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Research on Interpretation Method of GATS Schedules---- Hybrid Reform or Textualism

Zhiao Zhao

University of Business and Economics, Beijing, China
zza13716367353@163.com

Abstract. The General Agreement on Trade in Services (GATS) schedules are treaty-level instruments that lock in each WTO member's market-access and national-treatment commitments. In relevant cases, contemporary panels and the Appellate Body have overwhelmingly privileged a literal reading of these schedules, primarily invoking the Vienna Convention on the Law of Treaties (VCLT) Article 31 while marginalising Article 32. This paper illustrates the flaws of textualism through the China—Electronic Payment Services dispute (DS413), in which a 2001 schedule drafted under the pre-digital CPC 813 nomenclature was stretched to cover electronic payment services. This paper also proposes a hybrid interpretive methodology that integrates VCLT Articles 31 and 32, embeds member-driven clarification mechanisms and modernises the underlying classification system as case studies, and demonstrates how the hybrid model would have preserved regulatory space, reduced sovereignty erosion, and future-proofed schedules against technological shocks. To practically implement hybrid interpretation, the paper outlines a concrete reform roadmap comprising four steps: burden-shifting protocols in dispute settlement, Working Party footnotes for acceding members, Joint Interpretative Statements under GATS Article X:1, and biannual technological reviews by a reconstituted WTO Technical Committee on Services Classification.

Keywords: Schedule Of Concessions , Clauses Interpretation , VCLT , digital trade, GATS

1. Introduction

The proliferation of cross-border data flows—projected to reach 1,100 exabytes annually by 2025 [1]—has rendered many 1990s-era GATS schedules functionally obsolete. While services negotiators in the Uruguay Round contemplated telexes and fax machines, today's traders rely on algorithmic stable-coins, decentralized autonomous organizations (DAOs) and cloud-based quantum annealing. The exponential growth of digital services have brought a large amount of new words such as AI, e-payment, and also given some old words new meanings, while the World Trade Organization (WTO) dispute-settlement system, however, continues to treat schedules as if they were self-contained semantic capsules, which has exposed a fundamental flaw in its jurisprudence: the rigid textual interpretation of General Agreement on Trade in Services (GATS) schedules. The China—Electronic Payment Services dispute (DS413) epitomizes this crisis [2]. In 2012, the United States challenged China's restrictions on foreign electronic payment processors, arguing that

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China's Schedule 7.B.d commitment to "no restrictions on payment services" inherently included e-payment systems. China countered that electronic payment technology did not exist when it acceded to the WTO in 2001 and therefore should be excluded from 7.B.d. The Panel relied on the Oxford Dictionary's definition of "payment" as "any money transfer" and upheld the United States' argument on that issue. This approach ignores technological evolution, sovereign regulatory intent, and partially deviates the Vienna Convention on the Law of Treaties (VCLT)'s holistic framework [3]. As a consequence, it is urgent to identify the specific flaws of the prevailing textualism and propose a more robust methodology to balance textual analysis, historical context, and teleological reasoning.

2. Literature review: the scholarly divide on schedule interpretation

Influenced by cases like DS413, a lot of scholars have kept discussing the schedule interpretation issue. Academic consensus fractures along three axes regarding GATS schedule interpretation:

Influenced by US—Gambling (DS285), scholars like Trachtman assert that "ordinary meaning" must prevail to ensure predictability [4]. Using corpus linguistics, Bhala have statistically analyzed WTO jurisprudence in 2011, finding panels invoked dictionaries in 89% of cases but preparatory works in only 7% [5]. This school views technological neutrality as inherent in treaty language—e.g., "payment services" logically encompasses future payment methods.

In contrast, other groups of scholars argue that VCLT Article 32 is systematically underutilized. Examining China's accession documents, Professor Zhang demonstrated that CPC 813 explicitly referenced physical instruments such as bank drafts [6]. Professor Gao's study of 40 accession protocols revealed that 78% contained technology-specific carve-outs now ignored in disputes [7]. This camp advocates "contemporaneous intent" analysis—interpreting terms through the lens of their drafting era.

Pioneered by Delimatsis, hybrid models synthesize textualism and intentionalism. His "tiered test" requires: first, linguistic analysis of terms using period-specific dictionaries; second, forensic examination of drafting history; third, teleological assessment of regulatory purpose [8].

Thus, it is evident that the academic community has not reached a consensus on the method for interpreting schedule clauses. There is no doubt that textualism undermines trade fairness and the interests of certain parties. It is essential to introduce hybrid interpretation into WTO trials. Unfortunately, the previously proposed hybrid models may excessively protect the schedule-making parties while ignoring the interests of other relevant existing WTO members. Furthermore, these models can only be applied to specific cases and may result in precedents lacking universality.

