



ITC

TRADE IMPACT
FOR GOOD

50
YEARS

1964-2014

LDC Services: Geneva Practitioners Seminar Series: “Making Sense of GATS and Applying Good Practices in Services Negotiations”

Seminar 1: “Why the GATS matters for LDCs”

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**Key elements of the GATS and
issues for LDCs**

WTO Building, Room F

8 December 2014



Structure of the presentation:

- Genesis of the GATS
- Main features of the GATS
- Liberalization under the GATS
- Negotiations - Work in progress
- Increasing participation of developing and least-developed countries

The traditional view of services:

- Services = **government monopolies**
- Services = non-storable = **non-tradable**
- Services = intangible = no duties = **unsuited for GATT-type disciplines**
- Services = **rich countries'** playfield

But, in reality:

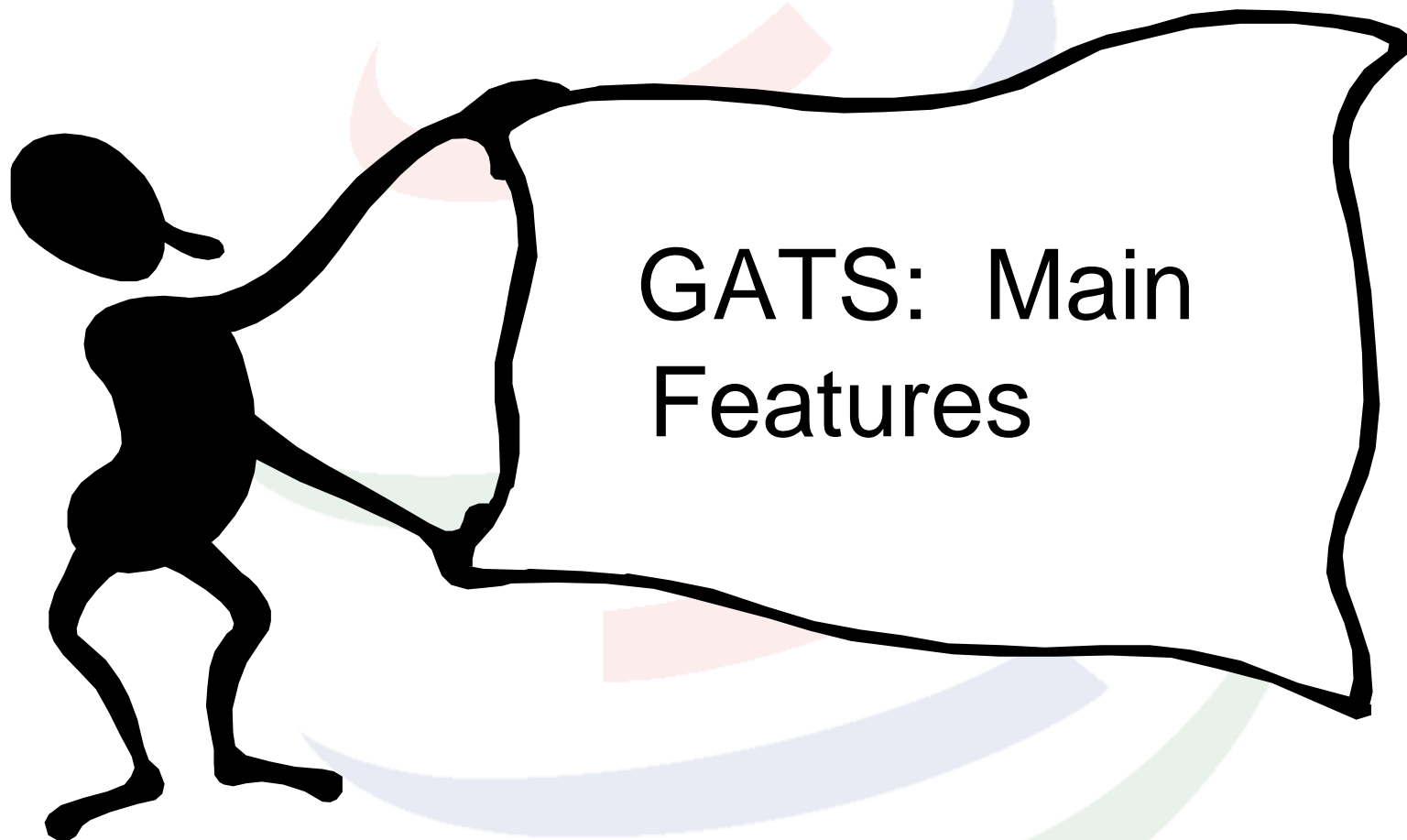
- Certain services have been traded for centuries (e.g. maritime transport)
- Others have become tradable (e.g. telemedicine)
- Many are “embedded” in traded goods
- Services trade presently accounts for a limited share in total world trade measured in gross terms (~ 20 % on BOP basis) ... but nearly 45% when trade is measured in value-added terms



GATS:

- Relative latecomer to the multilateral system (→ Uruguay Round)
 - Focus: regulatory measures
 - Crucial distinction:
 - **trade barriers**
 - other regulatory measures
- ↙
- progressive liberalisation**
(≠ deregulation)
- ↘
- “good governance”
provisions





Key notions

- The GATS contains rules for **services trade**
- There are some “general” **rules that apply to all services trade**
- But the “**liberalisation/market opening**” disciplines apply only to trade in the services **sectors** that each Member has **selected**

1st Observation

THE GATS IS FAR WIDER IN
COVERAGE THAN CONVENTIONAL
TRADE AGREEMENTS



GATS: Scope of application

- GATS disciplines apply to:

measures

affecting **TRADE** in **SERVICES**

taken at all government levels



What is **TRADE** in services?

