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**Services Liberalization and Regulation under RTAs:
Observations Based on TPP**

SESSION # 2



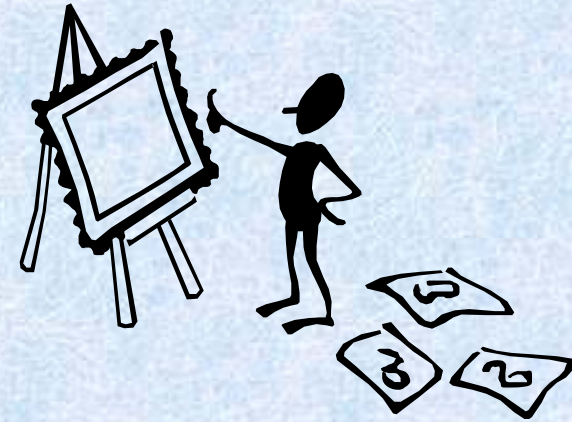
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SERVICES LIBERALIZATION AND REGULATION UNDER RTAs: OBSERVATIONS BASED ON TPP

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Services liberalization under TPP: A mixed picture (across participants, sectors, modes and measures)



While GATS-plus commitments clearly prevail (especially from Japan, Malaysia and Vietnam),* there are exceptions. Examples:

Sectors: scaled-down GATS commitments on certain social services, new financial services, etc.

Modes: no US commitments under mode 4 ('temporary entry for business persons')

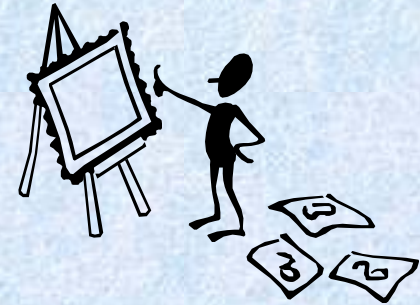
Subsidies: fully exempt from MFN and NT on cross-border trade

* According to Hufbauer, Peterson Institute, 2016

Complemented with ...

+ ...the creation of stricter rules (GATS-plus) on
Electronic commerce, cross-border information flows etc.
(Chapter 14)
State-owned enterprises and designated monopolies
(Chapter 27)
Transparency (Chapter 26)
and [...]

Disciplines on Domestic Regulation* (TPP Art. 10.8): A mixed picture, again



- + More effective obligations (GATS-plus) governing the licensing and authorization process**
 - BUT: Weaker disciplines (GATS-minus) on regulatory substance than implied by GATS Art. VI:4 & 5
(only best-endeavours basis, no necessity test)**
- * Qualification requirements and procedures, technical standards and licensing requirements.

The ‘comprehensiveness trap’:

The broader the coverage of the envisaged disciplines, the weaker their substance (see necessity test in the 1998 ‘Accountancy Disciplines’)

Possible response:

RTA provisions promoting regulatory cooperation and coherence in individual areas, including via competent international/regional organizations (see TPP Annex 10-A on Professional Services; Chapter 25 on Regulatory Coherence)

To be kept in mind: TPP and other mega-regional initiatives currently are the only game in town, given WTO Member's inability to address pressing rule-making issues. Look at the 'progress' made in the WPDR in some 17 years ...

'The lack of 'innovations' within the (WTO's) legal architecture has meant that the framework is no longer adequate to facilitate trade relations and maintain order in a modern trading environment. For this reason, innovations and rulemaking have been pushed to FTA's and other bilateral and regional forums'. (Bryan Mercurio, 2014)

The downside, however:

RTA-based approaches might contribute to the fragmentation of international regulatory conditions (third-countries tend to be excluded from cooperation, harmonization and/or recognition initiatives)*

Could the extension or denial of regulatory cooperation and recognition be used as a strategic trade policy instrument?

*** 'A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restrictions on trade in services' (Art. VII:3).**

A conceivable alternative to RTA-based approaches (?)

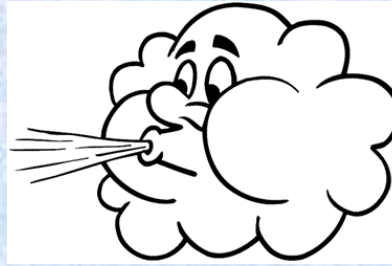
Negotiate templates of new and/or stricter rules and regulations for incorporation, once a 'critical mass' has been reached, as additional commitments (Art. XVIII) in the participants' GATS schedules.

A possible model: the telecom reference paper (RP).

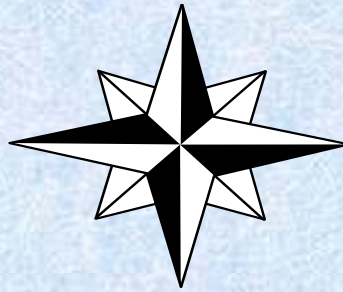
[By the way: the RP contains a necessity test concerning the use of universal service obligations.]

Still realistic? Who would eventually take the initiative?

Tailwind from Nairobi?



- **‘We reaffirm the pre-eminence of the WTO as the global forum for trade rules setting and governance’**
- **‘We reiterate that the WTO shall remain the main forum to negotiate multilateral trade rules’**
- **‘As we recognize the centrality and primacy of the multilateral trading system, we note that WTO Members have also successfully worked and reached agreements in *plurilateral formats*’**
- **‘We reaffirm the need to ensure that Regional Trade Agreements (RTAs) remain complementary to, not a substitute for, the multilateral trading system’**



THANK YOU!

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