

PACER PLUS REGIONAL WORKSHOP ON TRADE IN SERVICES

Day 2 S5. Unpacking Schedules of Commitments



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Overview

- I. General principles Interpreting Positive List Schedule
- II. Examples: non-WTO Members

I. General principles: Interpreting Positive List Schedules

I.1 Key issues: understanding positive list

- A. Interpreting committed sectors and sub sectors;
- B. Understanding modes of supply;
- C. Understanding nature and level of commitment:
 - i. Horizontal commitments;
 - ii. Sector specific commitments;
 - iii. Levels of commitment

I.2 Interpreting committed sectors & sub sectors

- Classification of sectors based on WTO Services Sectoral Classification List (W/120)
 - Prepared by WTO Secretariat in 1991 to assist negotiations
 - Classification of 12 categories of services and over 150 sub-headings
- Each sector identified by UN Central Product Classification (CPC) number
 - Breaks down sectors in progressively specific subsectors – to 5 digit level
 - Different versions: PACER Plus Schedules identify the 1991 *Provisional Central Product Classification* as basis of schedules
- CPC Prov includes explanatory notes for each sub sector
 - Useful guidance for schedules

I.2 Interpreting committed sectors & sub sectors

W/120: 12 core service sectors:

- Business services (including professional services and computer services)
- Communication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services
- Financial services (including insurance and banking)
- Health-related and social services
- Tourism and travel-related services
- Recreational, cultural and sporting services
- Transport services
- Other services not included elsewhere

W/120 Classification

SECTORS AND SUB-SECTORS

CORRESPONDING CPC

1.	BUSINESS SERVICES	Section B
A.	Professional Services	
...		
h.	Medical and dental services	9312
i.	Veterinary services	932
j.	Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k.	Other	

CPC Provisional

DIVISION 93 HEALTH AND SOCIAL SERVICES

931 Human health services

9311	93110	Hospital services	8511
9312		Medical and dental services	
	93121	General medical services	8512
	93122	Specialized medical services	8512
	93123	Dental services	8512
9319		Other human health services	
	93191	Deliveries and related services, nursing, physiotherapeutic and para-medical services	8519
	93192	Ambulance services	8519
...			
	93199	Other human health services n.e.c.	8519

CPC Provisional

9312 Medical and dental services

Services chiefly aimed at preventing, diagnosing and treating illness through consultation by individual patients without institutional nursing, except nursing provided by hospital out-patient clinics (for a part of the day).

93121 General medical services

Services consisting in the prevention, diagnosis and treatment by doctors of medicine of physical and/or mental diseases of a general nature, such as consultations, injections (limited and/or periodical), physical check-ups, etc. These services are not limited to specified or particular conditions, diseases or anatomical regions. They can be provided in general practitioners' practices, and also delivered by out-patient clinics, attached to firms, schools, etc.

93122 Specialized medical services

Diagnosis and treatment services by doctors of medicine of diseases of a specific nature, delivered in a specialists' practice or health institution (including hospital in-/out-patient clinics). These services are defined as those limited to specific or particular conditions, diseases or anatomical regions (except dental services), such as medical services for the following: ...

I.3 Understanding the modes of supply

- Identify commitments / limitations for each of the modes of supply
 - 1) from the territory of one Member into the territory of any other Member (**Cross-border trade**)
 - 2) in the territory of one Member to the service consumer of any other Member (**Consumption abroad**)
 - 3) by a service supplier of one Member, through commercial presence, in the territory of any other Member (**Commercial presence**)

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*[[*Commitments on Mode 4 not made in Services Schedules]]*

- 4) by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (**Presence of natural persons**)

I.4 Horizontal v Sectoral commitments

- Horizontal commitment applies to all committed services sectors unless otherwise specified
 - But not necessarily all Modes of supply
 - e.g. restriction on land ownership generally only apply to Mode 3
- Contained in separate section at start of schedule
- Horizontal commitments include limitations with respect to restrictions on foreign investments
- Sector specific commitments apply to trade in services in particular sector

ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS (CHAPTER 7)

SCHEDULE OF TUVALU

Modes of Supply:

(1) Cross-border supply

(2) Consumption abroad

(3) Commercial presence

Sector or Sub-sector ¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
1. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE		3) Natural persons who are not citizens of Tuvalu and enterprises that are not wholly- owned by citizens of Tuvalu are prohibited from owning land. Land may be leased for a period not exceeding 25 years. Leases have to be approved by the Lands Court and by the relevant Minister under a non-discriminatory process.	