- Trade in services = Services supplied through **four modes of supply**
 1. Cross-border supply
 2. Consumption abroad
 3. Commercial presence
 4. (Temporary) presence of natural persons



GATS: Modes of supply

MODE	EXAMPLE (Health)
1. Cross-border Trade	Tele-diagnosis from Country B into Country A
2. Consumption Abroad	A's resident obtains hospital treatment in B
3. Commercial Presence	Hospital operator from B has subsidiary in A
4. Presence of Natural Persons	Physician from B practices in A

Health services: What modes are involved?*



"Nurse, get on the internet, go to SURGERY.COM, scroll down and click on the 'Are you totally lost?' icon."

- * Hospital owner, medical staff and patient are foreign nationals; SURGERY.COM is established abroad.



Which **services** are covered?

All services

Business Services	Health Related Services
Communication	Financial Services
Construction	Tourism
Distribution	Recreation, Culture, Sports
Education	Transport
Environmental Services	Other Services

Further subdivided into \approx 160 sub-sectors



Two sectoral exclusions (1/2)

1. “Services provided in the exercise of governmental authority”

i.e. services supplied:

“*neither* on a commercial basis, *nor* in competition with one or more service suppliers”



Typical examples:

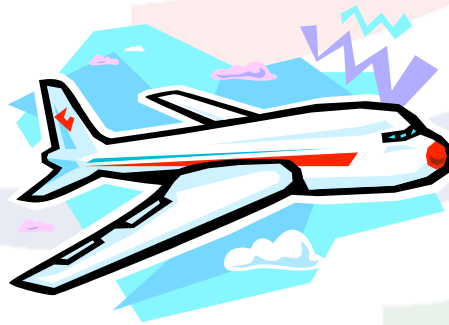


Police, fire protection, monetary policy operations, customs administration, ... any, if meeting the relevant criteria, health and education services



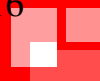
Two sectoral exclusions (2/2)

2. The bulk of **air transport services**
(i.e. traffic rights and services directly
related to their exercise)



2nd Observation

... BUT THE GATS IS EXTREMELY
FLEXIBLE IN APPLICATION



The main rules of the GATS and their application

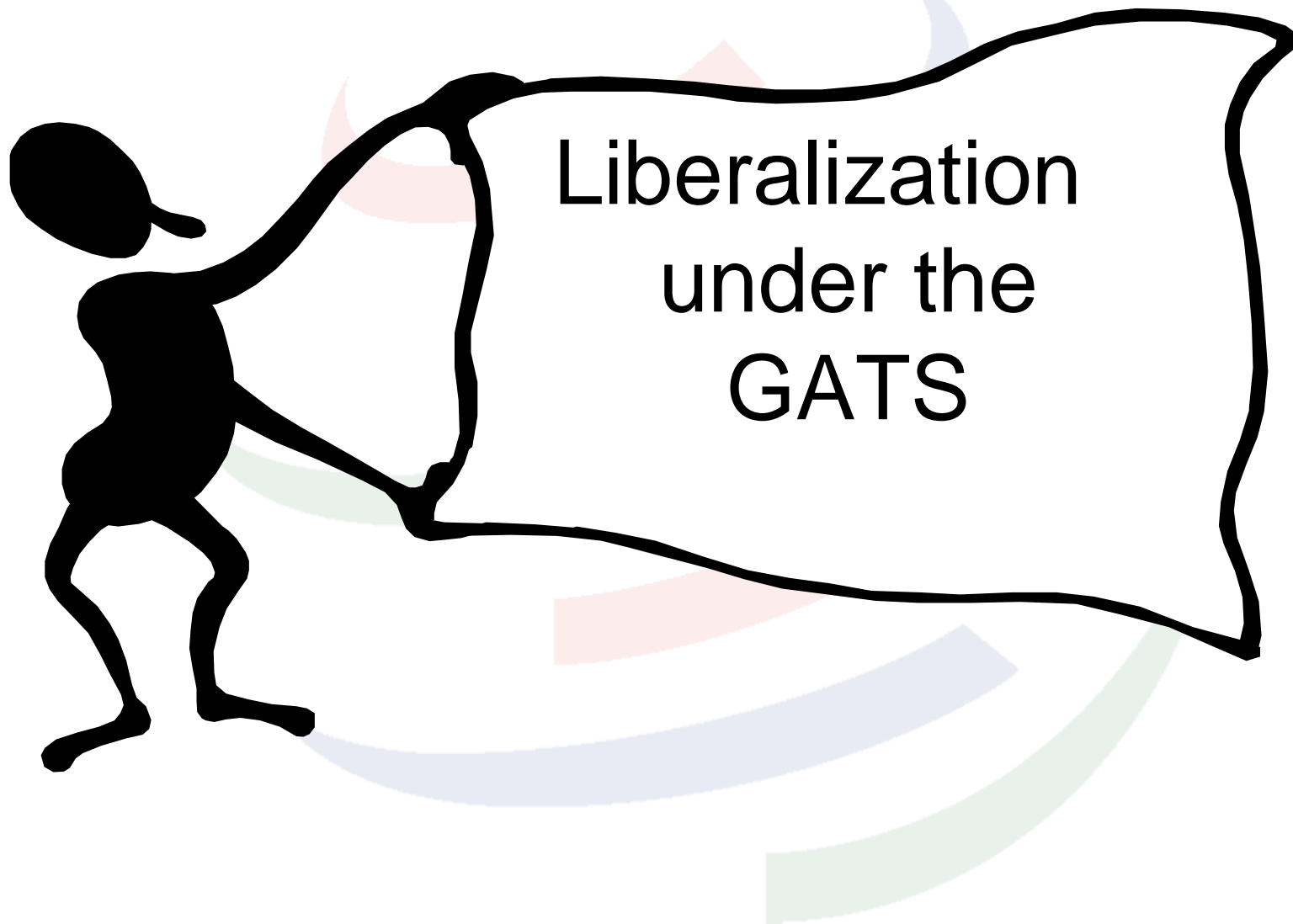
- **MFN:**
trade in all sectors covered by the GATS
- **“Liberalisation” disciplines, i.e. market access and national treatment:**
only for trade in those sectors that a Member has selected (in its “schedule of commitments”)



