

World Trade Organization Agreements: The Possible Effect on the Nigerian Maritime Industry

Part I

1. INTRODUCTION

A world of over 6 billion persons is potentially an unstable place. Imagine the claims this enormous population makes on natural resources and the consequent inability of most governments to satisfy the needs of its people at the appropriate time, at a cheap cost and in the quantity demanded. To achieve and maintain orderliness, progress and stability in such a world requires necessary adjustments and prioritization in the trade policies of each nation.

No country or economy can exist independently of others. All economies therefore, including the centrally planned ones, depend on a satisfactory functioning of the international price mechanism. Though we may not always be conscious of it, international or foreign trade is a normal phenomenon in our daily lives. Some of the delegates here today may have arrived at this conference hall in a car manufactured in Germany, powered by fuel imported from Venezuela and with electronics manufactured in Japan. My Partner's laptop computer is a Sony product manufactured in Japan but running on Microsoft software manufactured in the United States of America (U.S.) and my coffee this morning was grown and imported from Cote d' Ivoire. International commerce binds people together in a dynamic and complex web of mutually beneficial network which is powered by the political will of the different governments or ("sovereignties"). Sovereignty is used here with reference to the right of government to make laws and regulations on matters affecting their territory.

The world is not a single market but is composed of more than 160 sovereignties each of which can interfere with the flow of transactions across its borders and to that extent impair the international price system. This underscores the need for an international economic order in the sense of formal legal arrangements among governments. While the prerogative of governments ("sovereignties") to do as they please is obvious, equally obvious is the fact that they cannot achieve all they might wish or hope. The international economic order, indeed, the international price system provides

governments with a reasonable chance of attaining their objectives in an economically interdependent and potentially quite unstable world. Conversely, uncertainty which is brought about by lack of relevant information and cooperation would lead to chaos and breakdown of governments caused by failure to achieve the common good. This economic order expressed in form of policy is a system of expectations which governs the behaviour of the public and is sustained by the consistent behaviour of the policy-making authorities. It guarantees some degree of certainty and is thus indispensable not only to the prosperity of the individual economic actors or decision-makers but to the survival of the social and political systems.

The international economic order consists of two sets of intergovernmental arrangements or commitments constituting policy regimes. One governs monetary relations among countries, its main concern being with free convertibility of currencies. The other governs the trade relations among countries, its main objective being non-discrimination. The focus of this paper would be international trade policies. International trade by its very nature requires careful planning and substantial investments, which can be recouped only over long periods of time. All long-term investments are highly sensitive to uncertainty, and foreign-trade-related investments doubly so for their outcomes may be affected by policy changes in several countries. The trade part of the international economic order can thus be understood as a set of policy commitments exchanged between and among countries in order to minimize policy-generated uncertainty and so to maximize the gains from trade.

International trade system encourages specialization which leads to greater gains in productivity and efficiency. It allows countries to concentrate their resources on producing goods they make best and importing goods which are more efficiently produced elsewhere. This principle is rooted in the most widely accepted economic theory of comparative advantage posited by David Ricardo in the 17th century.

Historically, WTO commitments evolved as a series of contractual bargains entered into as a voluntary, cooperative act of sovereign governments in the aftermaths of the world economic crisis and the 2nd world war. This period was characterized by a rise in economic nationalism such that several countries raised their tariff barriers which was followed by further increase in tariff by others as retaliatory measures. The immediate result was the

declining trade, rise in unemployment, breakdown of cooperation between nations and ultimately war. In November 1947, The Economic and Social Council of the United Nations convened a meeting in Havana, Cuba attended by over 50 countries to draw up a Charter which was to regulate international trade on a new and original basis and which at the same time provided for the creation of the International Trade Organization (ITO) as a specialized agency of the United Nations. The original intention was to create a third institution handling international economic cooperation, in the manner of the “Bretton Woods” institutions (i.e. the World Bank and the International Monetary Fund). The Havana Charter was never promulgated due to the reservations of several countries on the extent of regulations contained in it which in addition to trade rules included rules on employment, commodity agreements, restrictive business practices, international investment and services. As a result several countries, led by the United States refused to ratify it and the idea of establishing the ITO never saw the light of day. At the same time that the Havana Charter was still under negotiation, a group of 23 countries assembled at the Geneva Conference of October 1947 to negotiate on the reduction and binding of customs tariffs. The outcome of the meeting was the draft General Agreement on Tariffs and Trade. GATT was signed on October 1947 and came into force on January 1, 1948. The 23 countries agreed to “provisionally” adopt some of the trade rules under the draft ITO Charter in order to protect the value of the tariff concessions they had negotiated. The combined package of trade rules and tariff concessions became known as the **General Agreement on Tariffs and Trade, 1947 (GATT)**. The 23 founding GATT members listed in Annex 1 are referred to in the WTO Agreements as “contracting parties.” Thus emerged the creation of a formal international trade system which though, provisional, remained the only multilateral instrument governing international trade from 1948 until the WTO was established in 1994.

2. GATT Trade Rounds

The legal text called GATT has since coming into force in 1948 undergone several modifications and additions in its efforts to reduce tariff and ensure free trade. The trading system developed through a series of major trade conferences and negotiations called “Trade Rounds” held under GATT. Different Rounds usually have different preoccupation which are reflected in each subsequent addition to the legal text by way of Understandings, Agreements, Decisions or Annexes. Between 1947 and 1961, the main preoccupation was the necessity for re-establishing a liberal economic regime in the aftermath of a period of international economic crisis (1929 depression) and 2nd world war as well as re-establishing the trade relations that existed in the period preceding the world crisis of 1929. The negotiations during those Rounds were dominated by tariff reductions on both imports and exports tariffs. The first round of negotiations resulted in 45,000 tariff concessions affecting \$10 billion worth of trade, about one-fifth of the world’s total¹.

In the 1962 Round, the concern was for GATT to respond and take account of the new elements that was emerging in the economic organization of the world and in particular the creation of regional economic blocs such as the European Economic Community (EEC) and the newly attained independence of several developing countries. It was thus necessary to undertake new negotiations extending beyond the confines of tariff reductions. Tariff and anti-dumping measures dominated the Kennedy Round of 1964-1967 which resulted in the Anti-Dumping Agreement under GATT. The Kennedy Round also ushered in the extension of negotiation to include non-tariff barriers and quasi-tariff barriers. This means restrictive practices other than customs tariffs employed in the form of import quotas, variable levies, exceptional customs valuation procedures, health regulations, price control, control of technology, restriction of supplies, patent agreements and the dominant role of multinational companies. The subcommittee on non-tariff barriers set up in 1964 during the Kennedy Round set up working groups composed of representatives of governments to map out an agenda on the systems of custom valuation, government policy on public contracts, administration and technical regulations hampering trade, anti-dumping policies, state trading practices and other non-tariff barriers.

¹ WTO website

As a follow-up on the work of the sub-committee set up during the Kennedy Round, non-tariff barriers took centre stage in the Tokyo Round 1973-79. The Tokyo Round of the seventies was the first major attempt to negotiate on trade barriers that do not take the form of tariffs, and to improve the system of trade negotiations. On tariff reduction the Round recorded an average of one-third cut in customs duties in the world's nine major industrial markets, bringing the average tariff on industrial products down to 4.7%.² With respect to improvement in the GATT system, negotiation moved from the "product by product" method to negotiation based on the principle of equal linear reductions of all the tariffs by a uniform percentage which had to be combined with a procedure for the "harmonization" of tariffs (i.e. the higher the tariff, the larger the cut, proportionally).

Prior to the Dillon Round of 1960/62, the traditional method of negotiation was conducted product by product. Under this method, each contracting party negotiated for each concession with the country that was its principal supplier of the product in question. The concession thus granted by a contracting party was automatically extended to all the other parties under the most-favoured-nation (MFN) principle. This method was found to result in tariff disequilibrium in the tariff structures of the contracting parties. For countries whose tariffs were already lower than those of other contracting parties, it was difficult for them to effect tariff reduction beyond a certain point and the effect was that a particular rate of tariff reduction had a different effect depending on whether it was applied to a high tariff or a low tariff.

The then EEC proposed the reduction of tariff based on a linear method which involved the harmonization of national tariff with the common external tariff. This method was rejected by other members who stuck to negotiation product by product. In 1960/62 during the Dillon Round, a compromise solution was put forward and put to test. It involved a combination of the two methods i.e. negotiation partly based on product by product and partly by the linear method. The disequilibrium between the tariff structures of different countries remained and at the end of the Round it was proved to be unsatisfactory. It was therefore decided that new negotiation should be based on the principle of equal linear reductions of all the tariffs by a uniform percentage which had to be combined with a

² WTO website

procedure for the harmonization of tariffs. The new system was to ensure reciprocity and reduce the problem of disparity between tariff systems. Some of the new issues negotiated in this Round such as safeguards, emergency import measures and technical barriers to trade were accepted by very few participating countries and remained as Tokyo “codes”. The GATT system is based on consensus by all the contracting parties and agreements not accepted by all the contracting parties they are called codes. It becomes multilateral where full consensus is achieved. Plurilateral arrangements under GATT are those that some members voluntarily decide to commit themselves to and are binding only on such members. Plurilateral Trade Agreement does not create obligations or rights for members that have not accepted them.

The next and final Round was the Uruguay Round of 1986-94 which is the latest Round and happened to be the longest and the most extensive of all the Rounds. It took seven and a half years and is jokingly referred to as the Round to end all Rounds. This was the largest and most encompassing trade negotiation in history with over 123 countries participating in the talks and led to the establishment of the WTO and a new set of agreements.

Name	Year	No of Countries
Geneva	1947	23
Annecey	1949	13
Geneva	1956	26
Dillon Round	1960-61	26
Kennedy Round	1964-67	62
Tokyo Round	1973-79	102
Uruguay Round	1986-94	123

Table 1: GATT Trade Rounds.

3. Establishment of the World Trade Organization (WTO) - The Uruguay Round

The WTO came into existence in 1995 as a successor to GATT and is the result of the Uruguay Round. GATT’s success in reducing tariffs to such a low level, combined with a series of economic recession in the 1970s and

early 1980s, high rates of unemployment and constant factory closures prompted governments to devise other forms of protection for sectors facing increased foreign competition. Governments of Western Europe and North America resorted to bilateral market-sharing arrangements with competitors and embarked on a subsidy race to maintain their holds on agricultural trade. The result was a serious damage to the credibility and effectiveness of GATT in ensuring fair and free trade.

The world economic order and trade policy environment is dynamic and by the early 1980s new issues came into play which was not covered by GATT. This included the ushering in of the era of globalization of world economy, expansion of trade in services and the acute disequilibrium in the agricultural sector caused by the resistance to liberalize trade in agriculture. Even GATT's institutional structure and its dispute settlement system were giving cause for concern. It was obvious that GATT which was introduced in the 1940s were no longer suitable or relevant to the changing and far more complex trade environment. These and other factors convinced GATT members that a new effort to reinforce and extend the multilateral system should be attempted. That realization resulted in the Uruguay Round, the Marrakesh Declaration, and the creation of the WTO.

The seeds of the Uruguay Round were sown in November 1982 at a ministerial meeting of GATT members in Geneva. The negotiation commenced in September 1986, in Punta del Este, Uruguay with an agenda which covered virtually every outstanding trade policy issue. The talks intended to extend the trading system into several new areas, such as trade in services and intellectual property, and to reform trade in the sensitive sectors of agriculture and textiles. Negotiation in the Uruguay Round reviewed the existing GATT articles, GATT system, introduced institutional reforms and amended the Tokyo Codes which then became multilateral commitments accepted by all WTO members. The Round is particularly noted for negotiations which covered new trade topics such as natural resource products, textiles and clothing, agriculture, tropical products, anti-dumping, subsidies, intellectual property, investment measures, dispute settlement and trade in services. The participation of about 123 “member” countries in the Uruguay Round as opposed to the original 23 “contracting parties” in Geneva Round demonstrated that the multilateral trading system was recognized and accepted as an anchor for development and instrument of economic and trade reform.

The 10 ministerial meetings spanning about 8 years and collectively known as the Uruguay Round recorded progressive successes. The Uruguay negotiation of 1986 did record some early successes. Within only two years, participants had agreed on a package of cuts in import duties on tropical products – which are mainly exported by developing countries. They had also revised the rules for settling disputes, with some measures implemented on the spot. And they called for regular reports on GATT members' trade policies, a move considered important for making trade regimes transparent around the world. The next talk was in 1988 in Montreal, Canada where a package of concessions on market access for tropical products – aimed at assisting developing countries was agreed on. A streamlined dispute settlement system, and the Trade Policy Review Mechanism, which provided for the first comprehensive, systematic and regular reviews of national trade policies and practices of GATT members was achieved in the Montreal meeting. The third meeting was in Geneva in 1989 to agree on the agenda for the next two years which the ministers failed to agree at the Montreal meeting. Next came the Council of Minister's meeting in Brussels, Belgium in 1990 but there was no consensus on the envisaged reform of trade in agriculture and a decision was taken to extend the talks. The Geneva meeting of 1991 witnessed the presentation of the first draft of the final legal text called the "Final Act". This draft became the working documents for subsequent negotiations (Washington - 1992; Tokyo – 1993 and Geneva - 1993) and also the basis for the final agreement.

