

THE WTO LEGAL FRAMEWORK

Seminar on WTO Accessions Rules
4 February 2019

What is the WTO?

1994: WTO Agreement:

“common institutional framework for the conduct of trade relations among its Members in matters related to the [WTO] agreements” (Art. II:1)

“the forum for negotiations among its Members” (Art. III:2)

“[t]he WTO shall administer” the Dispute Settlement Understanding (DSU) and the Trade Policy Review Mechanism (TPRM)

1996: “special character of the WTO”:

“both a legally binding intergovernmental treaty of rights and obligations among its Members and a forum for negotiations”

(WT/L/162, para. 6)

2015: “We acknowledge the strong legal structure of this Organization”

(WT/MIN(15)/DEC, para. 30)

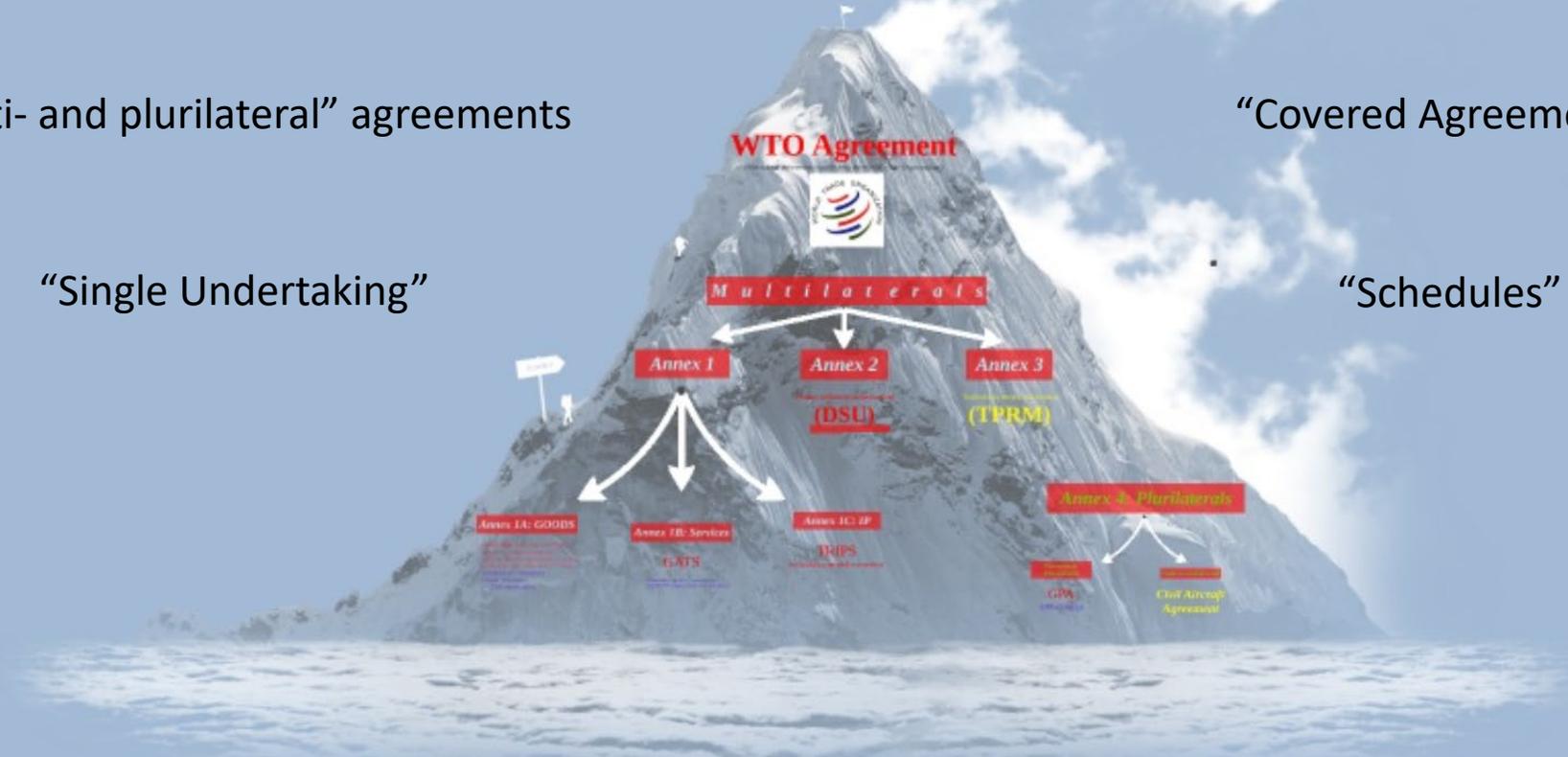
The WTO legal framework

“Multi- and plurilateral” agreements

“Covered Agreements”

“Single Undertaking”

“Schedules”



**Protocol of Accession
Russian Federation**

Goods Sched.

1051 pages

Services Sched.

68 pages

WTO Accession Protocol of the Russian Federation,
2012
Protocole d'accèsion à l'OMC de la Fédération de
Russie, 2012
Protocolo de Adhesión a la OMC de la Federación de
Rusia, 2012

**Member-specific commitments
(Schedules)**



WTO agreements

Schedules

Nature of WTO obligations

- often – but not always! – relatively straightforward concepts (MFN, NT, transparency)
- sometimes expressed in *relatively* straightforward manner:
 - “Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.” (Art. 2.1 TBT Agreement)
- but more often in very complex language:
 - “With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, * any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.” (Art. I:1 GATT 1994)
- constructive ambiguity and its implications:
 - “Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.” (Art. 2.2 TFA)
 - “Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.” (Art. 3.8 TFA)
- enforceable in WTO dispute settlement proceedings, on the basis of legal tests, evidentiary standards, burden of proof, etc.

Exemptions, exceptions and flexibilities

- Exemptions, derogations, carve-outs
- Exceptions: general and national security
 - “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
 - (a) necessary to protect public morals;
 - (b) necessary to protect human, animal or plant life or health; ...” (*Art. XX GATT*)
- RTAs
- Development flexibilities: S&D and TFA commitment categories
- Waivers (time-limited and exceptional)