MFN Treatment

“... each Member shall accord **immediately and unconditionally** to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country” (Article II:1)

- No obligation to open markets
- Plus, derogations are possible: exemptions (one-off), Economic Integration Agreements, **LDC waiver**



Distinction between “Regulation” and “Liberalization”

- All measures by Members are “regulation” in a wider sense.
- The GATS does not produce “regulation” in services sectors.
- Members remain free to define regulatory requirements and processes according to national needs/preferences.

Where Members liberalize a service sector, they can impose measures limiting

- **Market Access** (six types of quantitative restrictions)
- **National Treatment** (discriminatory measures favouring domestic services and suppliers)

only to the extent that these limitations are specified in their schedule of specific commitments

Format of Schedules under GATS



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

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
	(1) (2) (3) (4)	(1) (2) (3) (4)	
II. SECTOR-SPECIFIC COMMITMENTS			
	(1) (2) (3) (4)	(1) (2) (3) (4)	



GATS: Hybrid approach to scheduling

SCHEDULE OF SPECIFIC COMMITMENTS

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Positive Element: selection of sectors in which Market Access and National Treatment is granted	(1)	(1)	Negotiated commitments not subject to scheduling under MA or NT
	(2)	(2)	
	(3) Negative Element:	(3)	
	(4) inscription	(4)	
	(1) of any limitations on	(1)	scheduling under MA or NT
	(2) Market Access and	(2)	
	(3) National Treatment	(3)	
	(4)	(4)	



How Schedules of Commitments are structured:

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<u>Hotels and restaurants</u>	1) Unbound 2) None 3) Foreign capital participation limited to 49% 4) Unbound except for managers	1) Unbound 2) None 3) Foreign-owned hotels and restaurants are subject to training requirements 4) Unbound	

NOTES: “Unbound” = no commitment (full policy discretion)

“None” = no limitation (full commitment)

“Foreign capital... “Foreign-owned ..”, “Unbound except ..” = partial commitments





Country pattern of commitments

Members	Average number of committed sectors	Range
Least developed countries	24	1 – 110
Developing and transition economies	54	1 – 154
Developed countries*	108	87 – 117
Accessions since 1995**	104	37 - 154

* Western Europe, Canada, Australia, New Zealand, Japan, United States.