The resolution of differences between the largest trading partners i.e. the US and the European Union (EU) on agriculture became central in the meetings. This impasse was resolved in 1992 and by 1993, the US, EU, Japan and Canada announced significant progress in negotiations on tariffs and market access. By December 1993 an extensive package was agreed upon, participating countries' lists of commitments for cutting import duties was obtained and negotiations on market access for goods and services were concluded. Consensus was finally achieved and the Ministers who were representatives of the 123 participating governments signed the **Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations** (composed of the Agreement Establishing the World Trade Organization known as the "WTO Agreement"; the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services) on April 15, 1994, at a meeting in Marrakesh, Morocco. Section 2 of the Final Act states that representatives agreed "on the desirability of acceptance of the WTO Agreement by all participants in the Uruguay Round

of Multilateral Trade Negotiations with a view to its entry into force by 1 January 1995, or as early as possible thereafter”. In January 1995, **The Marrakesh Agreement Establishing the World Trade Organization** entered into force.

WTO was created in 1994 and is to a large extent an extension of GATT having been developed from GATT albeit with extensive amendment and more comprehensive agreements on trade and services which are referred to as GATT 1994. While GATT 1994 is legally distinct from GATT 1947, it should be noted that GATT 1947 was never repealed, it is in point of fact incorporated under GATT 1994, some in their original form while some of the Agreement has been amended. The Multilateral Trade Agreements (**The WTO Agreements**) adopted in Marrakesh which form the integral of the Agreement and are binding on all the Members are the³

- 1) General Agreement on Tariffs and Trade referred to as “GATT 1994” Annex 1A;
- 2) General Agreement on Trade in Services referred to as “GATS”, Annex 1B;
- 3) Agreement on Trade Related-Aspects of Intellectual Property Rights referred to as “TRIPS”, Annex 1C;
- 4) Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2; and
- 5) Trade Policy Review Mechanism, Annex 3.

The opening section of GATT 1994 expressly states that “the provisions of the General Agreement on Tariffs and Trade dated 30 October 1947, annexed to the Final Act ... as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement”⁴, the provisions of the legal instruments that entered into force under GATT 1947 and the new Agreements and Understandings negotiated under the Uruguay Round together constitute the WTO Agreements. This explains the several references to GATT 1947 in the

³ Marrakesh Agreement Establishing the World Trade Organization, Article II, Section 2.

⁴ General Agreement on Tariffs and Trade 1994, Section 1.

WTO Agreements. It follows that a proper understanding of GATT 1947 is a prerequisite to the understanding of WTO Agreements particularly the Agreements on Tariffs and Trade.

3.1. WTO – The Organization

Unlike GATT which evolved as an informal *ad hoc* institution for the provision of secretarial support for the discussions and negotiations related to the Agreements which by themselves contained no provision for the creation of an organization, Articles I, II and III of the Marrakesh Agreement expressly established the World Trade Organization ‘WTO’ as an international organization with specific functions, institutional structure, status and decision making structures. Article VIII, Section 1 of the same Agreement, confers the WTO with a legal personality and it is to be accorded by Members such legal capacity as may be necessary for the exercise of its functions.

The Organization provides the common institutional framework for the negotiation and conduct of trade relations among its Members. Under Article III, the functions of the WTO shall be:

- i. the facilitation of the implementation, administration and operation of the Multilateral Trade Agreements;
- ii. the provision of the framework for the implementation of the Plurilateral Agreements;
- iii. provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the Agreements;
- iv. administer the Understanding on Rules and Procedures Governing the Settlement of Disputes;
- v. administer the Trade Policy Review Mechanism;
- vi. monitoring national trade policies;
- vii. provide technical assistance and training for developing countries; and

- viii. to cooperate as appropriate with the IMF and the World Bank with a view to achieving greater coherence in global economic policy making.

Another major difference between the WTO and GATT 1947 is that GATT concentrated only on trade in goods which was the dominant feature of international commerce. Now the world has gradually evolved into a global village with greater appreciation of trade in services such as transportation, financial services, insurance, consultancy, telecommunications and trade in intellectual property. The WTO Agreement for the first time in history negotiated and incorporated agreements related to trade in services and intellectual property by way of General Agreement on Trade in Services “GATS” and Agreement on Trade-Related Aspects of Intellectual Property Rights “TRIPS”.

As earlier stated GATT 1947 lives on in the form of GATT 1994. The main principles of GATT which include non-discrimination, transparency and predictability run through the entire WTO Agreements. On the decision making procedure, Article IX of the Marrakesh Agreement expressly states that “the WTO shall continue the practice of decision-making by consensus followed under GATT 1947”. Consensus under the WTO requires that all Members present at the meeting where a decision is to be taken accept the decision on the matter submitted to the Organization for consideration.

As at January 1 2002, WTO had about 144 Members, 30 observer countries and 7 observers to the General Council and the Organization regulates over 80% of the world trade⁵. China has recently joined the long list of membership. The Russian Federation, Saudi Arabia, Ukraine, Vietnam and Yemen have commenced negotiation for accession to the WTO.⁶ (see Annex 2 on current list of WTO members and observers). The 23 contracting parties under GATT 1947 became the original Members of the WTO and about three quarters of the Membership are developing countries. Nigeria was a participant at Marrakesh and became a Member on January 1 1995.

3.2. Structure of the World Trade Organization

⁵ WTO website

⁶ Mike Moore, Director General WTO, WTO Policy Issues for Parliamentarians: A Guide to Current Trade Issues For Legislators, World Trade Organization 2001, P2.

The WTO is an organization made up governments of Member countries and is run by its member governments. The key difference between the WTO and other international organizations such as the World Bank and International Monetary Fund, is that power is not vested in a board of directors but in governments of Member States. All major decisions are made by the membership as a whole, either by Ministers who are representatives of governments or by officials representing governments of Member countries. The Ministers meet every two years while the officials meet regularly in Geneva. Decisions are normally taken by consensus.

The bureaucracy or secretariat therefore has no influence over individual countries' policies. WTO rules impose obligations on countries to observe commitments which are the result of negotiations among WTO members and to reflect these obligations in their trade policies. The rules are enforced by the members themselves under agreed procedures that they negotiated. Sometimes enforcement includes the threat of trade sanctions. The sanctions are however, imposed by member countries as represented in the Dispute Settlement body, not by the organization. This again differentiates the WTO from The World Bank and the IMF who characteristically withhold credit from a country as a punitive measure.

Decision-making by consensus in an organization with 144 members cannot by any stretch be an easy matter. Its main advantage is that decisions made this way are more acceptable to all members. Though onerous the several agreements in the several multilateral agreements demonstrates the successes in this regard and the WTO remains a member-driven, consensus-based organization as shown in the chart below.

3.2.1. The Ministerial Conference

The Ministerial Conference is the highest decision making authority in the WTO. It is made up of the representatives of government of Member States and is required to meet every two years. The first meeting of Ministers after the establishment of the WTO in 1994, was in Singapore in December 1996, the second meeting took place in Switzerland in 1998, third in Seattle in 1999 while the fourth meeting was in 2001 at Doha. The Ministerial Conference is empowered “to take decisions on all matters under any of the multilateral trade agreements”⁷. Several Ministerial Decisions taken during

⁷ Article IV, Section 1, Marrakesh Agreement.

the Uruguay Round form an integral part of the WTO Agreements. The next Ministerial Conference is scheduled for 2003 in Mexico.

3.2.2. General Council in Three Different Bodies

Work and functions of the WTO has to be carried out in-between the biennial meeting of the Ministerial Conference. The General Council which again is composed of representatives of all Member States performs the functions of the Ministerial Conference in that interval as well as its own specific duties under the Agreement. It is next in the line of authority and reports to the Ministerial Conference. The General Council convenes within itself as appropriate (1) the Dispute Settlement Body as provided for in the Dispute Settlement Understanding and (2) the Trade Policy Review Body as provided for under the Trade Policy Review Mechanism. Thus the responsibility of the Dispute Settlement Body and the Trade Policy Review Body is vested in the General Council. It meets as the Dispute Settlement Body and the Trade Policy Review Body to oversee procedures for settling disputes between members and to analyze members' trade policies.

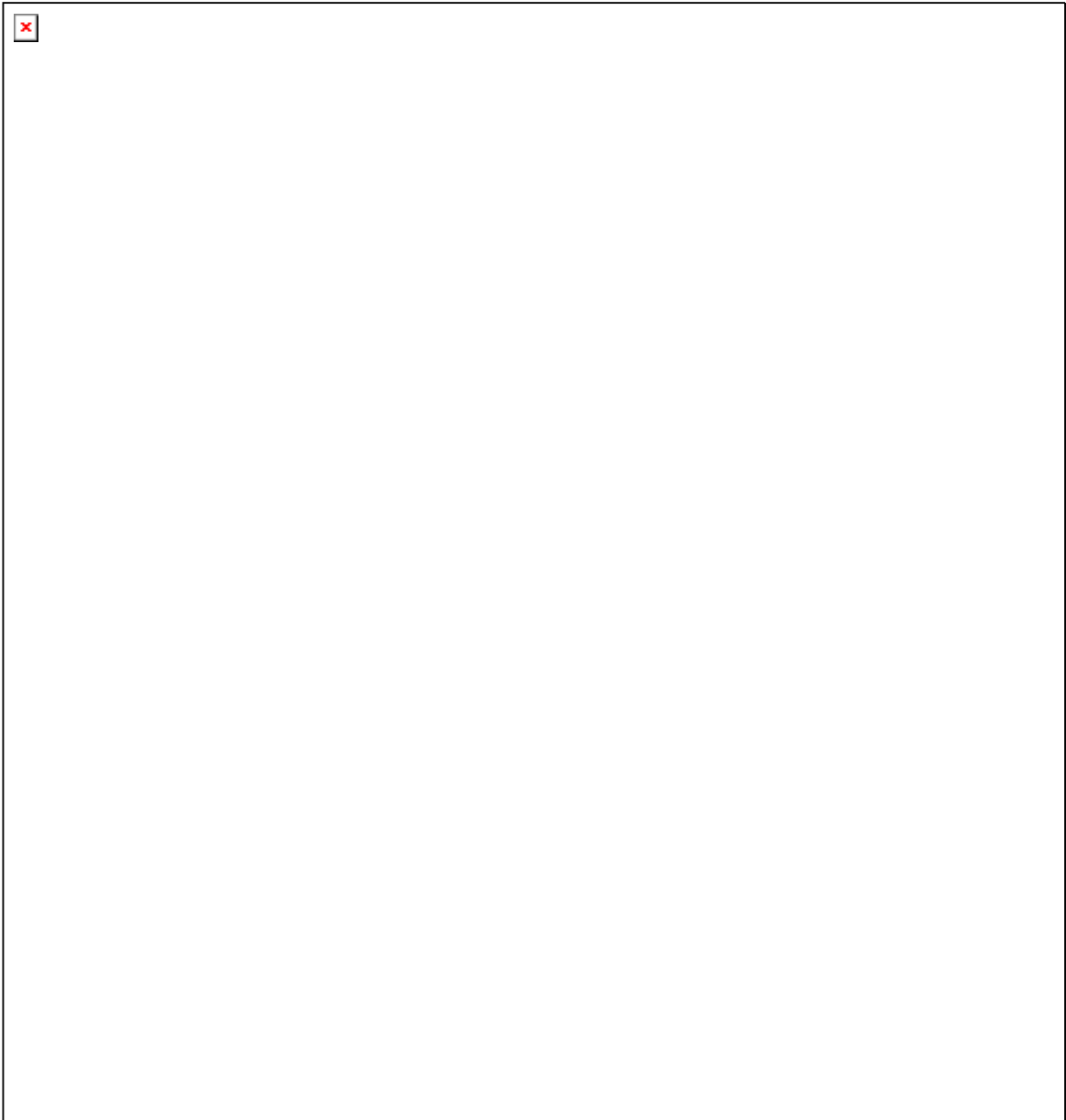


Table 2: The Organogram of the WTO⁸

3.2.3. Councils for Trade, Services and TRIPS

The Marrakesh Agreement also established the Council for Trade in Goods (Goods Council), the Council for Trade in Services (Services Council) and the Council for Trade-Related Aspects of Intellectual Property (TRIPS

⁸ WTO website.

Council) who report to the General Council. Each Council oversees the functioning of the WTO agreements dealing with their respective areas of trade and is composed of representatives of all the Member States. They are expected to set up their rules of procedure subject to the approval of the General Council and to establish subsidiary bodies to assist in the performance of their functions.

3.2.4. Committees

About five Committees made up of all WTO members also report to the General Council. They cover issues such as trade and development, the environment, regional trading arrangements, and administrative issues. The Singapore Ministerial Conference in December 1996 decided to create new Working Groups to look at investment and competition policy, transparency in government procurement and trade facilitation. A new **Trade Negotiations Committee** which consists of all WTO Members operating under the authority of the General Council was set up by the Doha Declaration in the Doha Ministerial Council 2001. It is like the Councils empowered to create subsidiary negotiating bodies to handle individual negotiating subjects.

3.2.5. Subsidiary Bodies

Each of the higher level Councils has subsidiary bodies in the form of small committees or negotiating groups. The **Goods Council** has 11 committees dealing with specific subjects such as agriculture, market access, subsidies, anti-dumping measures and textile. Again, these consist of all member countries. Notifications from governments of member States informing the WTO about current and new policies or measures are filed with these bodies. **The Service Council** has committees/groups dealing with financial services, basic telecommunications and maritime transport services etc. Other subsidiary bodies deal with professional consultancy services, GATS rules and specific commitments.

At the General Council level, the Dispute Settlement Body also has two subsidiaries: the dispute settlement “panels” of experts appointed to adjudicate on unresolved disputes, and the Appellate Body that deals with appeals.