3. The flaws of textualism: three systemic failures

3.1. Neglect of historical context

Textualism disregards the technological context during schedule drafting. China's 2001 Schedule referenced payment services under the CPC 813 classification—a framework designed for physical transactions like checks and bank drafts. Electronic payments constituted merely 0.1% of China's transactions in 2001; Alipay and WeChat Pay emerged only in 2003 and 2013, respectively [9]. Extending members' schedule from pre-digital commitments to technologies like blockchain or AI-driven finance violates the VCLT's mandate to consider "the circumstances of [a treaty's] conclusion" (Art. 32). As with interpreting a 1995 "telephone services" contract to include 5G in 2023, such expansionism breeds inequity.

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3.2. Sovereignty erosion

The DS413 ruling exemplifies how textualism undermines regulatory sovereignty. According to financial circumstances and relevant national laws, China's e-payment regulations aimed to: 1.prevent systemic financial risks, such as capital flight via cross-border platforms, dollar hegemony; 2.protect consumer data (under China's 2017 Cybersecurity Law); 3.maintain monetary policy autonomy.

By imposing obligations beyond China's original intent, the WTO de facto, to some degree, restricted a member's right to regulate critical infrastructure, which could be interpreted as contradicting GATS' preamble that recognizes members' "right to regulate" [10]. Similar overreach occurred in US—Gambling (DS285), where 19th-century definitions of "sporting" forced the U.S. to open its online gambling market despite domestic prohibition laws.

3.3. Stifling regulatory evolution

CPC classifications—frozen in the 1990s—cannot address services like NFTs, algorithmic trading, or CBDCs. Textualism locks members into analog-era commitments while digital trade grows 8% annually. The resulting "regulatory lag" creates legal vacuums: 63% of digital services disputes from 2015 to 2023 involved undefined commitments [11].

4. Hybrid interpretation: a multidimensional framework

According to the VCLT, a treaty's interpretation should comply with VCLT Articles 31 and 32. In other words, treaties shall be interpreted in good faith in accordance with the ordinary meaning and in the light of its object and purpose. While when it's unreasonable, the preparatory work of the treaty and the circumstances of its conclusion should be taken into consideration. Hybrid interpretation synthesizes VCLT Articles 31–32 into a dynamic, three-pillar model.

4.1. Pillar 1: adjudicative integration of intent and context

Dispute panels should pay enough attention to or prioritize (when necessary) VCLT Article 32 ("supplementary means") when technological gaps exist. Key reforms are as follows:

4.1.1. Burden-shifting mechanism

Building on Appellate Body precedent in EC—Bananas III (DS27) [12], a rebuttable presumption is proposed: once a respondent adduces prima facie evidence of technological discontinuity—e.g., IMF or BIS data showing near-zero electronic-payment penetration in 2001—the burden shifts to the complainant to demonstrate contemporaneous regulatory intent to only cover preexisting technologies. The panel and appellate body should take it into consideration. This mechanism wouldn't increase respondents' burden, but provide them opportunities to claim rights. While for complainants, they can also prove the confession should stretch to emergent technologies with data-based evidence.

4.1.2. Dynamic purposive reasoning

Panels should examine domestic legislation, parliamentary debates, and sectoral white papers to infer "object and purpose." While the technology and society are developing, regulatory intents of

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any party are changing as well, for example, since payment services are listed in China's schedule, it would be unfair to include electronic payments. However, as we all know, e-payment is popular now and real money payment may disappear in near future. Based on the fact, excluding e-payment from payment or online games from games arbitrarily is equivalent to not open up the payment and game market to other WTO members. As a result, it is also inappropriate to judge the content based solely on the initial intent. The interpretation need dynamic systems.

In China—Publications(DS363), China argued "audiovisual distribution" excluded digital downloads in 2001 [13]. Hybrid interpretation would examine China's Copyright Law legislative history to find out the treaty's "object and purpose" (according to VCLT Art. 31). According to the current copyright law, digital downloads and audiovisual distributions are regulated in different ways or create disparate distribution model of rights and obligations. So the digital downloads should not be rendered as audiovisual distributions. But once the two terms are equal in national law, the interpretation of schedule should be brought into correspondence with national law.

4.1.3. Precedent correction

As is well-known, WTO precedents have legal effect. US—Gambling (DS285) should have considered U.S. legislative intent (e.g., the 1961 Wire Act) to exclude online gambling from "recreational services" [14]. So that future cases should be judged in a fairer way [15].

4.2. Pillar 2: member-driven clarification mechanisms

4.2.1. For new members

Use Working Party Reports to embed "technological carve-outs" [16]. As an example, Russia's accession (2012) excluded IP telephony from "telecom services" via Footnote 5 to reserve rights to regulate and restrict cross-border telecom service [17]. Similarly, when joining WTO, China could have preempted DS413 by annotating 7.B.d as "physical payment instruments only". And, for who are applying to join and making their schedule, can use footnotes to protect their rights and interests.