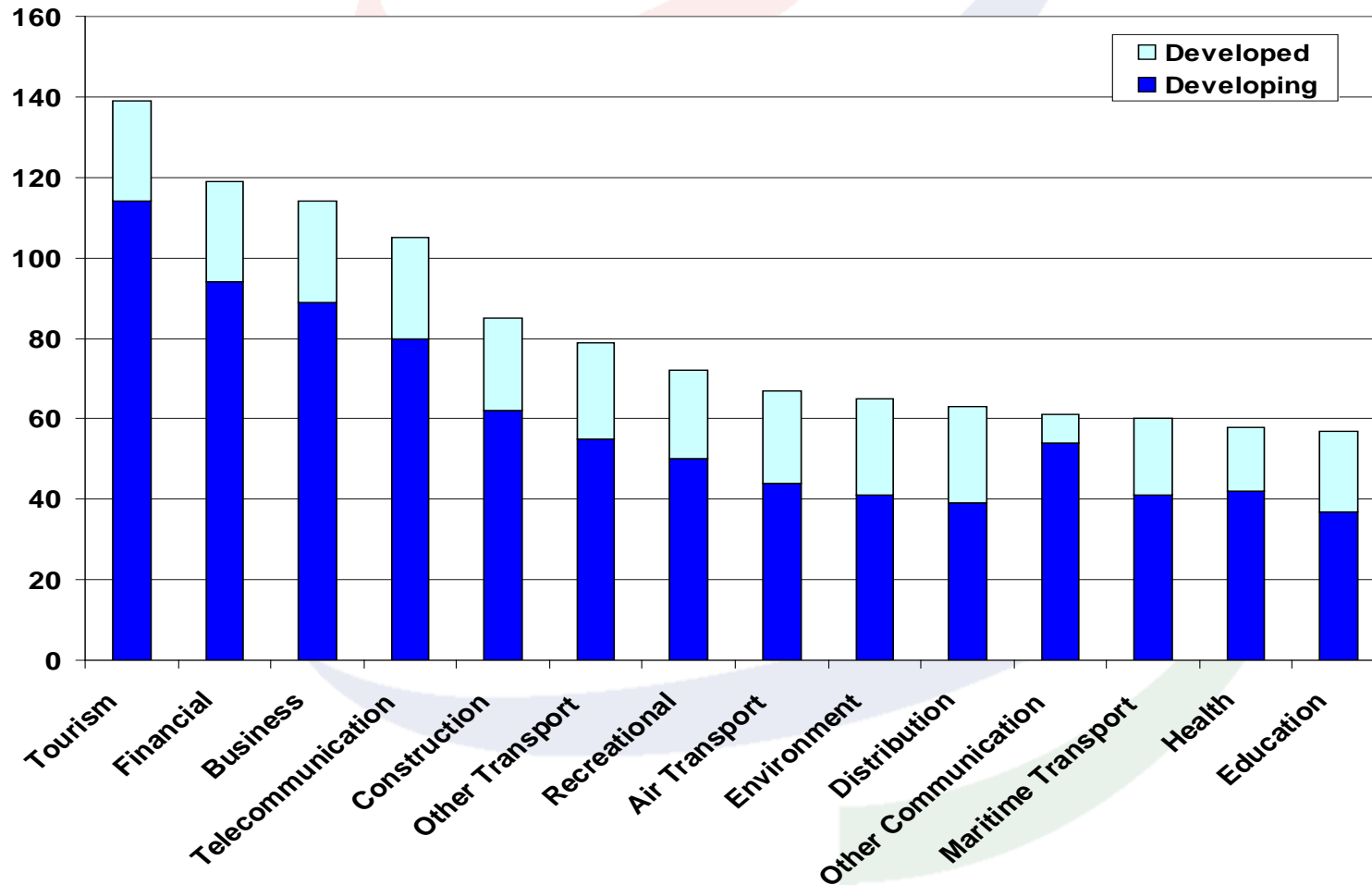
** Mainly transition economies

Total number of sectors: ~160



Sector pattern of commitments

(Number of Members)

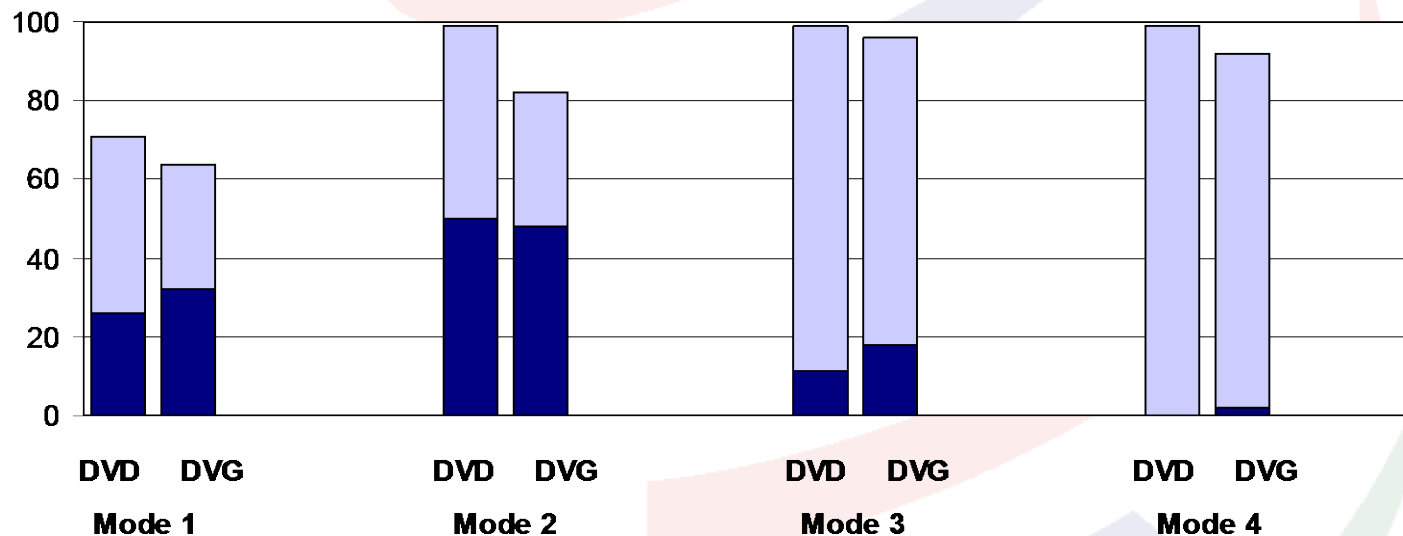




WTO OMC

Modal pattern of commitments

(Number of MA commitments in selected sectors, per cent, July 2000)



a Calculated on the basis of a sample of 37 sectors deemed representative for various services areas (See WTO Document S/C/W/99, 2 March 1999)

Legend

The upper part of each bar represents partial commitments, the lower part full commitments.