3.2.6. Heads of Delegations

Informal consultations within the WTO play a significant and vital role in bringing a vastly diverse membership round to an agreement to achieve the required consensus. Much of this work is carried on by the Heads of Delegation composed of all the Member States in their regular and informal meetings before the consensus is ratified by the higher Councils in their formal meetings. It is customary for several contentious issues to be ironed out in smaller groups. Occasionally a deadlock can only be broken in a small group of two, three or four countries at meetings they have organized themselves in their own countries. In a market access negotiation, where the final outcome is a multilateral package of individual countries' commitments, those commitments are the result of numerous bilateral, informal bargaining sessions such as the recently concluded talks on basic telecommunications in services and on information technology products.

Heads of delegations provide the forums for exchanging views, putting countries' positions on the record, and ultimately for confirming decisions. The art of achieving agreement among all WTO members is to strike an appropriate balance, so that a break-through achieved among only a few countries can be acceptable to the rest of the membership.

4. The General Agreement on Trade in Services - GATS

The focus of this paper as you would recall is the possible effects of WTO Agreement on the Nigerian Maritime Industry. We would proceed by first defining the shipping industry and delineating the scope of the industry to be discussed. A very general definition of the shipping industry would include custom valuation, pre-shipment inspection or destination inspection, port services and the actual carriage of goods and passengers. Under the WTO, issues like agreements on customs valuation and pre-shipment come under the General Agreement on Tariffs and Trade because it is focused on tariffs. The other areas of shipping concerned with service delivery is negotiated under the Maritime Transport as a Trade topic and comes under the General Agreement on Trade in Services introduced in 1994 (GATS). This section would provide some basic explanation of GATS. GATS has two broad categories or disciplines: (1) the General Commitments or Agreements relating to all service sectors such the MFN obligation, national treatment, safeguard measures and subsidy and are included in the main text of the Agreements and (2) the Sector Specific or Sectoral Commitments relating to specific service sectors e.g. basic telecoms, financial services and maritime transport services which also form an integral part of the GATS.

Services represent the fastest growing sector of the global economy and accounts for 60% of global output, 30% of global employment and nearly 20% of global trade. Exports of commercial services by all countries rose by 1.5% in 1999 to reach \$1,350billion annually. Even in Africa commercial services export expanded by 8.5% in 1999.⁹

As explained in the previous sections, WTO Agreements are documents negotiated and signed by governments of Member States who together constitute the bulk of the world's trading nations. The three major Agreements under the WTO *viz*: General Agreement on Tariffs and Trade (GATT); General Agreement on Trade in Services (GATS); and Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) together provide rules for regulating commerce and are essentially contracts binding governments to keep their trade policies. GATS negotiated under the Uruguay Round is the first set of multilateral, legally enforceable rules governing international trade in services and contain the general obligations

⁹ Mike Moore, Director General WTO, WTO Policy Issues For Parliamentarians: A Guide to Current Trade Issues For Legislators, World Trade Organization 2001, pp. 27 and 28.

that all members have to apply. Article 1, Part 1 of the General Agreement on Trade in Services defines trade in services as the supply of a service:

- i. from the territory of one member into the territory of any other Member e.g. international telephone services also known as “cross-border supply”;
- ii. in the territory of one Member to the service consumer of any other member e.g. tourism where persons or firms make use of service in another country also known as “consumption abroad”;
- iii. by a service supplier of one Member, through commercial presence in the territory of any other e.g. a foreign company setting up branches or subsidiaries in another country also known as “commercial presence”; and
- iv. by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member e.g. consultants traveling to another country to provide service also known as “presence of natural persons”.

The General Agreement on Services cover all services in any sector with the lone exception of services supplied in the exercise of governmental authority which is not supplied on a commercial basis. The WTO Council for Trade in Services oversees the operation of the agreement. Negotiations on commitments in four Services topics have taken place to date. At the end of the Uruguay Round Members agreed to continue negotiations in four topics including basic telecommunications (negotiation completed in 1997), movement of natural persons (negotiation completed in 1995) maritime transport (negotiation suspended) and financial services (negotiation completed in 1997). A full new services round started, as required by GATS in February 2000¹⁰.

International trade is important and politically sensitive, as such countries need to be guided by common principles, a sort of code of conduct and a series of well defined procedures. Thus these complex and lengthy agreements are in practice implemented through some fundamental principles which are the foundation of the multilateral trading system. The

¹⁰ Art XIX, Part IV, Section 1 GATS

three fundamental principles for WTO Agreements are Non-discrimination, Freer Trade gradually through Negotiation; and Predictability through Binding commitments. These principles run through all three Agreements although the principles are applied slightly differently in each Agreement.

4.1. Fundamental Principles of WTO Agreements - GATS

4.1.1. Non-discrimination Between Members

The principle of Trade without Discrimination simply means that no country should discriminate between its trading partners and it is implemented through the **Most-Favoured-Nation (MFN)** and **National Treatment** principle (Arts II and XVII of GATS). MFN implies that each time a country lifts a trade barrier or opens a market for a particular country, it is obliged to do the same for all its trading partners without discrimination with respect to the goods or services in question. This means that when a Member undertakes a national treatment or market access commitment in a sector it must accord the stated minimum standard of treatment specified in its schedule to all other Members. Thus all fellow WTO members are equal and are all equally granted the MFN status.

Like GATT i.e. Agreement on Tariffs and Trade, GATS operates on three levels: the general principles and obligations; rules for specific sectors; and individual countries' specific commitments to provide access to their markets. A major difference however exists between GATT and GATS. GATS provides for a fourth item which form an integral part of the Agreement and that is the lists indicating countries which are temporarily not applying the MFN principle of non-discrimination. These are called **MFN Exemptions**.

4.1.1(a) **MFN Exemptions**

In addition to the Schedule of Specific Commitments, the WTO under section 2, Art II GATS provides that “a Member may maintain measures which are inconsistent” with the MFN obligation by way of a separate list of exceptions to the MFN principle of non-discrimination. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups notably Europe and the United States. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular services activities by listing “MFN exemptions” alongside their first sets of commitments. This right is open to every member of the WTO and depositing an MFN list means a member may accord treatment in that sector more favourable to its trading partner than the minimum standard applicable to other members. MFN Exemption List is required to provide the following information for each exemption:

- i. description of the sector or sectors in which the exemption applies;
- ii. description of the measure, indicating why it is inconsistent with Article II;
- iii. the country or countries to which the measure applies;
- iv. the intended duration of the exemption;
- v. the conditions creating the need for the exemption.

The list of exemptions were required to be submitted by the end of the Uruguay Round of Multilateral Trade Negotiations or by the conclusion of extended negotiations on certain sectors for which the delayed submission of related exceptions was expressly authorized. Members who do not fall under this group may still submit their MFN exemption list with approval of the Ministerial Conference under the waiver provision of the Article IX of the Marrakesh Agreement. From the WTO document available to me there is no indication that Nigeria has filed a list of Exemptions. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. The MFN exemptions are reviewable after five

years with a life span of not no more than 10 years. The exemption lists form an integral part of GATS.

Sector	Description of measure	Countries to which the measure applies	Intended duration	Condition creating the need for exemption
Banking	Favourable treatment in respect of licences for entry and expansion in the form of branches will be granted to banks incorporated outside the countries on the basis of reciprocity	All countries	The reciprocity requirement will remain in place until similar measures maintained by other countries in this sector are removed	To enable favourable treatment to be accorded to another Member which is based on the treatment or access accorded by that Member to this country

Table 3: Model of a Country's List of MFN Exemptions.¹¹

4.1.1(b) National Treatment

National Treatment means that foreigners and local businesses should be treated equally. In the context of the Nigerian shipping industry, it means that once a foreign shipping company has been allowed to supply a maritime service in Nigeria, there should be no discrimination between the foreign and local shipping companies. GATS as in MFN Exemptions allow Member countries to derogate from the National Treatment obligation by allowing Members to set out “any conditions and qualifications”¹² in the sectors described in its Schedule. This obligation is triggered only when a country has made a specific commitment to grant foreigners access to its services market. The **Schedule of Specific Commitments** filed by member countries lists the protective measures a country wishes to maintain and

¹¹ B. L. Das, *An Introduction to the WTO Agreements*, 1998. pp. 112.

¹² GATS, Art XVII, Section 1.

allows it to derogate from the National treatment obligation. A country does not have to apply national treatment in sectors where it has made no commitment. Even in the commitments, GATS does allow some limits on national treatment. Member countries are permitted to make laws regulating access to a particular market in their individual countries but are expected to give the foreign company who is qualified and has been granted access to its market the same treatment it accords the local companies.

4.1.2. Freer Trade Gradually Through Negotiation

WTO Agreement operates on the principle of consultation and compromise. GATS has inbuilt mechanisms for consultations between contracting parties on potential commercial problems and for dispute settlement in a mutually satisfactory manner thus avoiding trade wars. Each member is required to “accord sympathetic consideration to, and afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement.”¹³

The Dispute Settlement Understanding provides the guidelines for such negotiation. Apart from the routine consultation, the WTO system encourages the removal of barriers to trade through “rounds of negotiation” in which participating countries give better access to their markets in return for better access to the markets of other Member countries. Multilateral negotiations in all the services had commenced in 2000 as specified in Article XIX with the aim of promoting the interest of all participants and achieving a progressively higher level of liberalization.

4.1.3. Predictability Through Binding Commitments

The WTO Agreement aims to promote stability and predictability in international trade through legally binding rules. The Schedules of Specific Commitment deposited by each member set clear ceilings on the levels of protection a government wishes to grant its domestic goods and services. These Schedules are binding just like tariffs. The system allows the stakeholders in international commerce to have full knowledge of the terms of access and enable them to make investment plans knowing that the markets which are open will remain open. WTO principles make it more

¹³ Art XXII, Section 1, Part V, GATS

difficult to introduce new trade terms. Concession granted within the framework of WTO negotiation is difficult to retract than that obtained during a bilateral agreement. Contracting parties can no longer impose a unilateral tariff measures or withdraw concessions granted without a commensurate compensation for the countries affected. A ready example is the current unilateral increase of tariff on imports of steel by the US. This triggered a series of negotiations between the US and the affected trading partners - Europe and Japan. Having failed to reach a compromise solution, the EU has threatened to impose retaliatory high tariffs on a number of US products including clothing and steel products.

4.1.4. Transparency

Related to certainty and predictability is the requirement of transparency in the trade policies of Member States. Each Member is obliged to publish promptly all relevant measures of general application which pertain to or affect the operation of the WTO Agreements. According Article III, “each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement”. This for instance requires Nigeria to inform the Council of its application or suspension of the UNCTAD 40-40-20 Code for Liner Conferences. The obligation is only as it relates to services where a commitment has been entered.

5. Members’ Specific Commitments

Individual country’s commitments to open markets in specific sectors and how open those markets will be are the outcome of negotiations. The commitments appear in “schedules” that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (e.g. whether some rights granted to local companies will not be granted to foreign companies). The WTO Agreement allows Members to attach “terms, limitations and conditions”¹⁴ to the market access granted but with a requirement that the limitations and conditions be specified in the Schedules. It is under the Schedule of Specific Commitments that Member

¹⁴ Art XVI, Section 1, Part III, GATS.

countries are required to list the “measures inconsistent with both Articles XVI and XVII”¹⁵ i.e. market access and the national treatment principle.

Each country submits a list of specific commitments on service sectors and on activities within those sectors. The commitments guarantee access to the country’s market in the listed sectors, and they spell out any limitations on market access and national treatment. As an example, if a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment. If the government limits the number of licences it will issue, then that is a market access limitation. If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, that is an exception to the national treatment principle. The lists of market access commitments (along with any limitations and exemptions from national treatment) are negotiated as multilateral packages, although bilateral bargaining sessions are needed to develop the packages. The commitments therefore contain the negotiated and guaranteed conditions for conducting international trade in services. Art XVI retains the general prohibition on the use of quotas as a protective measure by member countries. These commitments are “bound” like bound tariffs; they can only be modified or withdrawn after negotiations with affected countries which would probably lead to compensation. This is exemplified by the ongoing protest and negotiation between the United States, on the one hand, and United Kingdom and Japan on the other, with respect to the increased tariff on steel imports.

With respect to service sectors, where commitments are undertaken, WTO provides that each Schedule shall specify¹⁶:

- i. terms, limitations and conditions on market access;
- ii. conditions and modifications on national treatment;
- iii. undertakings relating to additional commitments;
- iv. where appropriate the time frame for implementation of such commitments; and

¹⁵ Article XX, Section 2, Part III, GATS.

¹⁶ Article XX, Section 1, Part III, GATS

- v. the date of entry into force of such commitments.

Even though the commitments are binding in nature, governments are free to “modify or withdraw any commitment in its schedule” see Art XXI GATS. In order not to defeat the certainty and predictability in international commerce such withdrawal or modification may be effected only after three years from the date it came into force. The modification or withdrawal has to be notified to the Council for Trade in Services at least three months before the intended date of implementation and the modifying Member is required to negotiate (at the instance of the affected Member) the terms of the modification with the other Members who may be adversely affected by the modifications.

Sector	Limitation on market access	Limitation on national treatment	Additional commitment
Engineering service	1. unbound, ¹⁷ 2. unbound, 3. only through incorporation with a foreign equity ceiling of 51%, 4, unbound except as indicated in the horizontal section	1. unbound, 2. unbound, 3. none, 4 unbound except as in the horizontal section	

Table 4: Model of a Country’s Schedule of Commitments¹⁸.

