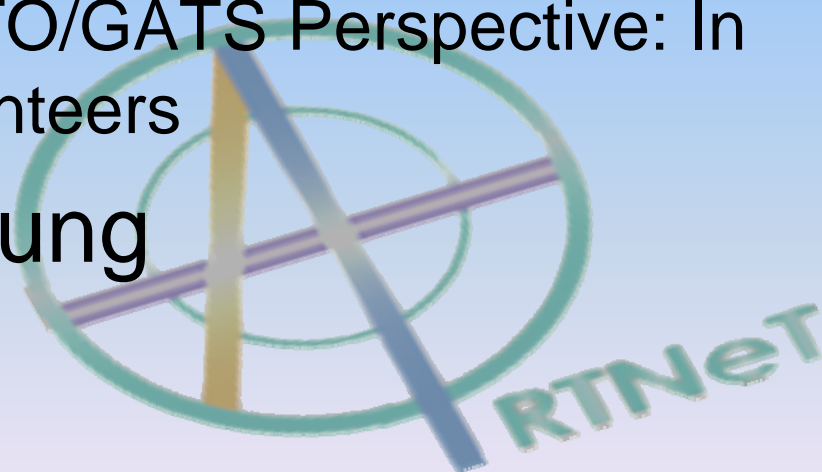


Trade-led Growth in Times of Crisis
Asia-Pacific Trade Economists' Conference
2-3 November 2009, Bangkok