DVD = Developed countries

DVG = Developing and transition economies



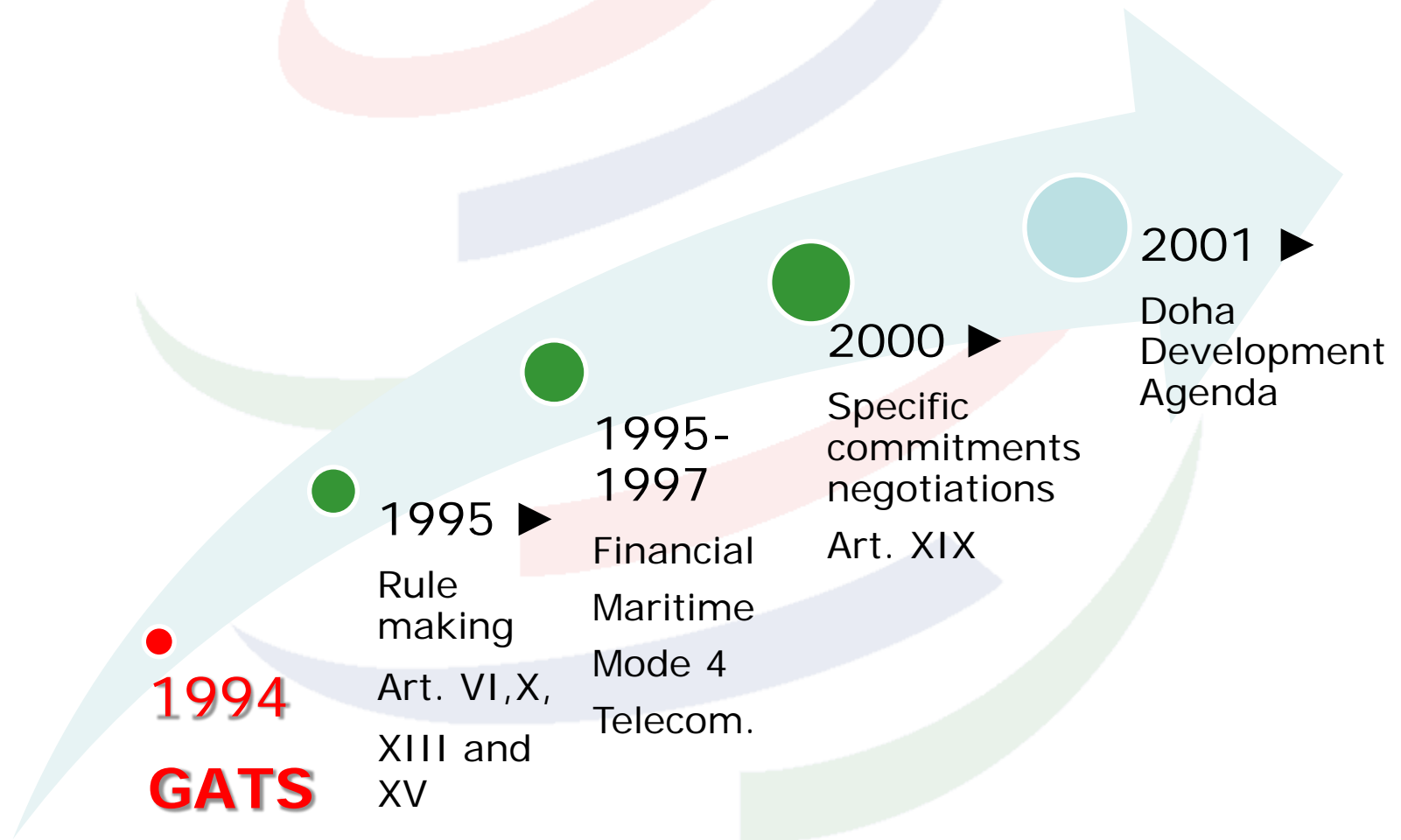
What has the GATS achieved to date?

