

A paper submitted to participants by Australia in June 2012.

Australia proposes to introduce the ratchet and standstill obligations even if a GATS type positive list is used to schedule commitments

Accommodating standstill and ratchet provisions in positive listing of sectors

- For discussion -

Objective

The objective of this non-paper is to illustrate how the mechanisms of standstill and ratchet could be incorporated in a plurilateral services agreement which would use the GATS provisions relating to specific commitments (notably Articles XVI, XVII and XX).¹

Members could agree on rules and mechanics for incorporating standstill and ratchet provisions into their schedules of specific commitments, for example by means of an Understanding on Specific Commitments (inspired by the Understanding on Financial Services which incorporates a standstill provision). Members would adhere to the Understanding on Specific Commitments which would be part of the agreement. Such an Understanding could be easily integrated into the GATS at the appropriate moment.

Rules and mechanics

A standstill obligation would apply to all commitments that a Member takes in its schedule, except for negotiated exceptions. For these exceptions, the commitment in the schedule would not reflect actual liberalisation but maintain policy space. Such exceptions would be marked, for instance, with an infinity sign (∞).

The ratchet mechanism would be applied to all commitments that are subject to the standstill, except for negotiated exceptions. Such exceptions would be marked, for instance, with a triangle (Δ).

Examples

Scheduling	Meaning
Foreign equity limited to 49%	49% is the actual limit as per legislation. If the legislation was amended to become more liberal, the higher limit would be automatically bound.
Foreign equity limited to 49% ∞	Majority foreign ownership may be possible, but the country retains discretion to limit foreign equity to 49%. Legislative change would not affect such discretion.
Foreign equity limited to 49% Δ	49% is the actual limit as per legislation. If the legislation was amended, it would not be automatically bound.

¹ This illustration is without prejudice to the position of the EU with respect to the incorporation of standstill or ratchet disciplines in a possible plurilateral agreement.

Draft provisions in the Understanding on Specific Commitments

Standstill

Any conditions, limitations and qualifications to Members' specific commitments shall be limited to measures in force in the territory of the Member at the time the schedule of specific commitments enters into force ("inconsistent measures"), unless they are marked with an infinity sign (∞).

Ratchet

If a Member amends a measure inscribed in its schedule of specific commitments in a way that reduces or eliminates the inconsistency of that measure with Articles XVI (market access) and/or XVII (national treatment), such amendment shall be binding on the Member pursuant to this Agreement.

This shall not apply to measures marked with a triangle (Δ) or to measures marked with an infinity sign (∞).