I.5 Terminology: levels of commitment

(i) NONE = Full commitment

- No limitations on MA or NT in a sector for any mode of supply
- Any relevant limitations in horizontal section still apply

(ii) NONE EXCEPT ... = Commitment with limitations

- No limitations except where listed against NT / MA

(iii) UNBOUND EXCEPT = Broad flexibility except for specific commitment

- Only commitment as set out in Schedule – otherwise unbound

(iv) UNBOUND = No commitment

- Party free to maintain or introduce measures inconsistent with MA or NT (in a particular sector and mode of supply)

(iv) UNBOUND* = No commitment – not technically feasible

- Asterisk: footnote "Unbound due to lack of technical feasibility"

**ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS
(CHAPTER 7)
SCHEDULE OF COOK ISLANDS**

Modes of supply:

1) Cross-border supply

2) Consumption abroad

3) Commercial presence

Sector or Sub-sector¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>7. FINANCIAL SERVICES</p> <p>A. Insurance and insurance-related services</p> <p>(i) Direct insurance (including co- insurance) : (A) Life (B) non-life</p> <p>(ii) Reinsurance and retrocession;</p> <p>(iii) Insurance intermediation, such as brokerage and agency;</p> <p>(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.</p>	<p>1) Only through an established agent or broker. 2) None 3) Incorporation in the Cook Islands is required.</p> <p>1) None 2) None 3) Incorporation in the Cook Islands is required.</p> <p>1) Unbound 2) Unbound 3) None</p> <p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) None</p> <p>1) None 2) None 3) None</p> <p>1) Unbound 2) Unbound 3) None</p> <p>1) None 2) None 3) None</p>	

I.6 Additional commitments

- Parties can make commitments with respect to measures not subject to scheduling under NT or MA Articles
- Additional commitments expressed as **undertakings**, not limitations
- Include undertakings regarding qualifications, technical standards, licensing requirements or procedures, and other domestic regulations
- Most common area additional commitments is **telecommunications**
- Number of PACER Plus Parties incorporated regulatory disciplines set out in *Telecommunications Reference Paper* – developed by WTO Members during negotiations
 - E.g. Kiribati – Additional Commitment & Annexes TRP to Schedule

**ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS
(CHAPTER 7)
SCHEDULE OF KIRIBATI**

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
C. Telecommunication services			
a.Voice telephone services (CPC 7521)	1)None 2)None 3)None	1)None 2)None 3)None	Kiribati subscribes to the Reference Paper on Basic Telecommunication Services, as attached.
b.Packet-switched data transmission services (CPC 7523**)	1)None 2)None 3)None	1)None 2)None 3)None	
c.Circuit-switched data transmission services (CPC 7523**)	1)None 2)None 3)None	1)None 2)None 3)None	
d.Telex services (CPC 7523**)	1)None 2)None 3)None	1)None 2)None 3)None	
e.Telegraph services (CPC 7522)	1)None 2)None 3)None	1)None 2)None 3)None	
f.Facsimile services (CPC 7521**+7529**)	1)None 2)None 3)None	1)None 2)None 3)None	

ANNEX II TO THE SCHEDULE OF KIRIBATI: TELECOM REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services. Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

1 Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

II. Examples from Schedules

ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS (CHAPTER 7)

SCHEDULE OF NIUE

Modes of Supply:	(1) Cross-border supply	(2) Consumption abroad	(3) Commercial presence
Sector or Sub-sector ¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
1. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	3) Foreign enterprises seeking to carry on business activities in Niue require registration by Cabinet. ² Registration is granted subject to meeting an economic needs test on the basis of established criteria ³ in relevant laws and regulations. ⁴		

² For the purpose of this limitation, foreign enterprises mean enterprises in which 50 per cent or more of the voting shares or power are not held Niueans, or where 50 per cent or more of the shares are not beneficially owned or controlled by Niueans, or where the enterprise does not have its central management or control in Niue.

³ The economic needs test is based on the following criteria: impact on local employment and upgrade of local skills; economic impact, including magnitude of local value added and use of local resources, external trade, income, infrastructure demand, and secondary effects on other activities; environmental and cultural impact. For greater clarity, Cabinet approval can be conditional on compliance with aspects of the criteria mentioned above.

II.1 Examples from Schedules - horizontal

Niue – Horizontal limitation

- Foreign enterprises seeking to carry out business activities in Niue require registration by Cabinet – subject to economic needs test

Key points

- Scheduled against Mode 3 supply (commercial presence) – does not apply to cross-border trade (e.g. over email / internet)
- Many of Niue’s Mode 3 commitments in specific sectors have no limitations “3) None”
 - But – because horizontal limitation – applies to all sectors – no need to repeat / list for all
- Scheduled against MA but also discriminatory – would be NT issue?
 - But – Scheduling obligation confirms measures inconsistent with both MA and NT only need to be scheduled against MA
 - No need to schedule separately against NT

II.1 Examples from Schedules - horizontal

Niue – Horizontal limitation

- Provides space for Niue to maintain cabinet approval / ENT requirement for all service sectors
 - Will not be in breach of MA or NT
- But flexibility not unlimited – scope of limitation determines policy space
- E.g. Approval requirement applies to businesses owned or controlled (50% or more) by foreigners
 - Doesn't apply to minority interests

II.2 Examples from Schedules - Sectoral

ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS (CHAPTER 7)

SCHEDULE OF KIRIBATI

Modes of Supply:	(1) Cross-border supply	(2) Consumption abroad	(3) Commercial presence
Sector or Sub-sector ¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. Sector-Specific Commitments			
<p>1. BUSINESS SERVICES</p> <p>A. Professional Services</p> <p>a) Legal Services (CPC 861**) on foreign law and international law, excluding legal advisory and legal documentation and certification services performed by service suppliers entrusted with public functions, such as notary services.</p>	<p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) None</p>	

But ** = scope limited – not whole sector CPC 861

No limitations on any mode for NT or MA – full commitment

Limited to foreign and international law – no commitment on domestic law + no commitment on services by suppliers with public functions.

ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS (CHAPTER 7)

SCHEDULE OF TUVALU

Modes of Supply:	(1) Cross-border supply	(2) Consumption abroad	(3) Commercial presence
Sector or Sub-sector ¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. Sector-Specific Commitments			
2. COMMUNICATION SERVICES			Compare against W/120 & CPC
B. Courier Services (CPC 7512)	1) None 2) None 3) None	1) None 2) None 3) None	Commitments in subsectors B. Courier Services & D. Audiovisual
D. Audiovisual services			
a) Motion picture and videotape production and distribution services (CPC 9611)	1) None 2) None 3) None	1) None 2) None 3) None	No Commitments on subsectors A. Postal Services & C. Telecommunications

SERVICES SECTORAL CLASSIFICATION LIST

SECTORS AND SUB-SECTORS	CORRESPONDING CPC
2. <u>COMMUNICATION SERVICES</u>	
A. <u>Postal services</u>	7511
B. <u>Courier services</u>	7512
C. <u>Telecommunication services</u>	
a. Voice telephone services	7521
b. Packet-switched data transmission services	7523**
c. Circuit-switched data transmission services	7523**
h. Electronic mail	7523**
i. Voice mail	7523**
D. <u>Audiovisual services</u>	
a. Motion picture and video tape production	9611

ANNEX 7-A: SCHEDULE OF SPECIFIC SERVICES COMMITMENTS (CHAPTER 7)

SCHEDULE OF COOK ISLANDS

Modes of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence

Sector or Sub-sector ¹	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. Sector-Specific Commitments			
4. DISTRIBUTION SERVICES (excluding distribution services in relation to alcohol, tobacco, fresh fish, pearls) A. Commission agents' services (CPC 621, 61111**, 6113**, 6121**)	1) None 2) None 3) None	1) None 2) None 3) None	
C. Retailing services (CPC 632, 61112, 6113**, 6121**)	1) None 2) None 3) None	1) None 2) None 3) None	

Exclusion applies to whole sector – no commitments on distribution certain products

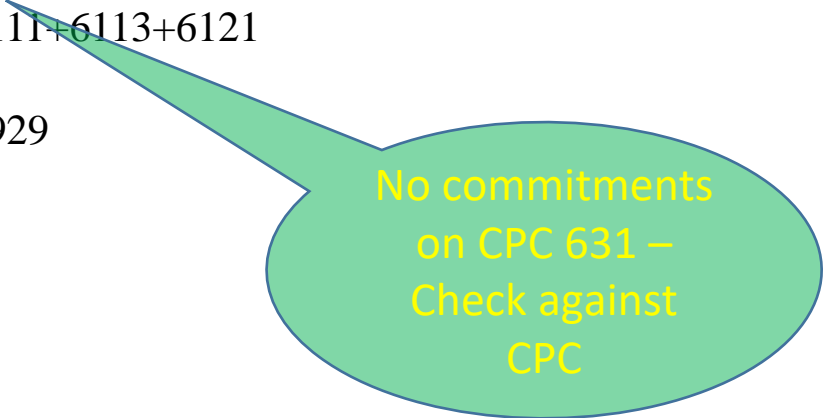
Retail – whole sector? Check against W/120

SERVICES SECTORAL CLASSIFICATION LIST

SECTORS AND SUB-SECTORS

CORRESPONDING CPC

4.	<u>DISTRIBUTION SERVICES</u>	
A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632 6111+6113+6121
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	



No commitments
on CPC 631 –
Check against
CPC

PROVISIONAL CENTRAL PRODUCT CLASSIFICATION

W/120 & CPC – reveals
no commitments on
Food retailing services
(CPC 631)

631 Food retailing services

6310 Retail sales of food, beverages and tobacco

63101 Retail sales of fruit and vegetables

63102 Retail sales of dairy products and eggs

63103 Retail sales of meat (incl. poultry) and meat products

63104 Retail sales of fish and other seafoods

63105 Retail sales of bread and flour confectionery 63106 Retail sales of sugar
confectionery

63107 Retail sales of beverages not consumed on the spot

63108 Retail sales of tobacco products

63109 Specialized retail sales of food products n.e.c.

632 Non-food retailing services

Thank you