6. Dispute Settlement Process

Without a means of settling disputes, the rules-based system would be worthless because there would be no mechanism for monitoring and enforcing compliance. The system is based on clearly-defined rules under the Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2, WTO. The purpose of the dispute settlement system is “... to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in

¹⁷ Explanations for the terms are provided in the section on Nigeria’s commitments.

¹⁸ B. L. Das, An Introduction to the WTO Agreements, 1998. pp. 110.

accordance with customary rules of interpretation of public international law.”¹⁹ Dispute typically arises when Members believe that one or more Member countries have broken their WTO commitments and that this has negatively affected the trade of their national industries. The WTO members have agreed to use the multilateral system of settling disputes instead of taking action unilaterally when fellow members violate trade rules. That means abiding by the agreed procedures, and respecting the recommendations and rulings of the panels.

The priority of the dispute settlement system is to settle disputes through consultations if possible and not to make rulings. During the period of 1995-99, 77 disputes were resolved and 41 out of the lot were solved without going through the full panel process.²⁰ Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible. This system enables the WTO to maintain the delicate balance of international rights and obligations.

The Uruguay Round agreement introduced a more structured process with more clearly defined stages in the procedure and specific though flexible timelines for settlement of disputes. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. Upon the notification of a dispute to the WTO Dispute Settlement Body (DSB), the first stage is for the DSB to encourage settlement by consultations between the parties. Where this fails, members of the DSB refer the dispute to a panel of experts whose function is to assist the DSB in discharging its responsibilities. Members of the Panel are appointed by agreement between the parties who during the assignment serve in their individual capacity and not as representatives of government or any organization. The qualification and process of selection can be found in Article 8 of the Understanding on Settlement of Disputes. The rules provide that the Panel’s recommendations or rulings be automatically adopted unless there is a consensus against adoption by all WTO members who are all represented in the Dispute

¹⁹ Section 2, Art 3, Annex 2, WTO.

²⁰ Moore, m. WTO Policy Issues for Parliamentarians, A Guide to Current Trade Issues for Legislators. WTO, 2001, pp. 6.

Settlement Body.²¹ The approximate timetable for the settlement of dispute from notification to the end can be found in Annex 3.

6.1. Appeals

The WTO Agreements makes provision for appeals against a panel's ruling by both or either party to a dispute. Appeals have to be based on points of law such as legal interpretation and the Appellate body cannot re-examine existing evidence or examine new evidence. Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have a renewable four-year term and must be "persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally."²² The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The Dispute Settlement Body has to accept or reject the appeals report within 30 days and again, rejection is only possible by consensus.

The long term aim of the Dispute Settlement process is the complete restoration of full compliance with WTO rules. Parties most of the times accept and implement WTO rulings. First, the party found to have contravened a rule is given the opportunity to bring its policy in line with the recommendation or ruling. The dispute settlement agreement stresses that prompt compliance with recommendations or rulings of the DSB (Dispute Settlement Body) is essential in order to ensure effective resolution of disputes to the benefit of all Members. If immediate compliance with the recommendation proves impractical, the member will be given a "reasonable period of time" to comply. If it fails to act within this period, it has to enter into negotiations with the successful party or parties in order to determine mutually-acceptable compensation which may take the form of tariff reductions in areas of particular interest to the complainant.

If no satisfactory compensation is agreed, then the Dispute Settlement Body can impose a level of retaliatory trade sanctions by the suspension of concessions or obligations against the erring party. According to the

²¹ Ibid, section 4, Article 16 and Section 4, Art 2.

²² Ibid, section3, Art 17.

Director General of WTO, the vast majority of disputes are settled without fanfare or public contention. Since the main aim of WTO dispute settlement is to contain unilateral imposition of trade sanctions, unilateral retaliation by powerful trading entities is subject to multilateral WTO control. The flow chart in Table 5 below reproduced from the WTO website demonstrates the entire dispute settlement process.



Table 5: Dispute Settlement Flow Chart.

Part II

1. Negotiation on Maritime Transport Services

With that detailed expose on the WTO Agreements, we would now turn attention to the sector specific agreement on Maritime Services. In point of fact, GATS does not have any agreement yet on maritime transport sector, it only has the general agreements on GATS principles which relates to all sectors. The only references to maritime services are the Ministerial Decisions on Negotiations on Maritime Transport Services and the Annex on Negotiations on Maritime Services of half a page each. I nearly panicked when I noticed during the initial stage of preparing this paper that the entire material on maritime service in the WTO is only one page as I wondered what I was going to write on. In setting out the scope of maritime services we would be guided by the WTO Agreement itself. The Negotiating Group on Maritime Transport Services (NGMTS) established under The Ministerial Decision on Negotiation on Maritime Transport Services during the Uruguay Round was mandated to embark on comprehensive negotiations on maritime services within the framework of GATS aimed at the elimination of restrictions within a fixed time scale.

The Ministerial Decision agreed to in Marrakesh and forming part of the WTO Agreement mandated negotiations on three specific maritime sub-sectors i.e. “international shipping, auxiliary services and access to and use of port facilities.”²³ Thus, in the first instance, our discussion of the impacts of WTO on Nigeria’s maritime industry would be limited to these areas being the only areas of shipping where WTO Agreement applies to. To further delineate the scope of the shipping industry, it might be helpful to explain further what activities are covered under the broad classifications of international shipping, auxiliary services and access to and use of port facilities. The two classification systems²⁴ i.e. the United Nations Central Product Classification (CPC) and the Services Sectoral Classification List used by the WTO for maritime services throw more light on the components of the three major categories as detailed below.

1. International shipping comprises of:

²³ Ministerial Decision on Negotiations on Maritime Transport Services, GATS.

²⁴ Draft Schedule, April 1996 and MTN.GNS/W/120, Maritime Transport Services S/C/W/62, 16 November 1998.

freight and passenger transportation less cabotage transport and rental of vessels with crew. The underlined is for the attention of those who have some concerns over the proposed cabotage legislation.

2. Maritime auxiliary services includes:

maritime cargo handling services (not including direct activities of independently organized dockers), storage and warehousing services, customs clearance services, container depot/services, maritime agency services and maritime freight forwarding services.

3. Port services includes:

Pilotage, towing and tug assistance, provisioning, fueling and watering, garbage collecting and ballast waste disposal, port captain's services, navigational aids, shore-based operational services essential to ship operations including communications, water and electrical supplies, emergency repair facilities anchorage, berth and berthing services.

While about 32 countries made commitments on maritime services in the Uruguay Round and five additional countries did so later, some major participants notably the US and EU member countries (none on international shipping) did not and it was agreed that further negotiation aimed at securing and improving commitments in the three areas aforementioned be continued with a dateline of June 1996.²⁵ In 1995 about 42 governments (counting the European Community and its member States as one) had elected to participate fully in the negotiations while another 16 governments were participating in the process as observers.

The maritime sector is regarded by the developed economies and the emerging economies of Asia and rightly too, as a very strategic sector of their respective economies and national security. They recognize that the value of their foreign earnings by way of exports depends overwhelmingly on shipping and so negotiations on maritime services is usually a very intense process and concessions are not readily granted if given at all. Because of the sensitivity of the maritime sector and the need of member

²⁵ Paragraph 4, Ministerial Decision on Negotiation on Maritime Transport Services, GATS and The Annex on Negotiations on Maritime Transport Services.

countries to continue to protect their maritime industry, commitments could not be obtained during the Uruguay Round and the extended post Uruguay negotiations. Most of the countries which had submitted offers withdrew them in the light of the absence of an offer by the United States and the absence of any meaningful commitments by the EU. Telecommunications and Finance services had concluded their negotiations as planned and submitted supplemental lists of commitments in 1997.

On account of the impasse in negotiations on maritime services, the negotiations which were supposed to end in 1996 were suspended by the Negotiating Group on Maritime Transport Services since participants failed to agree on a package of commitments. The Council for Trade in Services in June 1996 adopted a Decision on Maritime Transport Services²⁶ in July of the same year to (a) suspend negotiations and to resume at the commencement of the next comprehensive negotiations on services which began in 2000 as mandated by Article XIX of the GATS which committed members governments to undertake negotiations on specific issues and to enter into successive rounds of negotiations to progressively liberalize trade in services; and (b) maintain the current suspension of Article II of the GATS, i.e. the MFN obligation until the end of the resumed negotiations, which averted the need for many countries to list MFN exemptions at this stage. (c) resume negotiations on the basis of existing or improved offers and (d) that until the end of the resumed negotiations, countries would not take any measures affecting maritime trade to improve their negotiating position except in response to measures taken by other countries.

The Doha Ministerial of last year was in-conclusive on commitments on maritime services and so the *status quo* remains as it was in 1996. Some commitments were already included in some countries' schedules covering the three main areas in the maritime sector and such commitments are not affected by the suspension of MFN obligations in the Decision referred to above. Currently, only 29 out of 144 WTO members have entered commitments in international shipping services. Note that there is no commitment on international shipping or port services by the EU member countries and absolutely no commitments on any area of maritime transport services by the United States. 26 countries scheduled commitments in services auxiliary to maritime transport. Six members have undertaken

²⁶ Decision on Maritime Transport Services, S/L/24, 3 July 1996.

commitments on port services, ten members on maintenance and repair of vessels and six members on rental of vessels with crew. It is instructive that the major shipping countries in the world, notably USA, EU countries and emerging Asian economies where they made any commitments at all, excluded cabotage from their WTO commitments which obviously explains the continued practice and enforcement of cabotage laws in such WTO frontline States like USA, Asia and some European countries. 26 members have deposited MFN Exemption Lists in maritime transport services. The two ECOWAS countries, who did not expressly exclude cabotage from their commitments on international shipping, promptly listed cabotage in their List of MFN Exemptions. The EU also restricted liberalization of the only commitment undertaken by them i.e. auxiliary services to non-community Members on a reciprocal basis. Members' commitments on maritime transport services can be found in Annex 4.

2. Nigeria's Specific Commitments

Pursuant to Articles XX and XVII of GATS, Nigeria in June 1994 along with 95 other countries filed its Schedule of Specific Commitments. As stated earlier a specific commitment in a service schedule is an undertaking to provide market access and national treatment for the service activity in question, in this instance, maritime transport services on the terms and conditions specified in the schedule. The schedule indicates any limitations on market access or national treatment which are to be maintained by member countries and that are inconsistent with Articles XVI and XVII of GATS (market access and national treatment respectively). To discuss the impact of WTO Agreement on our shipping industry the starting point, I believe, is to identify the commitment undertaken by Nigeria under this sector bearing in mind that the Schedule of Specific Commitments form an integral part of the WTO Agreements.²⁷ The complete Schedule of Specific Commitments undertaken by Nigeria is produced in Annex 5 but some part of it is provided below for discussion.

NIGERIA - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons*

Sector or subsector

²⁷ Section 3, Art XXPart IV, GATS.

Limitations on market access

Limitations on national treatment

Additional commitments

1. HORIZONTAL COMMITMENTS

ALL SECTORS INCLUDED IN THIS SCHEDULE

Commercial Presence

3) Commercial Presence requires that foreign service providers incorporate or establish the business locally in accordance with the relevant provisions of Nigerian Laws and, where applicable, regulations particularly with respect to land and building acquisition, lease rental, etc. This requirement operates on a non-discriminatory basis.

Foreign enterprises with investment in Nigeria have the same rights and responsibilities as domestic enterprises, and could transfer abroad their profits in accordance with the existing regulations.

Presence of Natural Persons

4) Unbound, except for measures concerning entry and temporary stay of personnel employed in senior management and experts jobs for the implementation of foreign investment. Their employment shall be agreed upon by the service providers and approved by the IDCC*

4) Unbound, except for measures concerning the categories of natural persons referred to in the market access column

11. SECTOR-SPECIFIC COMMITMENTS

11. TRANSPORT SERVICES

A. Maritime Transport Services

7212

b) Foreign transportation³

1) Unbound: Access to Cargo is subject to the provisions of the National Shipping Policy Decree No. 10 of 1987

1) Unbound

- at least 40 per cent of Liner Cargo is reserved for national carriers,
- 100 per cent of government cargo is reserved for national carriers;
- 50 per cent of bulk trade (dry/wet) is reserved for national carriers

- 50 per cent of cargo generated through technical assistance or international aid is reserved for ships owned or hired by national carriers

2) None

3) None (provided ship-owner's representative complies with relevant laws of establishing business in Nigeria)

4) Unbound

2) None

3) None

4) Unbound

7213

c) Rental vessels with crew

1) Unbound

2) None

3) Unbound

4) Unbound

1) Unbound

2) None

3) Unbound

4) Unbound

8868

d) Maintenance and repair of vessels

1) Unbound

2) Bound

3) None

4) Unbound

1) None

2) Bound (authorisation necessary for national carriers)

3) None

4) Unbound

3. Cabotage is excluded.

Explanation of terms on schedule

***1) Cross-border supply** – the possibility for the supply of services by non-resident service suppliers cross-border into the Member’s territory. The service supplier is not present within the territory of the member where the service is delivered. e.g. international shipping services in Nigeria by the foreign shipping lines not registered under the Nigerian flag, e.g. Wasa-Delmas and Mearsk Sealand.

2) Consumption abroad – the freedom of Member’s residents to purchase services in the territory of another member e.g. ship repair abroad. Restrictive measures may be imposed only on measures affecting its own service consumers and not those of other Members on activities taking place outside its jurisdiction.

3) Commercial presence – the opportunities of establishing the actual presence of juridical persons in a Member’s territory such as branch offices, agency, representative office or wholly-owned subsidiary.

4) Presence of natural persons – the possibilities offered for the entry and temporary stay of natural persons who are themselves service suppliers and their employees in the territory of a member State.