Session 7

Services Liberalization from a WTO/GATS Perspective: In
Search of Volunteers

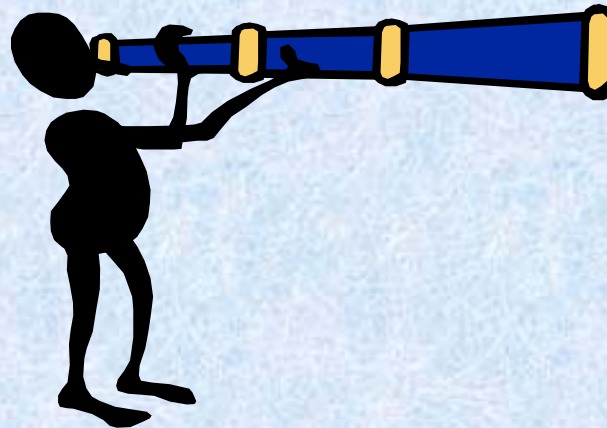
Rudolf Adlung



Asia-Pacific Research and Training Network on Trade

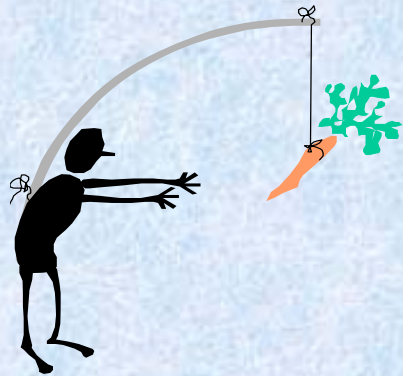
www.artnetontrade.org

Services Liberalization from a WTO/GATS Perspective



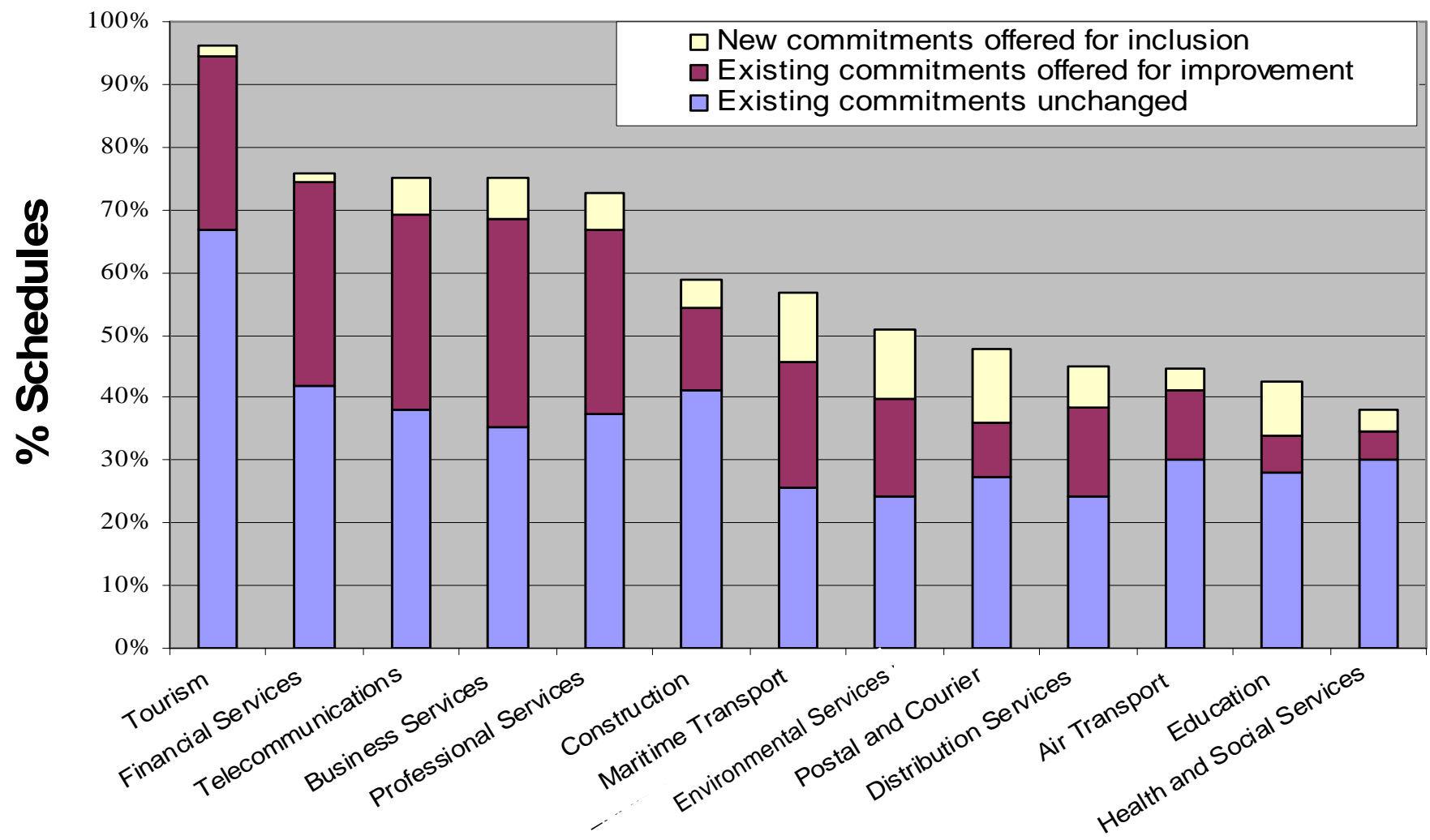
Rudolf Adlung
November 2009

rudolf.adlung@wto.org



Services Negotiations under the DDA: A Sobering Picture

Commitments and Offers: Overview



Offers: Quality

“Few, if any, new commercial opportunities would ensue for service suppliers. Most Members feel that the negotiations are not progressing as they should.”