- The GATS provides a reliable and predictable framework for world services trade
- The focus of the Uruguay Round was on rule-making rather than on actual liberalization
- Many commitments have since been “overtaken” by (autonomous/PTA) liberalization measures
- The absence of successful negotiations has seen the gap between bound and applied liberalization grow





History of multilateral services negotiations



Scope of Market Access Negotiations

- **Specific commitments (Art. XVI-XVIII)**
 - Market access
 - National treatment
 - Additional commitments
- **MFN exemptions**
 - Annex on Article II (reduction of MFN-exemptions)

State of play: Market access

- **Initial offers**

- 71 Schedules (covering 95 Members*)
- Last submission: 19 March 2008 (Belize)

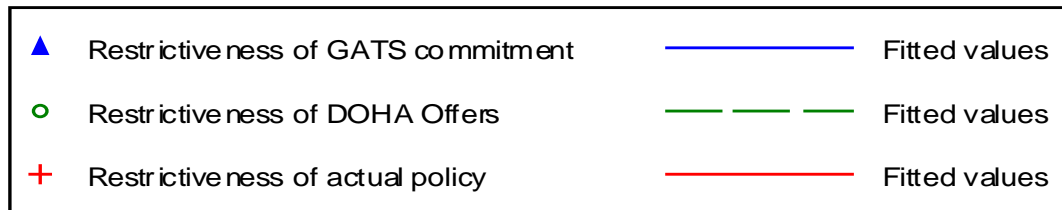
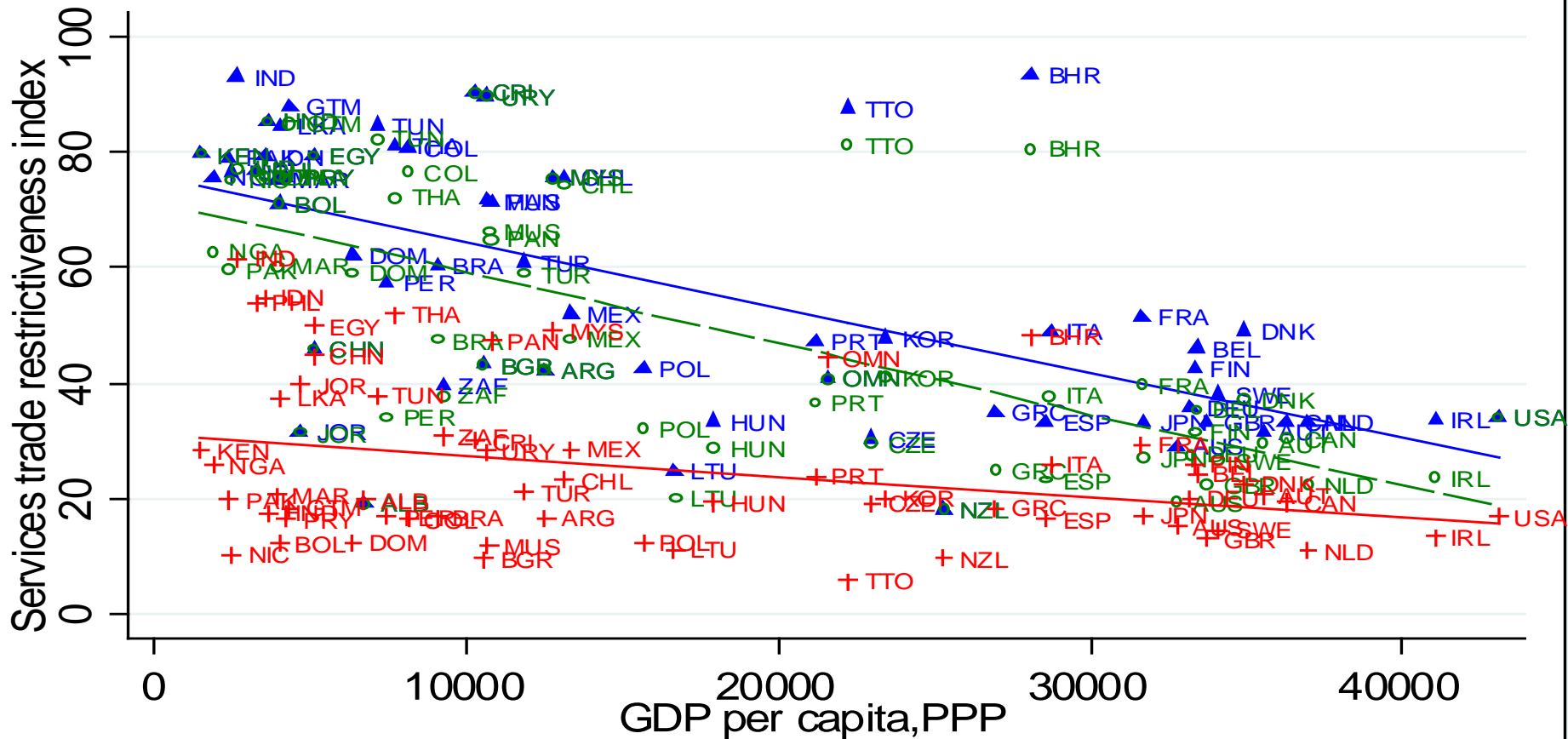
- **Revised offers**

- 31 Schedules (covering 55 Members*)
- Last submission: 22 August 2007 (Nigeria)

