart from the WTO Agreement and its constituent parts, various instruments have been recognized in previous dispute settlement cases as having potential value in assisting the interpretation of GATS schedules. These instruments include the 1991 United Nations Provisional Central Product Classification (hereafter 'CPC') and the GATT Secretariat document 'Services Sectoral Classification List' (MTN.GNS/W/120, hereafter 'W/120'), both of which deal with the classification of services. The Appellate Body has identified document W/120 and the 1993 Guidelines for the Scheduling of Specific Commitments under the GATS (hereafter the '1993 Scheduling Guidelines'), which are not binding on WTO Members, as supplementary means of interpretation within the meaning of Article 32 of the Vienna Convention. <sup>38</sup> <sup>39</sup>

##### 1.4.4.1 *China – Publications and Audiovisual Products* (WT/DS362) (Panel Report) (2010) (Appellate Body Report) (2010)