Unbound – No commitments. Means a Member chooses to remain free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment obligations.

Bound – all commitments in a schedule are bound unless otherwise stated. A commitment like tariff binds or guarantees the specific level of market access and national treatment allowed.

None – Full commitment. Means a Member does not seek in any way to limit market access or national treatment in a given sector or mode of supply. No limitations specific to that sector but the horizontal commitments affecting all sectors are applicable.

2.1. Effects of the Commitments on the Maritime Industry

Bearing in mind the Ministerial Decision stating that “until the conclusion of the negotiations Article II and paragraphs 1 and 2 of the Annex on Article II Exemptions are suspended in their application to this sector, and it is not necessary to list MFN exemptions”²⁸, the implication is that Nigeria is not under any obligation to apply the most-favoured-nation or national treatment to all WTO members with respect to granting market access to or liberalization of its maritime industry with exception of the commitments already entered. Remember also that the areas of the shipping industry covered by the WTO Agreements are international shipping, auxiliary services and access to and use of port services.

With respect to international shipping (freight and passenger transportation), Nigeria retained the freedom to introduce or maintain measures inconsistent with market access or national treatment obligations. The schedule specifies that market access in this sector is regulated by the provisions of the National Shipping Policy Decree 10 of 1987. Limitation on National Treatment is expressed in the form of cargo reservation for domestic carriers i.e. 40% of liner cargo, 50% of bulk trade, 100% of government cargo and 50% of aid generated cargo. By liner cargo we mean transport of containerized and general cargo by regular lines with published schedules and bulk cargo (dry) means transport of iron ore, grain, coal, bauxite and

²⁸ Ministerial Decision on Negotiations on Maritime Transport Services, GATS.

phosphate. The limitation on national treatment in the schedule as we all know does not reflect the current practice having administratively suspended the cargo reservation policy. In reality therefore there is no limitation on national treatment even though under the WTO we are free to maintain the discriminatory measures. With respect to the commercial presence of foreign companies offering this service, Nigeria's entry indicates that there is no limitation except that such companies or representative office would have to comply with the relevant laws on establishing a business in Nigeria e.g. CAMA. Even where "None" is entered in the sector specific section, the horizontal commitments on commercial presence and on presence of natural persons is read to apply to all sectors. On rental of vessels with crew and maintenance and repair of vessels, our commitments are largely unbound but no restrictions on market access and national treatment with respect to consumption abroad i.e., freedom to rent vessels with crew abroad is guaranteed. For maintenance and repair of vessels, there is no obligation under market access and national treatment with respect to cross-border-supply and presence of natural persons but freedom to engage the services abroad is bound both for market access and national treatment except that authorization is required for national carriers.

Nigeria entered no commitments at all on auxiliary services and port services and where a Member country undertakes no commitments in relation to a service sector or sub-sector, that sector or sub-sector does not appear in the country's schedule. That explains why auxiliary and port services are not listed in Nigeria's schedule.

We would recall that members were invited to undertake commitments only in the three areas of maritime transport already discussed which did not include cabotage. Nigeria like some other countries nevertheless expressly excluded cabotage in its schedule of specific commitments.

From the documents available to me, nothing indicates that Nigeria had deposited a list of MFN Exemptions. A member is allowed to enter MFN Exemptions whether or not it made commitments in a particular sector. In previous sections we had discussed *in extenso* the provisions of GATS on MFN Exemptions. Where commitments are entered, the effect of MFN exemption is to permit more favourable treatment to be given to the country to which the exemption applies than is given to all other members. Where there are no commitments, MFN exemption permits less favourable treatment to be given to some member countries. That Nigeria has not filed

MFN exemption is not fatal. In the first instance, delayed submission of commitments in maritime transport sector was expressly authorized by the GATS and was to be submitted at the conclusion of the extended negotiations. Secondly, it was agreed at the Uruguay Round that “At the conclusion of the negotiations, Members shall be free to improve, modify or withdraw any commitments made in this sector during the Uruguay Round without offering compensation, notwithstanding the provisions of Article XXI of the Agreement. At the same time Members shall finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. Should the negotiation not succeed, the Council for Trade in Services shall decide whether to continue the negotiation in accordance with this mandate.”²⁹ This means that Nigeria still has the opportunity to submit its MFN list and is at liberty to modify or withdraw any commitments without compensation to the affected member(s) as is generally required under the WTO. Also recall that the same Ministerial Decision had suspended the application of the MFN obligation to the maritime sector and further stated that it is not necessary for countries to list their exemption until the conclusion of the ongoing negotiations.

There has been a lot of discussions in recent times about the proposed cabotage legislation vis-à-vis our WTO obligation. The essence of the bill is to reserve participation in Nigeria’s domestic coastal transport otherwise known as cabotage to indigenous operators aimed at stimulating the growth of our indigenous tonnage. The fear entertained by some people simply reflects lack of familiarity with the WTO system and its obligation. We have pointed out that under Section 11 on Sector-Specific Commitments in Nigeria’s Schedule, cabotage was expressly excluded from its commitments. Having not made any commitments, i.e. no guarantee to members that they have access to the provision of domestic shipping services, Nigeria does not have to negotiate with member countries on the cabotage law nor would we be required to pay compensation. To the extent that Nigeria has not made any commitment to grant members access to its domestic coastal services the enactment of cabotage legislation does not in any wise conflict with the Nation’s obligations under the WTO.

If this is the only position taken by Nigeria, then there can be no objection or obstacle to the making and passage of the Cabotage Bill. The work “if” is

²⁹ Ministerial Decision on Negotiations on Maritime Transport Services, GATS.

used advisedly because there may very well be other bilateral or even multilateral agreement under which Nigeria may have unwittingly signed off its rights to reserve cabotage to indigenous shipping companies. So far, we have not seen any document or received any representation that suggests that Nigeria has made any commitments with respect to domestic coastal services. Moreover, the bill is about domestic coastal shipping not international shipping and so far the only sub-sector with respect to carriage of goods under negotiation is international shipping. And finally, the general obligation to grant a most favoured nation treatment to every Member State has been suspended as far as maritime transport services are concerned. It is instructive that the major shipping countries in the world, notably USA, some EU countries, emerging Asian economies, have excluded cabotage from their WTO commitments which obviously explains the continued practice and enforcement of cabotage laws in such WTO frontline States like USA and the southern European countries.

3. WTO and Developing Countries

In this section, further implications of WTO agreement on Nigeria maritime industry is discussed under the general provisions for developing countries in the Agreements. As far as trade relations between the industrial countries and developing countries were concerned, the rules of free trade as codified by GATT 1947 proved to be increasingly unsuitable to the needs and aspirations of the third world. The developing countries regularly abstained from participation in GATT tariff negotiations and persistently sought the benefits of the markets of the industrialized countries of favoured treatment on exports of manufactured or semi-finished products i.e. a system of non-reciprocal and non-discriminatory preferences which was not permissible under GATT 1947. In response to the agitation of third world countries, an amendment in the form of three supplementary articles called **Part IV - Trade and Development** was introduced. This was of considerable legal importance to GATT because it exempted developing countries from the reciprocity requirement of the tariff negotiations. It remains to be seen how this in practice solved the basic problems of the third world. For example, GATT acknowledged that “there is need to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development”.³⁰

³⁰ Part IV, Article XXXVI section 3, GATT 1947.

In Section 8 of the same Article, the Agreement also removed the burden of reciprocity for commitments made by developing countries in trade negotiation meaning that when developed countries grant trade concessions to developing countries they should not expect the developing countries to make matching offers to them. GATT further provides that “the adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effect on the part of the contracting parties both individually and jointly”³¹. The unfortunate thing is that the Protocol that would have given effect to Part IV was abandoned in 1968 therefore the provisions which would have assisted trade and development of the developing countries under GATT has not entered into force. This should be a major item on the agenda of developing countries for the ongoing negotiation and before any further concessions are undertaken.

Carrying on from where GATT 1947 stopped, preferential provisions for developing countries were adopted by the WTO under the Marrakesh Agreement which guaranteed that less developed countries will “only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities”.³² The WTO Agreement contains all the aforementioned pro-developing countries measures and several other special provisions for developing countries and unlike GATT this provisions are in force. Article IV on **Increasing Participation of Developing Countries** and Art V on **Economic Integration** are devoted largely to measures in the interest of developing countries. WTO says that increasing participation of developing countries in international commerce shall be facilitated by other Members through negotiated commitments with respect to market access and progressive liberalization. The facilitation by WTO and developed country members shall focus on³³

- i. Strengthening the domestic services capacity of developing countries, its efficiency and competitiveness;
- ii. Improvement of developing countries’ access to distribution channels and information networks;

³¹ section 9, *ibid*.

³² Section 2, Art XI, Marrakesh Agreement 1994.

³³ Section 1, Art IV, Part II GATS.

- iii. Liberalization of market access in sectors and modes of supply of export interest to developing countries.

WTO encourages member countries including developing countries to introduce trade policies aimed at reducing barriers to free trade and liberalization but does not advocate a frenzied programme of deregulation such as that pursued by the BPE. Instead WTO Agreements advocates “progressive liberalization” structured in a manner that gives³⁴

- i. *due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors;*
- ii. *that there shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions;*
- iii. *progressively extending market access in line with their development situation; and*
- iv. *when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV” i.e. Increasing Participation of Developing Countries.*

In addition, developing countries are required to establish contact points to facilitate the access of developing country Members’ service suppliers to information related to their respective markets. In Nigeria, the Federal Ministry of Commerce is the Focal Point on WTO matters. What I do not know is if an efficient mechanism has been established for them to obtain correct information from the various sectors including maritime transport services. This function requires sectoral cooperation and exchange of information between Federal Ministry of Commerce and the Federal Ministry of Transport.

4. Recommendations for Negotiation on Maritime Transport

³⁴ Section 2, Art XIX, Part IV, GATS.

The above mentioned provisions in GATS for developing countries have largely been ignored. Some developed countries continue to expect high level of concessions from developing countries for granting market access in some sectoral negotiation contrary to Part IV. The Negotiating Team for Nigeria starting at the level of the Negotiating Group on Maritime Transport Services should insist that a mechanism be evolved by the WTO that would be used to ensure and monitor compliance with these provisions. Negotiation on Trade in Services is in progress and the Council for Trade in Services in March 2001 adopted Guidelines and Procedures for the negotiation which recognized the right of governments of Member countries to regulate and introduce regulations on the supply of services in pursuit of national policy objectives.³⁵

As at 2001, 70 negotiating proposals had been submitted by about 40 countries to the Council for Trade in Services but none yet from Nigeria. The practice is for Members to form groups with a common agenda and submit as a group the negotiating proposals which would ensure that issues of interests to them are taken up for negotiation. Cuba, Senegal, Tanzania, Uganda, Zimbabwe and Zambia submitted in December 2001 negotiation proposal as a group on Assessment of Trade in Services for Developing Countries. Another group consisting of Cuba, Pakistan, Senegal, Sri Lanka, Tanzania, Uganda, Zambia and Zimbabwe submitted another proposal also in December 2001 on Increasing Participation of Developing Countries in International Trade in Services and on Effective Implementation of Art IV of GATS. Kenya submitted its own negotiating proposal in September 2001. As may be observed, these are groups of developing countries and the contents of their proposal encourage a more aggressive negotiation strategy for developing countries in order to maximize their gains from the WTO. The EU and their Member States plus Hong Kong, China, Japan, Republic of Korea, Norway and Singapore together submitted a Joint Statement in 2000 on Negotiations on Maritime Transport Services. Again, I was unable to find any submission from Nigeria either by itself or with a group of like-minded nations.

The next Ministerial Conference is in Mexico next year where binding decisions would be made and adopted. The National Negotiating Team for Services assuming there is such a body constituted by the Nigerian Focal Point, should first and foremost undertake an assessment of trade in services

³⁵ Guidelines and Procedures for the Negotiations on Trade in Services, 28 March 2001.

in the country, assess the gains and benefits accrued to Nigeria as a result of GATS, identify the areas which could further be liberalized and identify the sectors of export interest. GATS guarantees technical assistance for developing countries from the WTO and we should as a matter of priority request for technical assistance to undertake these studies at the national and sectoral level. The importance of having a sophisticated negotiating team made up of knowledgeable persons with specific areas of expertise in the various trade and services topics from both the public sector and the private sector cannot be over-emphasized.

Article V of GATS acknowledges the need for and existence of regional economic bodies. It expressly allows Member States to form regional economic “agreement liberalizing trade in services between or among the parties to such an agreement”. Members of the ANDEAN Community consisting of Bolivia, Columbia, Ecuador, Peru and Venezuela; EC and their Member States; MERCOSUR Members made up of Argentina, Brazil, Paraguay and Uruguay, members of AFTA- Asian Free Trade Area and the EU are some of the regional economic bodies who negotiate as a group. Nearer home we have ECOWAS and the Maritime Organization for West and Central Africa where Nigeria is acknowledged as the leading economy in these regional bodies. It is therefore advisable for Nigeria to initiate discussions on a regional basis for the sub-region which constitutes a maritime bloc with a homogenous coastline for the purpose of evolving a common negotiating proposal which would enhance the sub-region’s bargaining position in negotiations with their larger trading partners in the developed world.