MFN Exemptions: Some 40 out of 540 exemptions offered for withdrawal



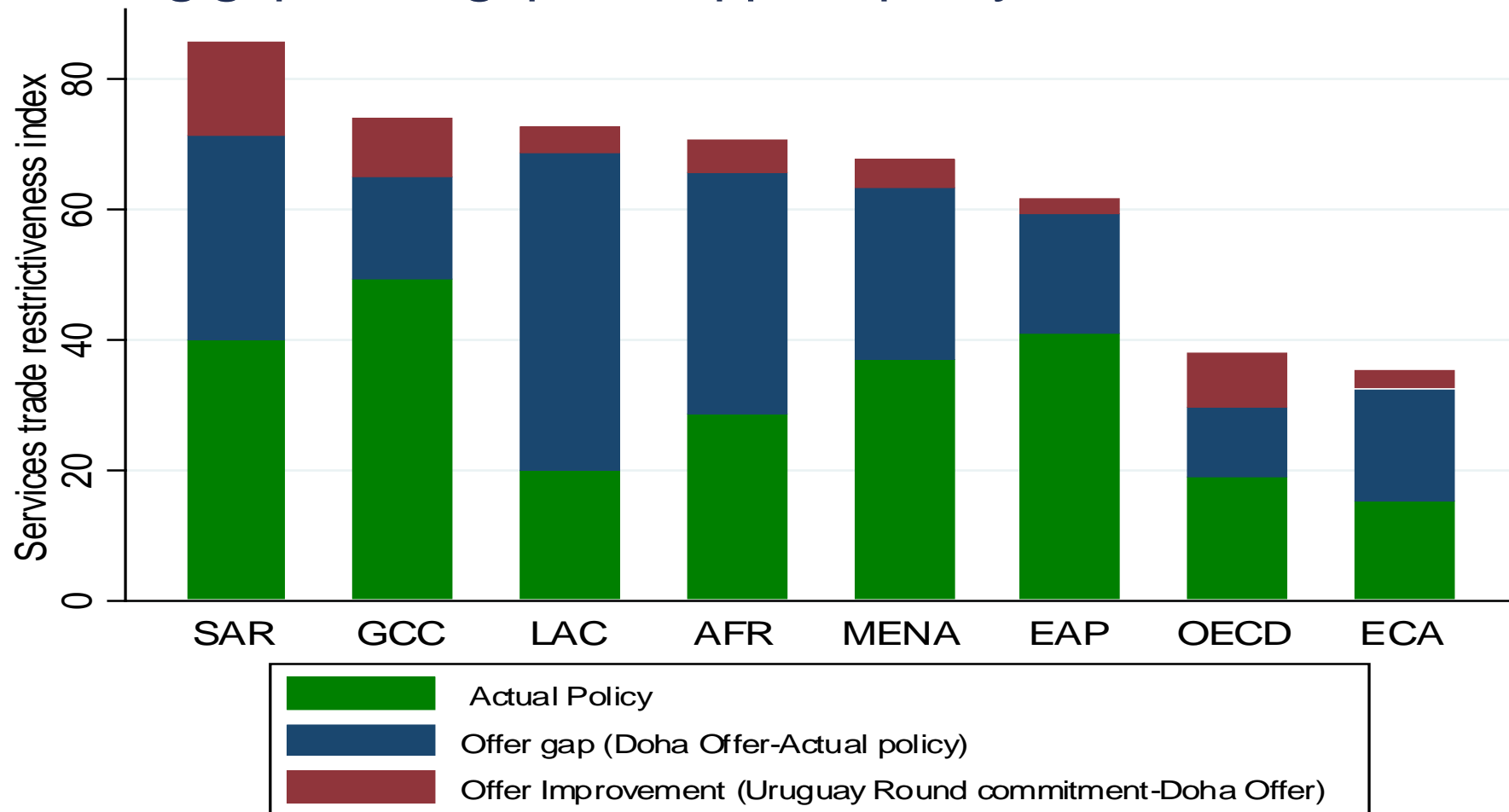
1995 Commitments, DDA Offers and Actual Policies