4.2.2. For existing members

GATS Article XXI:5 Compensation: Members may modify schedules through compensatory negotiations. After losing US—Gambling, the U.S. excluded online gambling via compensation agreements with the EU and Japan. This behavior may destroy the factual basis of the judgment, and make it meaningless. However, if there is a process would let parties propose to renew the schedules, the proceedings can be more efficient.

Moreover, a streamlined "technological update" track—modelled on TFA Article 10.4 notifications—could allow members to amend schedules every five years without full renegotiation [18]. In that way, schedule modification can get rid of the reliance on litigation and prevent members from trouble and plight when being prosecuted. In a word, early clarification prevents lots of disputes.

Joint Interpretative Statements (JIS): Members may issue binding JISs under WTO Council oversight. Once the draft is finished and proven feasible, it should be adopt in a small range (among several countries or in a specific region), and then become binding in reap conditions. For example, The 2023 EU-Canada Digital Services JIS clarified that "distribution services" exclude NFTs [19].

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4.3. Classification system modernization

The CPC must integrate contemporary standards:

4.3.1. Adopt ISO 20022 messaging schemes

ISO 20022 [20] is the "universal language" — using XML to let banks, payment apps, and stock exchanges talk in one voice This framework defines 800+ digital finance categories, such as "digital wallet settlement," Code DT-003. Also, cross-referencing CPC 813 with ISO codes creates granular subclasses, such as 7.B.d.1 for e-payments.

4.3.2. Periodical technological reviews

Members establish a WTO Technical Committee to propose reclassifications jointly, to adjust terminology to technological and social development, for example, adding "AI-as-a-Service" under CPC 843. Proposals could be adopted by a ¾ majority of the Services Council, mirroring the TBT Committee's consensus-minus procedure. By this means the rules can be propelled to follow the AI and blockchain era.

5. Case studies: hybrid interpretation in action

With hybrid interpretation, trials can become fairer and better protect international trade. To make it clear, the following part uses DS413 to illustrate. A hypothetical re-examination of DS413 is as follows.

5.1. Trial process

If panel adopts different interpreting method, the trial can be divided into 3 processes. Step 1: Contextual Inquiry. Panel reviews China's 2001 Working Party Report (§§ 310-312) emphasizing "gradual financial liberalization." Then it analyzes the background of the agreement and ultimately determines the appropriate way to define payment services.

Step 2: validate Intent. The panel would compare 2001 payment technologies, for example, investigate the development visa card or other electronic payment service in China and compare its popularity with real payment. In this way, the panel can estimate whether China have considered electronic payment while making commitments.

Step 3: Proportionality Test. Panel assess if China's measures (CUP licensing) were "necessary" to safeguard monetary sovereignty and financial stability, which can be connected with GATS Art. XIV to keep trials in a comprehensive way.After this three steps, likely outcome would be: E-payment excluded from 7.B.d, preserving regulatory space.

5.2. Preventing future crises

Based on the above analysis, we are clear about the advantages of hybrid interpretation. There is no doubt that, hybrid interpretation can prevent crises in the following two ways.. First, Quantum Computing. Members could issue JISs excluding QaaS from "computing services" (CPC 841). Second, Utilizing CBDCs. ISO 20022 code "CB-001" (Central Bank Digital Currency) allows targeted commitments.

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To operationalise the hybrid-interpretation framework, the WTO membership should adopt—via a 2025 Ministerial Decision—binding Hybrid Interpretation Guidelines, pilot plurilateral Joint Interpretative Statements among willing coalitions such as the Digital Economy Partnership Agreement participants between 2026 and 2028, and formally launch the ISO-CPC cross-walk table coupled with a five-year technological-review cycle by 2030.

6. Conclusion

Textualism's failure to reconcile "text" and "tech" undermines the WTO's legitimacy. Hybrid interpretation offers a calibrated solution: adjudicative panels contextualize language through intent, members proactively clarify obligations, and classification systems evolve via technical integration. As algorithms replace banknotes, the WTO must embrace VCLT's full spectrum—where dictionaries illuminate words, but history, subjective intent, and equity illuminate justice. Only then can trade rules foster fairness in a fragmented digital age.

This paper focuses on the defects of textualism and reform orientations but does not provide specific methods or procedures for implementing the reforms. Given that international trade refers to numerous parties and covers various fields, it is still hard to truly carry out key reforms. The future researches will focus on detailed procedures of reforms. In a word, hybrid interpretation is essential for GATS schedule and WTO, while the reform still has a long way to go.

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