It is very difficult for me to make a comprehensive assessment of the impact of WTO Agreements on Nigeria’s maritime industry because I really, like most people here cannot make a definitive statement on what constitutes our shipping policy. The only legislation now on shipping policy which everyone agree was in actual fact a law setting up a statutory body did incorporate the UNCTAD Cargo Reservation Code for Liner Conferences. Both the cargo reservation and the national carrier status are currently suspended. This measure in effect means the complete elimination of barriers which would make the WTO and the dominant countries very happy indeed. On the other hand, if the policy change was to introduce new and higher trade restrictions in that aspect of international shipping, we would have been required to notify other WTO Members, enter into negotiation with them and perhaps pay compensation to any Member adversely affected.

Luckily that is not the case. A point to note is that the suspension of all types of cargo reservation was not deposited with the Council for Trade in Services. The preferential treatment listed under Nigeria's Schedule of Specific Commitments remains unchanged. The point here, is that if we have decided to retain the suspension as a policy, it should be as a negotiating strategy and offered as some concessions Nigeria is willing to make but only in return for a commensurate concession on market access to maritime transport services from WTO members who are interested in providing international shipping services in Nigeria.

We are all aware of the ongoing debate on privatization of ports. Several options have been discussed including the grant of long term leases to the private sector, joint venture between government and the private sector, build-operate-transfer (BOT) or build-operate-own (BOO) options. The two broad category of policy considered are "service ports" where all operations are integrated and conducted by the port authority itself and the "landlord ports" where port authorities limit their role to the building and owning of infrastructure leaving pilotage, cargo operations and towage to be conducted by private operators. My understanding is that we are currently practicing the former i.e. service ports though some say that several services have been contracted out. If the ultimate employer is the port authority then it is still a service port. How does WTO Agreement impact on this? In the first place, Nigeria made no commitments whatsoever on port services and auxiliary services for maritime transport. Nigeria is consequently free to introduce or maintain measures inconsistent with market access or national treatment obligations in these areas. If the intention is to open up this sub-sector to foreign participation, the Ministry of Transport should take benefit of the detailed analysis above on progressive liberalization and remember that *"when making access to their markets available to foreign service suppliers, to attach to such access conditions aimed at achieving the objectives referred to in Article IV" i.e. increasing participation of Developing Countries.*"³⁶ The lesson here is that unlike other Bretton Woods institutions, WTO does not force Member countries to liberalize or deregulate their economy. Where developing countries choose to reduce or eliminate trade barriers, we should get some concessions by way of market access and national treatment in return from our trading partners and in this

³⁶ Section 2, Art XIX, Part IV, GATS.

instance access to provide maritime transport services in their respective countries.

Maritime freight forwarding services and warehousing comes under Auxiliary Services. The current position is that freight forwarding, storage and warehousing services are open to foreign operators. Nothing obliges Nigeria under the WTO to open this service to other Member countries. Taking cognizance of indigenous capacity, the Ministry may maintain the status quo but if in the future and in furtherance of a national policy objective and level of development of the maritime sector it is found expedient to restrict the participation of foreign operators in this sub-sector, Nigeria is free to introduce such restrictions. As in the case of port services, Nigeria did not undertake any commitments or obligations and to that extent is at liberty to introduce restrictions without the need to enter into negotiations or to pay compensation.

5. The Legal Status of WTO Agreements in Nigeria

Considering the categories of persons in the audience, this paper would not be complete without a discussion on the legal status of the WTO in our judicial system. In this section, we shall determine whether WTO Agreements an international treaty imposes binding obligations on Nigeria and whether it has direct applicability in Nigeria. We would adopt in this paper the definition given to international agreements in Article 2 of the Vienna Convention on the Law of Treaties 1969:

“treaty means an international agreements concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

WTO Agreement is correctly classified as an international treaty since it is an agreement negotiated and agreed to by several governments. There are two types of international agreements. The first is an international agreement which is at the same time an integral part of national legal systems of the member states (self-executing) and the second type is an international agreement of the ordinary kind which does not automatically become part of the legal systems of the member States (non-self-executing). In determining the status of an international treaty in the Member countries, the starting point is to look at the wordings of the Agreement itself to determine whether

it was the intention of the parties for it to have direct applicability or to be self executing.

A self-executing obligation is one which states or implies that it will become operative directly and immediately upon signing or accession. Alternatively, an obligation is 'non-self-executing' if its terms indicate that some separate act of domestic law-making will be needed to make it operative. As an example, if an international agreement simply states that the contracting parties undertakes not to employ a certain method of customs valuation, the obligation would probably be considered self-executing. If, on the other hand, the agreement states that the contracting parties shall promptly change its law to eliminate a certain form of customs valuation, the obligation would be considered non-self-executing. A ready example of the first type i.e. self-executing treaty is the European Community laws. The basic instruments establishing the European Community are national laws of member states which no other element of national law may contradict. It grants community laws direct applicability in Member countries and private persons can enforce the commitment, if necessary, on reluctant governments.

WTO membership according to the opening paragraph of the Final Act primarily entails subscribing to the original WTO Agreements, the Ministerial Declarations and Decisions and Understandings and Commitments and subsequent formal amendments. A country becomes a member of the WTO upon signature as one of the original contracting parties or by being a signatory to the Final Act signed at Marrakesh or by accession to the Agreement after it had come into force. The text of the Final Act of the Uruguay Round of Multilateral Trade Negotiations which was the instrument that representatives of governments signed and agreed to the Establishment of WTO provides that by signing the Final Act, participants agree.³⁷

- i. to submit, as appropriate, the WTO Agreement for the consideration of their competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and
- ii. to adopt the Ministerial Declarations and Decisions.

³⁷ Section 2, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, 1994.

It is therefore embedded in the Agreement that competent authorities generally the parliament and in this case the National Assembly should approve the Agreement in accordance with the procedure of the respective Member countries. In Nigeria, the procedure for obtaining this “approval” or ratification is by the promulgation of an Act by the National Assembly incorporating the agreement into our domestic laws. The Nigerian Constitution states in no uncertain terms that “No treaty between the Federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly.”³⁸ So, for any international agreement to be self-executing or have direct applicability in Nigeria, it must be ratified by the National Assembly. The question then is whether the National Assembly or any law making authority under the military regime ever ratified the WTO. To the best of my knowledge, the Nigerian legislature i.e. the National Assembly has not promulgated the WTO as part of our municipal laws. Hence, the legal requirements of direct applicability under Nigerian laws *ab initio* seem not to have been satisfied. WTO is therefore not an “integral part” of Nigerian domestic laws and consequently has no direct application. The Supreme Court in *Abacha v Fawehinmi per OGUNDARE JSC* supported this position when it held that:

“An International treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law by the National Assembly, it has no such force of law as to make its provisions justiciable in our Courts”.³⁹

In point of fact, the origin of the WTO obligations may be opposed to direct applicability in the judicial systems of Member States. World Trade Organization agreements have always been negotiated and concluded by the Member States on a preliminary basis pending ratification by sovereign parliaments. At the moment, the WTO agreements have neither been approved by the national legislature of the Member States, nor has it been promulgated in their domestic laws. The legal status of the Agreement in Nigeria is similar to the situation in the European Community and the United States. The European Community has not promulgated WTO rules as part of its laws in any of the EC official Directives nor has it ever formally expressed its intention of directly applying the agreement. On the contrary,

³⁸ Section 12(1), Constitution of the Federal Republic of Nigeria, 1999.

³⁹ *Abacha v Fawehinmi* (2000) 6 NWLR., Part 660, pp. 288.

the EC in several recent WTO documents specifically puts the issue to rest by inserting the statement that “the rights and obligations arising from GATS, including the schedule of commitments, shall have no self-executing effect and thus confer no rights directly to individual natural persons or juridical persons”.⁴⁰ Under the US legal system, self-executing international obligations are regarded as part of US domestic law and this is premised on the Constitution of the United States, which expressly provides that 'treaties', together with the Constitution and the laws of the United States, shall be 'the Supreme Law of the land'.⁴¹ In the US legal terminology, the term 'treaty' is generally confined to those international agreements submitted to the Senate under the special 'two-thirds' procedure stated in the Constitution. International agreements enter US domestic law as soon as their ratification is formally declared by Congress. As is the case with the European Community, the US in the 1979 US Trade Agreements Act enacted to give effect to the Tokyo Round Agreements in Sections 3(a) and 3(f) provides that the Agreements are not self-executing. The same point is made with greater force in the background materials to the Act. The “Statement of Administrative Action” affirms that: “The Trade Agreements negotiated are not self-executing and accordingly do not have independent effect under US law”. Equally categorical are the Senate and House of Representatives' reports, which note simply that: “The trade agreements are not self-executing”.⁴²

The argument that the signatories to WTO Agreement did not intend that it has direct applicability is buttressed by some of the measures and procedures intrinsic in the agreement. Take the dispute settlement provisions already discussed in previous section as an example. Does the dispute Settlement mechanism confer on the WTO the status of a self executing i.e. directly applicable Agreement? Under the WTO, prominence is given to the role of diplomacy in interpreting the WTO rules in the case of conflict or dispute between trading partners. In particular, since any interpretation intended to add precision to the rules, or to extend them to cover new substantive issues, requires extensive consultation and consensus to accommodate the divergent interests of the members, diplomacy rather than legal logic is the main force

⁴⁰ European Communities and Their Member States, Schedule of Specific Commitments, GATS/SC/31, 15 April 1994.

⁴¹ The US Constitution, Art VI, Section 2.

⁴² See J.H. Jackson, United States Law and Implementation of the Tokyo Round Negotiation, in Implementing the Tokyo Round, in M. Hilf et al, Studies in Transitional Economic Law, The European Community and GATT, Vol. 41986, p. 135.

behind the formal development of the WTO system. It is thus interpreted and developed by diplomacy, not by an independent international judiciary.

The Understanding of 28 November 1979 on Notification, Consultation, Surveillance and Dispute settlement negotiated during the Tokyo Round, and the additional consensus among the Contracting Parties recorded in the November 1982 Ministerial Declaration⁴³ gives some insight on this issue. The clauses in the Understanding that most clearly support its inadequacy for direct applicability are reproduced below:

- It is understood that requests for conciliation and the use of the dispute settlement procedures of Article XXIII, section 2 should not be intended or considered as contentious acts and that, if disputes arise, all contracting parties will engage in these procedures in good faith in an effort to resolve the disputes.' (Section 10, Art 3, Annex 2 WTO, 1994)
- The function of panels is to assist the CONTRACTING PARTIES in discharging their responsibilities under Article XXIII, section 2 (Art 11, Annex 2, WTO).
- Reports of panels and working parties should be given prompt consideration by the CONTRACTING PARTIES. The CONTRACTING PARTIES should take appropriate action on reports of panels and working parties within a reasonable period of time.'

The November 1982 Ministerial Declaration on dispute settlement provides that:

“The CONTRACTING PARTIES reaffirmed that consensus will continue to be the traditional method of resolving disputes; however, they agreed that obstruction in the process of dispute settlement shall be avoided. It is understood that decisions in this process cannot add to or diminish the rights and obligations provided in the General Agreement.” (Section 1, Art 3, Annex 2, WTO).

Strictly speaking, the above provisions mean that decisions of WTO working groups or panels are not binding on the parties to a dispute. They are

⁴³ GATT Selected Documents 29th Supplement, 1981-1982, Geneva 1983.

auxiliary bodies, whose task is to reflect views and opinions and make recommendations. Only the contracting parties can take binding decisions, and the decisions are in practice taken unanimously, in other words, with the assent of the very parties accused of breaching a WTO rule. This is in clear distinction with a self-executing Treaty that imposes express pronouncements upon the occurrence of specified events and precise penalties for infraction without recourse to consensus by governments. The over reliance on unanimity and a negotiated solution to dispute instead of an independent arbitration body which could hand down rulings on disputes points to the fact that the parties did not intend the Agreement to have direct applicability. Also the WTO dispute settlement procedure is considered to be adverse to the direct applicability of WTO rules by the courts since the WTO procedures are aimed at reaching an agreement or consensus rather than obtaining a judgment.

The operation of the MFN principle is another fitting example. The Members through the WTO Agreement agree on the observance of the most-favoured-nation principle as a necessary and sufficient condition of the international trade order that sovereignties including Nigeria need for satisfactory functioning and survival. Since there is no external power-balance compelling the observance of the principle, it needs be made into a requirement of national law, that is, entrenched in national law. In that form it could be enforced by the national judicial process without the slightest sacrifice of national sovereignty, merely as an expression of a better understanding of it. But were it has not been made part of the national law, the MFN principle cannot be enforced by judicial process. The WTO system is based on the principles of reciprocity and mutual benefit. While some of the provisions of the WTO such as the ones on market access and national treatment by their wording, establish precise obligations for the Member countries, they at the same time provide for extensive exceptions and possibilities for evasion (MFN exemption, limitations on market access and national treatment, countermeasures etc.). Such an order cannot endure 'all or nothing' decisions as would be expected from judicial proceedings. The intentions of the WTO system are met when violations of the rules are resolved by bilateral or multilateral negotiations. The aim, it is argued, is consensus or the toleration of unilateral counter-measures, but not always the elimination of the alleged WTO violation. Hence, in reality the toleration of practices adverse to WTO is envisaged and accommodated by the system.