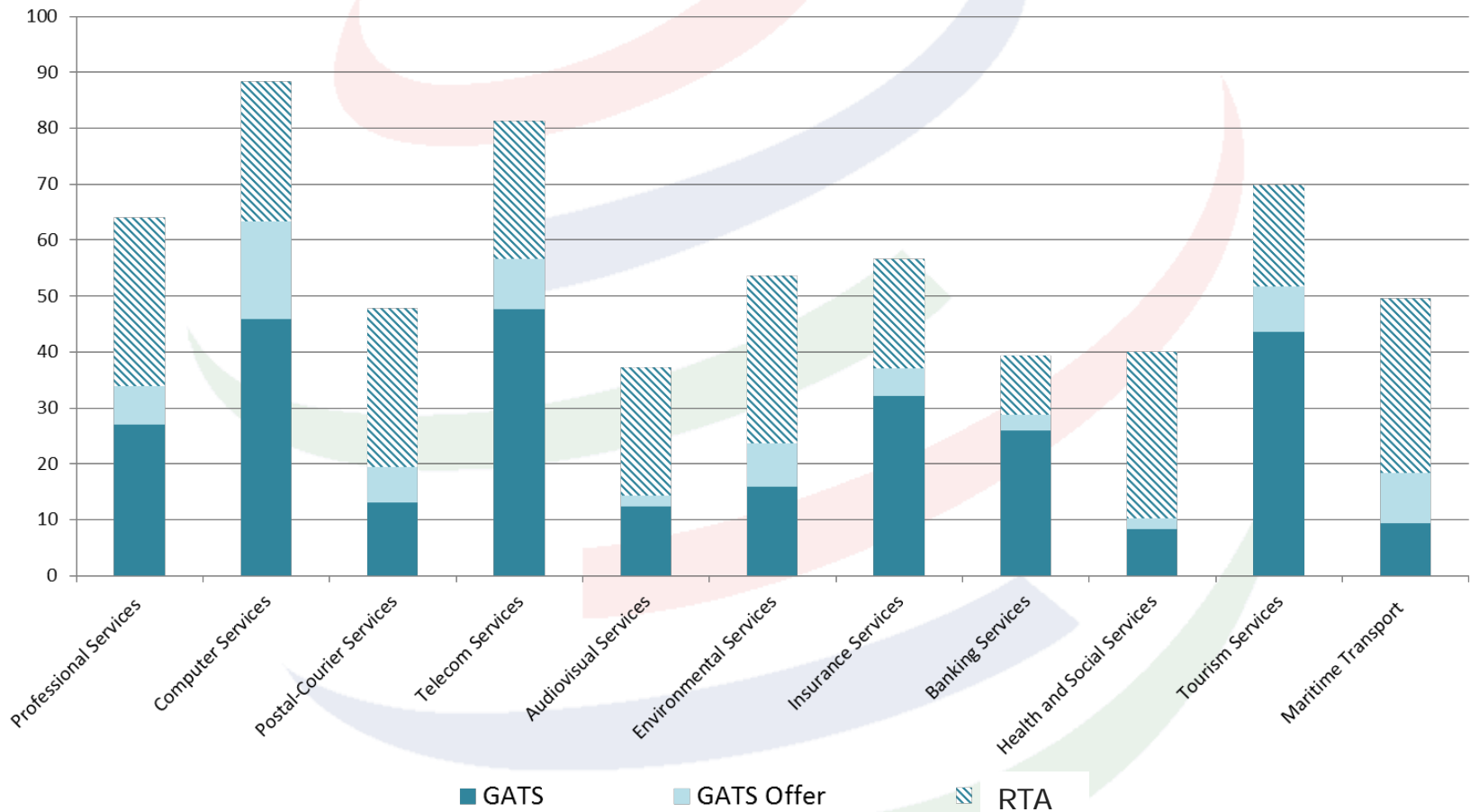
STRI for 61 countries, excluding Qatar and 31 countries that did not submit offers

UR commitments, Doha offers and actual policies by region

Binding gap, offer gap and applied policy for 93 countries



Economic Integration Agreements have closed the gap to some extent



Based on index of services commitments; details at:
http://www.wto.org/english/tratop_e/serv_e/dataset_e/dataset_index_e.htm



Rule making agenda & regular work

- Domestic Regulation (Art. VI:4)
(WP on Domestic Regulation)
 - Qualification requirements and procedures
 - Licensing requirements and procedures
 - Technical standards
- GATS rules (WP on GATS Rules)
 - Safeguards (Art. X)
 - Government procurement (Art. XIII)
 - Subsidies (Art. XV)

In addition: Regular work through the
Committee on Specific Commitments, and the
Committee on Trade in Financial Services





Increasing
participation of
developing and
least-developed
countries

Increasing Participation of Developing Countries (Art. IV)



- To be facilitated through **specific commitments** which:
 - strengthen their domestic services capacity, efficiency and competitiveness;
 - improve their access to distribution channels;
 - liberalise access to sectors and modes of export interest to them
- Developed countries to establish **contact points** to facilitate developing countries' service *suppliers'* access to information
- Special priority for **least-developed countries**/also in accepting negotiated commitments



LDC Modalities (TN/S/13, 2003)



WTO OMC

Members to develop 'appropriate mechanisms' for implementation of GATS Art IV, and take measures to increase participation of LDCs in world services trade, such as

- strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness;
- reinforcing export/import promotion programmes;
- promoting the development of LDCs' infrastructure and services exports through training, technology transfer, enterprise level actions and schemes, intergovernmental cooperation programmes, and where feasible, financial resources; and
- improving the access of LDCs' services and service suppliers to distribution channels and information networks, especially in sectors and modes of supply of interest to LDCs.

In addition, in the DDA, LDCs are not expected to make any new commitments (HK Ministerial, 2005)



Multilateral vs Regional negotiating engagement



Advantages of Multilateral engagement	Advantages of regional engagement
Infrastructure services with location-specific sunk costs are best liberalized on an MFN basis (Tel, FS)	Bargaining power: Possibility of obtaining reciprocal market access in negotiations
Credibility of bindings at WTO (Dispute settlement)	To the extent that geography shapes trade patterns: allows focus on sectors/issues where tangible results may be obtained (Professional Services/Movement of Business Persons)
Reduces complexity in negotiations and implementation of results	Regulatory cooperation more feasible within a smaller group of countries (harmonization, mutual recognition)
	Learning effects of regional engagement (coordination, mainstreaming services in general trade policy)
	Time: length of GATS negotiations a deterrent