Chair of CTSS, July 2005 (TN/S/20)

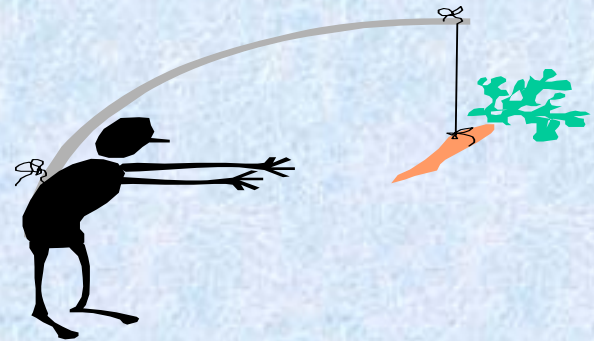
Rule-Making Areas

- **Emergency Safeguards (Art. X)**
- **Government Procurement (Art. XIII)**
- **Subsidies (Art. XV)**
- **Domestic Regulation (Art. VI:4)**

ANY RESULTS IN SIGHT???



Negotiations: The Main Impediments



- **Lack of political momentum**
(goods and services)
 - **Size and diversity of WTO Membership**
(+ absence of institutional / inspirational centre)
 - **Too many sensitivities of too many participants**
(> ‘exclusions game’)
 - **Many parallel attempts (PTAs, BITs, etc.)**
(> resource problem)
(> worries about ‘leverage effects’)

- **Particular structure of GATS
(and other service agreements)**
 - **Wide range of sectors (and ‘specificities’)**
 - **Four types of transactions
(> including ‘domestic’ transactions)**
 - **Virtually unlimited range of permissible restrictions
(> Absence of tariff-type indicator of protection)**
 - **Classification problems
(e.g., energy services, environmental services)**
 - **Considerable scope for regulatory initiatives
(mode 4!)**

- **Segmentation of competencies across ministries and government levels**
 - Mismatch between de-centralized national structures and centralized processes in Geneva
 - Many niches for political lobbying, etc.
- **Cost of services reform (time & resources)**
 - Trade liberalization might require deep institutional changes
- **Scant support for market-oriented reforms**
 - Beneficiary (taxpayer) ≠ consumer

However, many services have been liberalized over the past two decades ...

Autonomous initiatives in many countries with a focus on producer/intermediate services

Driving forces:

- **Pressure from downstream user industries**
- **Increasing scope for industrial re-location due to improved transport and communication links**
- **Governments' inability to modernize traditional public monopolies (e.g., telecom, transport)**
- **Countries' (self-)interest in attracting FDI**
- **WTO accessions**

A More Modest
Option for the
GATS:
Deliberate
Bindings of
Autonomous
Liberalization
(at least)



Commercial presence (mode 3) / investment:
Many moves have been locked in
unintentionally(?) under the GATS

- **Virtually all WTO Members have concluded investment treaties (more than 100 in some cases)**
- **These normally guarantee national treatment post-establishment (US: pre- and post-establishment)**
- **As far as services are concerned, the MFN-obligation under Article II of GATS applies**
- **Very few Members have listed relevant exemptions**

Note: 60 per cent of world investment stocks are estimated to be in services

In other words: The vast majority of WTO Members needs to extend services-related BIT-benefits on an MFN basis

Consequences

No scope for: discriminatory producer or production subsidies, regulatory discrimination, etc.

Compensation requirement for 'takings of property'

Constraints on using safeguard measures*

*** Relevant for ongoing negotiations on an Emergency Safeguards Mechanism under GATS**

Do they know?



Challenge for WTO negotiations: Reducing the perceived risks of deliberate policy bindings

- **Reviving information-exchange and discussion processes among Members**
(> Need for common interpretations and definitions: 'subsidies', 'governmental services', etc.)
- **Work on scheduling and classification issues**
(> Need for reference papers with competition disciplines, etc.?)
(> Link between A4T and access bindings?)

- **Rule-making initiatives**
(> e.g. ‘suspension clause’ for ambitious new commitments?)
- **Institutional innovation**
(e.g. upgrade the ‘Advisory Centre on WTO Law’ and the WTO Trade Policy Mechanism – in terms of mandate and resources)
- **Promote compliance with existing notification/transparency requirements**

Who volunteers?