5.1. Rights of the Individual under the WTO

The previous discussion has established that since the WTO Agreement has not been incorporated into our legal system, it therefore follows that the rights and obligations of the individual if any could not be derived from the agreement. The legal position of the individual depends decisively on his opportunity to plead the provisions of WTO or to claim their violation. The violation may be from the government, private institutions or from other member States. We shall now examine whether individuals can exercise any influence over a contravention of WTO rules. As international treaties generally do not contain any provisions regarding their national application and interpretation, the agreements within the framework of the WTO similarly do not contain any provisions for the Member States on how to comply with the obligations. In the absence of a legislative pronouncement on the legal status of the WTO, it is the courts which can decide on the legal effects of WTO Agreement in Nigeria. In making this determination, the court would be guided primarily by the content of the international rule, its precision being a pre-condition for direct applicability and the legal requirement for direct applicability. Though not directly on the point, the Supreme Court in the Fawehinmi case mentioned above maintained that the Appellant was entitled to rely on the African Charter in prosecuting the alleged violation of his fundamental right by the government, since the African Charter had become part of our domestic laws by virtue of the enactment of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. 10 LFN, 1990. Similarly, the European Commission Court of Justice has maintained a reserved and cautious position and has in general terms deny the direct applicability of WTO rules in favour of the individual.⁴⁴

WTO is a voluntary contract of governments and not of private individuals. WTO rules can be a foundation of individual rights only to the extent provided by implementing national legislation which is far from uniform between members. These conditions have created a substantial margin of uncertainty and discretion for the national authorities interpreting these policy rules. WTO does not have any provisions of its own against competition-restricting practices of private firms and must rely in this respect on national law of its member. If WTO offered a right of redress for individuals against subsidized competition then one would have argued that it created a property right for individuals. Even if we were to stretch the

⁴⁴ Ibid, pp. 175.

protection given to private enterprise, it is obvious that such a right exists only in an indirect and uncertain form. Where the parties fail to reach a consensus in the case of anti-competitive practices, the Agreement merely entitles governments to protect national producers against subsidized imports. WTO does not detail or impose the sanctions it merely authorizes governments to “take appropriate countermeasures” which may be in the form of any anti-dumping or countervailing duty (See Section 4.10, Art 4, Part II, GATT 1994 and Section 2(b), Art II GATT 1947). So, individual contracting parties maintain domestic procedures for handling complaints concerning subsidized imports and under these procedures a fairly broad administrative discretion is allowed to decide on the merits of a complaint.

The enforcement of compliance with WTO rules is thus substantially placed under the responsibility of the political institutions which correspondingly expand their range of action. The individual will remain incapable of contributing personally to the enforcement of the rules of WTO by his vigilance and participation in court procedures aimed at the protection of his rights. The rules of WTO are continuously developed for the better organization of international trade and only an effective execution of the rules by the individual Members gives them the significance that was intended for the WTO as a whole. WTO rules are subject to continued adaptation and alteration because the practice of their application is continuously influenced by bilateral and multilateral arrangements and agreements. This coupled with the lack of predictable and definite result from dispute settlement procedure does not favour the conditions necessary for direct applicability.

5.2. Legal Significance of the WTO Agreements

It has been demonstrated that WTO Agreements do not have direct applicability therefore individuals cannot invoke it to contest the legality of national laws or to enforce its provisions in the courts. This means that courts in the Member States cannot rely on it to declare unlawful measures taken by their governments or private parties. But the fact that WTO or any other international agreement has no direct effect does not automatically mean it confers no protection in law or creates no obligation. Frequently, probably in the majority of cases, the substance of the international agreement is incorporated in independently enacted national laws. The EU for example has incorporated several provisions of the WTO Agreements in their secondary legislation including:

- the safeguard clauses protecting the common organization of markets in agricultural products and, in the industrial sector, Council Regulation (EEC) no. 288/82 of 5 February 1982 on common rules for imports;
- the regulation, already cited, on protection against dumped or subsidized imports - the latest update is Council Regulation (EEC) No. 2176/84 of 23 July 1984;
- Council Regulation (EEC) No. 1224/80 of 28 July 1980 on the valuation of goods for customs purposes, as last amended by Council Regulation (EEC) No. 3193/80 of 8 December 1980.

In the same vein the US enacted

- The Trade Agreement Act, 1979 to give effect to the Tokyo Round Agreement;
- Reciprocal Trade Agreements Act of 1934 and that of 1945 to bind tariff;
- Trade Expansion Act 1962

And in Nigeria, we have the

- Pre-shipment Inspection and Import Act Cap363 LFN 1990 and its subsequent amendments;
- Customs, Excise Tariff etc (Consolidation) Act Cap 88, LFN, 1990 and its amendments.

Another significant point to note is that the Constitution of the Federal Republic of Nigeria empowers the Executive arm of government to negotiate and execute international agreements. Such international agreements entered into by the President representing the Executive are generally referred to as “Executive Agreements”. A significant percentage of the international conventions and agreements signed by Nigeria are agreements made by the Executive, without any prior authority from, or subsequent approval by the National Assembly. Such agreements rest on the President’s express and implied constitutional powers in the “foreign affairs” arena. Section 148 of the 1999 Constitution expressly vests in the President the right of “determining the general direction of domestic and foreign policies of the Government of the Federation.” The signing of the WTO fits into this category and even though not part of the domestic legislation does create some obligations for Nigeria.

Even if the WTO Agreement had been ratified by the National Assembly, legislation implementing an international obligation is usually not mandatory, i.e. it does not “require” the executive or any specific group of persons to take an action. The legislation could simply authorize the executive to take the measures necessary for compliance without actually requiring that the measures be taken. Such non-mandatory legislation is quite common on international trade matters. Where it exists, the Executive is simply not bound, under domestic law, to observe those obligations. This kind of legal freedom does not depend on the assertion of Constitutional powers but from the legislation itself. In other words, such laws may authorize the President to comply with say WTO tariff obligations, but they do not require him to do so.

A 1975 decision of the US Court of Customs and Patent Appeals in United States -v- Yoshida International Inc., illustrates the current legal position on this issue. In that case, an importer challenged the legality of a 1971 proclamation in which the American President imposed a ten per cent surcharge on imports. The surcharge had been one of several emergency measures taken in connection with a balance of payments crisis alleging a contravention of GATT. The court disposed of the claimed GATT violation in a footnote. It acknowledged that the ten per cent surcharge was a violation of GATT, because GATT does not allow governments to increase bound tariffs as a means of dealing with a balance of payments crisis but the court went on however to dismiss the relevance of this violation, saying that GATT had never been ratified by the US Congress.

Bear in mind here that the contracting party or Member is the government acting through the executive arm. The general opinion is that if international trade rules are held to be directly effective, that entails a decisive shift of responsibility from the executive to the judiciary. The judiciary would in that case take over functions normally reserved for the executive which would be contrary to the power reserved for the various institutions under the Constitution. This position was affirmed in the European Commission’s Court of Justice in *Polydor and Harlequin*.⁴⁵

6. Conclusion

⁴⁵ *Polydor and RSO Records v Harlequin Record Shops and Simon Records* [1982] E.C.R. 329 in M. Hilf et al, *Studies in Transitional Economic Law, The European Community and GATT*, Vol. 41986, pp. 137.

This paper has attempted to present a broad over view of the WTO including its origin, institutional framework and its several obligations and commitments. It is not a critique of the WTO Agreements and for that reason has not highlighted the areas of deficiencies and imbalances since this was clearly outside the purview of this presentation. From the point of view of a developing country, the paper identifies and emphasizes how developing countries can within the operative WTO rules maximize their gains from the Organization. I do hope the contents of this presentation have added something to your knowledge of the WTO as an organization, its Agreements and how these Agreements impacts on the Nigeria maritime industry. I do also sincerely hope that the National Focal Point would heed the recommendations of this Paper as it participates in the ongoing negotiations and prepares for the Ministerial Conference scheduled for Mexico in 2003.

After writing so many pages, I have clearly lost steam, so do pardon me for the crisp conclusion.

I thank you all very much for you attention and may I express my profound gratitude to Chief Idowu who encouraged me to embark on this adventure and who at his own cost made copies of copious WTO documents for me from the United Nations Library in New York.

Thank you.

Mfon Ekong Usoro

Annex 1

GATT 1947 CONTRACTING PARTIES

Commonwealth of Australia
The Kingdom of Belgium
United States of Brazil
Burma
Canada
Ceylon
The Republic of Chile,
The Republic of China,
The Republic of Cuba,
The Czechoslovak Republic
The French Republic
India
Lebanon
Grand-Duchy of Luxemburg
The Kingdom of the Netherlands
New Zealand
The Kingdom of Norway
Pakistan
Southern Rhodesia
Syria
The Union of South Africa
The United Kingdom of Great Britain and Northern Ireland
The United States of America

Annex 2

LIST OF WTO MEMBER COUNTRIES AND OBSERVER GOVERNMENTS

Country	Date
Albanicsa	8 September 2000
Angola	23 November 1996
Antigua and Barbuda	1 January 1995
Argentina	1 January 1995
Australia	1 January 1995
Austria	1 January 1995
Bahrain, Kingdom of	1 January 1995
Bangladesh	1 January 1995
Barbados	1 January 1995
Belgium	1 January 1995
Belize	1 January 1995
Benin	22 February 1996
Bolivia	12 September 1995
Botswana	31 May 1995
Brazil	1 January 1995
Brunei Darussalam	1 January 1995
Bulgaria	1 December 1996
Burkina Faso	3 June 1995
Burundi	23 July 1995
Cameroon	13 December 1995
Canada	1 January 1995
Central African Republic	31 May 1995
Chad	19 October 1996
Chile	1 January 1995
<u>China</u>	11 December 2001
Colombia	30 April 1995
Congo	27 March 1997
Costa Rica	1 January 1995
Côte d'Ivoire	1 January 1995
Croatia	30 November 2000
Cuba	20 April 1995
Cyprus	30 July 1995
Czech Republic	1 January 1995
Democratic Republic of the Congo	1 January 1997
Denmark	1 January 1995
Djibouti	31 May 1995

Dominica	1 January 1995
Dominican Republic	9 March 1995
Ecuador	21 January 1996
Egypt	30 June 1995
El Salvador	7 May 1995
Estonia	13 November 1999
European Community	1 January 1995
Fiji	14 January 1996
Finland	1 January 1995
France	1 January 1995
Gabon	1 January 1995
The Gambia	23 October 1996
Georgia	14 June 2000
Germany	1 January 1995
Ghana	1 January 1995
Greece	1 January 1995
Grenada	22 February 1996
Guatemala	21 July 1995
Guinea Bissau	31 May 1995
Guinea	25 October 1995
Guyana	1 January 1995
Haiti	30 January 1996
Honduras	1 January 1995
Hong Kong, China	1 January 1995
Hungary	1 January 1995
Iceland	1 January 1995
India	1 January 1995
Indonesia	1 January 1995
Ireland	1 January 1995
Israel	21 April 1995
Italy	1 January 1995
Jamaica	9 March 1995
Japan	1 January 1995
Jordan	11 April 2000
Kenya	1 January 1995
Korea, Republic of	1 January 1995
Kuwait	1 January 1995
Kyrgyz Republic	20 December 1998
Latvia	10 February 1999
Lesotho	31 May 1995
Liechtenstein	1 September 1995
Lithuania	31 May 2001
Luxembourg	1 January 1995
Macao, China	1 January 1995
Madagascar	17 November 1995

Malawi	31 May 1995
Malaysia	1 January 1995
Maldives	31 May 1995
Mali	31 May 1995
Malta	1 January 1995
Mauritania	31 May 1995
Mauritius	1 January 1995
Mexico	1 January 1995
Moldova	26 July 2001
Mongolia	29 January 1997
Morocco	1 January 1995
Mozambique	26 August 1995
Myanmar	1 January 1995
Namibia	1 January 1995
Netherlands — For the Kingdom in Europe and for the Netherlands Antilles	1 January 1995
New Zealand	1 January 1995
Nicaragua	3 September 1995
Niger	13 December 1996
Nigeria	1 January 1995
Norway	1 January 1995
Oman	9 November 2000
Pakistan	1 January 1995
Panama	6 September 1997
Papua New Guinea	9 June 1996
Paraguay	1 January 1995
Peru	1 January 1995
Philippines	1 January 1995
Poland	1 July 1995
Portugal	1 January 1995
Qatar	13 January 1996
Romania	1 January 1995
Rwanda	22 May 1996
Saint Kitts and Nevis	21 February 1996
Saint Lucia	1 January 1995
Saint Vincent & the Grenadines	1 January 1995
Senegal	1 January 1995
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	1 January 2002
Sierra Leone	23 July 1995
Singapore	1 January 1995
Slovak Republic	1 January 1995
Slovenia	30 July 1995

Solomon Islands	26 July 1996
South Africa	1 January 1995
Spain	1 January 1995
Sri Lanka	1 January 1995
Suriname	1 January 1995
Swaziland	1 January 1995
Sweden	1 January 1995
Switzerland	1 July 1995
Tanzania	1 January 1995
Thailand	1 January 1995
Togo	31 May 1995
Trinidad and Tobago	1 March 1995
Tunisia	29 March 1995
Turkey	26 March 1995
Uganda	1 January 1995
United Arab Emirates	10 April 1996
United Kingdom	1 January 1995
United States of America	1 January 1995
Uruguay	1 January 1995
Venezuela	1 January 1995
Zambia	1 January 1995
Zimbabwe	5 March 1995

LIST OF OBSERVER GOVERNMENTS

S/No.	Countries
1.	Algeria
2.	Andorra
3.	Armenia
4.	Azerbaijan
5.	Bahamas
6.	Belarus
7.	Bhutan
8.	Bosnia and Herzegovina
9.	Cambodia
10.	Cape Verde
11.	Ethiopia
12.	Former Yugoslav Republic of Macedonia
13.	Holy See (Vatican)
14.	Kazakhstan
15.	Lao People's Democratic Republic

16.	Lebanon
17.	Nepal
19.	Russian Federation
20.	Samoa
21.	Sao Tome and Principe
22.	Saudi Arabia
23.	Seychelles
24.	Sudan
25.	Tajikistan
26.	Tonga
27.	Ukraine
28.	Uzbekistan
29.	Vanuatu
30.	Vietnam
31.	Yemen
32.	Yugoslavia, Fed. Rep. Of

Note: With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.

Annex 3

Approximate Timetable for Dispute Settlement

60 days	Consultations, mediation, etc
45 days	Panel set up and panel lists appointment
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1yr 3months	(with appeal)

ANNEX 4

SPECIFIC COMMITMENTS IN MARITIME TRANSPORT SERVICES

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Antigua* and Barbuda	Freight: None except (3) MA&NT: reference to Merchant Shipping Act. No commitment on Passenger	No commitments	No commitments	Maintenance and repair of vessels: (3), reference to Business Act
Aruba*	None except (3) NT: vessels registered in Aruba must fly Netherlands flag, must be owned by an Aruban company and captain must be Dutch national	Commitments on cargo handling, storage and warehousing, freight agency and freight forwarding	No commitments	
Australia	None except (I a) MA: requirement of representative agent who is a resident; NT, Trade Practices Commission can examine restrictive practices; (3 a) establishment of companies operating a fleet under Australian flag nationality requirements for ownership and registration of vessels	Commitments on storage and warehousing services; and maritime freight forwarding services, pre-shipment inspection	No commitments	International rental of vessels with crew
Benin*	None except on	None except often	No commitments	Rental of vessels

	freight transportation (1) MA: access to only 20%	(3) MA: state monopoly, NT: unbound		with crew
Canada	Unbound	None except Customs clearance (1)-(4) Wc Requirement for a commercial presence/permanent residency	No measures shall be applied which deny reasonable and non-discriminatory access	
Cuba*	None except on freight transportation MA (3a): foreigners cannot register ships under Cuban flag	Commitments on (partially covered) cargo handling, and storage and warehousing	No commitments	Maintenance and repair of vessels
Egypt*	None except (1) unbound, and (3) only through joint ventures with max. equity of 49 per cent	No commitments	Commitments only on port dredging but (1) unbound and (3) through joint ventures with max. equity of 75 per cent	
European Community	No commitments	Storage and warehouse services (other than in ports), freight transport agency/freight forwarding services; pre-shipment inspection	No commitments	Rental of vessels with crew (F: prior notification requirement, D: unbound)
Finland	No commitments	Storage and warehousing services, freight	No commitments	Charter services: leasing of vessels with crew; sea

		transport agency; other supporting and auxiliary transport services		and road
Gambia*	None No commitments on freight	No commitments	Commitments on towing and pushing and supporting services for maritime transport	Maintenance and repair of vessels
Ghana	None except (1) access to only 20 % of bulk and liner cargo, and (3a) unbound	Commitments on cargo handling, storage and warehousing, container station and depot, with a limitation on (3) state monopoly - privatisation envisaged in 5-7 years	Made available on reasonable and non- discriminatory terms	
Hong Kong	Freight none except (1-2) NT: unbound, and (3) NT: income tax exemption for operation of national flag ships No commitments on passenger	None except (1) unbound, and (2) NT: unbound. No commitments on freight forwarding	Made available on reasonable and non- discriminatory terms	Maintenance and repair of vessels; rental of vessels with crew
Hungary	No commitments	Commitments on storage and warehousing	Commitments not technically feasible	Maintenance and repair of vessels
Iceland*	None except (3 a) N4A&NT: Unbound for	None	Made available on reasonable and non- discriminatory	Additional commitments on in multimodal

	establishment of companies operating a fleet under Icelandic flag		terms	
Indonesia	None except (1) NY requirement to appoint local agent, (lb) "Government's cargo" and (3) MA: "may establish owner's representative" and NT: horizontal	No commitments	Access to and use of facilities	
Jamaica*	Freight: none except (3) MA: registration and licensing requirement No commitments on passenger	No commitments	No commitments	
Japan	Unbound	Commitments on storage and warehousing (excluding petroleum products), and customs clearance.	Made available on reasonable and non-discriminatory terms. Commitments on pushing and towing services; salvaging services; watering services; fuelling services; garbage collecting services.	
Korea R-P	None except (I b) MA: Cargo preference for coal, iron ore and liquefied gas	None except storage and warehousing excludes agriculture, fish and livestock	Made available on reasonable and non-discriminatory terms	Maintenance and repair of vessels

	(3a) Unbound for establishment of companies operating a fleet under Korean flag	products. Agency, freight forwarding, and brokerage require incorporation as a joint stock company (Includes commitments on shipping brokerage)		
Malaysia	None except (3) MA: only through rep. office, or joint venture with max. equity of 30%, and (3 a) nationality and ownership requirements for vessels registration in Malaysia	Commitments on agency services with (3) MA: only through rep. office, or joint venture with max. equity of 30%	Made available on reasonable and non-discriminatory terms	Vessel salvage and refloating services with (3) MA: only through rep. office, or joint venture with max. equity of 30%
	None except (3) MA: horizontal	No commitments	No commitments	
Myanmar	No commitments	No commitments	No commitments	Tourist transport operation: operating a tourist business by water craft: (3) NT: unbound
Netherlands Antilles*	None except (3) NT: vessels registered in N.A. must fly Netherlands flag, must be owned by an N.A. company and captain must be Dutch national	Commitments on cargo handling, storage and warehousing, freight agency and freight forwarding	No commitments	
New Zealand	None except (3 a) N/IA&NT:	Storage and warehousing	No commitments	

	unbound for establishment of companies operating a fleet under New Zealand flag	services-, and maritime freight forwarding services		
Nigeria	None except (1) unbound with cargo reservations (40% of liner cargo, 50% of bulk trade, 100% of government cargo, 50% of aid generated cargo)	No commitments	No commitments	Maintenance and repair of vessels, (2) NT: authorization required; rental of vessels with crew (1,3,4) unbound, (2) none
Norway	None except (3 a) MA&NT: ownership requirements for nationally registered ships	None	Made available on reasonable and non-discriminatory terms	Additional commitments on multimodal terms
Papua New* Guinea	None	No commitments	No commitments	
Peru*	Commitments on passenger transportation by ferries exclusively for internal tourist services and (1,3) MA: authorization required, (1) NT: unbound,(2) MA&NT: unbound	No commitments	No commitments	
Philippines*	None except government owned cargoes to be shipped	None, but no commitments on customs clearance	No commitments	Maintenance and repair of vessels but (2) MAi:

	on board Philippines flag vessels. No limitation on (4) except time-limit for specialized vessels	and maritime agency services		requirement to use domestic ship Repair yards
St. Kitts and Nevis	Commitments on ship registration	No commitments	No commitments	
St. Lucia	None	Commitments only on trans-shipment services and free zone operations	No commitments	
St. Vincent and the Grenadines	None except (3) MAi subject to Exchange Control Act, Commercial Code and NT: withholding tax	Commitments only on trans-shipment services and free zone operations with (3) MA: subject to Exchange Control Act, Commercial Code and NT: withholding tax	No commitments	
Senegal	No commitments	Commitments on consignment, handling, forwarding and shiphandling with (1) MA: unbound	No commitments	
Sierra Leone*	None except (3) MA: compliance required with national laws for establishing business	Full commitments on MTN.GNS/W/120 list with (3) MA: joint venture requireme	Full commitments on supporting services for maritime transport	
Singapore	Freight: None No commitments on passenger	Commitments on shipping agency and brokerage	Made available on reasonable and non-discriminatory terms	
Slovenia	No commitments	Commitments on storage and warehousing,	No commitments	Maintenance and repair of vessels

		customs clearance, freight forwarding and pre-shipment inspection		
Thailand	None except freight: (1) restrictions on traffic with China and Vietnam, (3a) unbound, (3b) MA: horizontal, NT: income tax exemptions for national flag vessel operators	Commitments on storage and warehousing, freight forwarding (and maritime surveys and classification services) with (1) unbound, (3) MA: horizontal, NT: no limitations as long as foreign equity not more than 49%	Made available on reasonable and non-discriminatory terms Commitments on international towing, shore reception facilities (collection of waste), and port captain's services	
Trinidad and Tobago	No commitments	No commitments	Commitments on navigation aids, and communication /meteorological Services	Commitments on ship surveys and repairs/building with (1,2) unbound
Turkey	None except (1) NT: discriminatory port charges, (I b) 10% preference margins for public cargoes; (3 a) MA: ownership requirements	No commitments	No commitments	Maintenance and repair of vessels; rental of vessels with crew: (1,2) NT Limitations
Venezuela-	Freight: none, except (1) unbound. No commitments on passenger	Commitments on cargo handling and storage and warehousing	No commitments	

- 1 *Shipping commitments include cabotage.
- 2 As in the Schedules none stands for no limitations to the commitments undertaken in the sector.
- 3 This table relies on the classification adopted in the model draft schedule on maritime transport services of 15 April 1996 as well as on the services sectoral classification of document MTN.GNS/W/120.

Annex 5

NIGERIA - SCHEDULE OF SPECIFIC CONMTMENTS

GENERAL AGREEMENT GATS/SC/65

15 April 1994

ON TRADE IN SERVICES (94-1062)

NIGERIA

Schedule of Specific Commitments

(This is authentic in English only)

NIGERIA - SCHEDULE OF SPECIFIC CONMTMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Coding

Sector or subsector

Limitations on market access

Limitations on national treatment

Additional commitments

1. HORIZONTAL COMMITMENTS

ALL SECTORS INCLUDED IN THIS SCHEDULE

Commercial Presence

3) Commercial Presence requires that foreign service providers incorporate or establish the business locally in accordance with the relevant provisions of Nigerian Laws and, where applicable, regulations particularly with respect to land and building acquisition, lease rental, etc. This requirement operates on a non-discriminatory basis.

Foreign enterprises with investment in Nigeria have the same rights and responsibilities as domestic enterprises, and could transfer abroad their profits in accordance with the existing regulations.

Presence of Natural Persons

4) Unbound, except for measures concerning entry and temporary stay of personnel employed in senior management and experts jobs for the implementation of foreign investment. Their employment shall be agreed upon by the service providers and approved by the IDCC*

4) Unbound, except for measures concerning the categories of natural persons referred to in the market access column

11. SECTOR-SPECIFIC COMMITMENTS

2. COMMUNICATION SERVICES

C. Telecommunication Services I

7521,

7522,

7523

Sale/installation of terminal equipment

1), 2), 3), 4) None

1), 2), 3), 4) None

7521

Operating pay phones

1), 2) Not applicable

3), 4) None

1), 2) Not applicable

3), 4) None

-521,

7523

Mobile communications - cellular, paging, etc. (voice and data)²

1), 2) Unbound

3), 4) None

1), 2) Unbound

3), 4) None

7523

Value added services²

1), 2), 3), 4) None

1), 2), 3), 4) None

7. FINANCIAL SERVICES*

B. Banking and other Financial Services excluding Securities and Insurance

81115-9

a) Acceptance of deposits and other repayable funds from the public

1) Subject to a maximum of 40 per cent equity participation

1) Composition of the Board should reflect the ownership structure

8113

b) Lending of all types including mortgage credit, factoring and financing of commercial transactions

2) Unbound with the exception of 'C' "guarantees and commitments"²

2) Unbound with the exception of 'C' "guarantees and commitments" 1

81199

c) Guarantees and commitments

3) Companies must be incorporated in Nigeria

3) None

S112

d) Financial leasing

4) Unbound

4) Unbound

81339

e) All payments and money transmission, services, including credit, payment and similar cards. Travellers cheques and cheques.

f) Trading for account of Customers:

81339

- money market instruments

81333

- foreign exchange

81321

- transferable security

81339

- other negotiable instruments

81323

g) Asset management

81339

h) Settlement and clearing services for financial assets (excluding securities)

8131

i) Provision and transfer of financial information and financial data

9. TOURISM AND TRAVEL RELATED SERVICES A.-D.

641-643

7471

-7472

1), 2), 3), 4) None

1), 2), 3), 4) None

11. TRANSPORT SERVICES

A. Maritime Transport Services

7212

b) Foreign Transportation³

1) Unbound: Access to Cargo is subject to the provisions of the National Shipping Policy Decree No. 10 of 1987

1) Unbound

- at least 40 per cent of Liner Cargo is reserved for national carriers,

- 100 per cent of government cargo is reserved for national carriers;

- 50 per cent of bulk trade (dry/wet) is reserved for national carriersl

- 50 per cent of cargo generated through technical assistance or international aid is reserved for ships owned or hired by national carriers

2) None

3) None (provided ship-owner's representative complies with relevant laws of establishing business in Nigeria)

4) Unbound

2) None

3) None

4) Unbound

7213

c) Rental vessels with crew

1) Unbound

2) None

3) Unbound

4) Unbound

1) Unbound

2) None

3) Unbound

4) Unbound

8868

d) Maintenance and repair of vessels

1) Unbound

2) Bound

3) None

4) Unbound

1) None

2) Bound (authorisation necessary for national carriers)

3) None

4) Unbound

E. Rail Transport Services

8868

d) Maintenance and repair of rail transport equipment

1), 2) Unbound*

3), 4) None

1), 2) Unbound*

3), 4) None

* Detailed guidelines are obtainable from the IDCC secretariat, Federal Ministry of Industry, Federal Secretariat, Abuja, Nigeria.

2 Guarantees and Commitments are subject to regulations.

3. Cabotage is excluded.

NIGERIA

* Nigeria submitted a Supplement List on Financial Services in 1998.