

**RIETI-JETRO Symposium**  
**Global Governance in Trade and Investment Regime**  
**- For Protecting Free Trade -**  
**Handout**

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**Hosuk LEE-MAKIYAMA**  
Director,  
European Centre for International Political  
Economy (ECIPE)

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Research Institute of Economy, Trade and Industry (RIETI)  
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## FROM THE WTO IT AGREEMENT (ITA) TO INTERNATIONAL DIGITAL ECONOMY AGREEMENT

*Hosuk Lee-Makiyama*  
*Director, European Centre for International Political Economy (ECIPE)*



# » WTO information technology agreement (ITA)

## ITA – open zero-for-zero agreement

- » Under MFN and critical mass approach (90%), with less than 10% free riders
- » Remains the largest trade liberalisation in the history of WTO
- » Expanded from 29 to 46 members
  - ▶ Members theoretically account for 97% of trade in covered products
  - ▶ Driven global production networks (GPN), services and supply chain fragmentation
  - ▶ Radical shift from “intra quad” to south-south trade; developing economies accounting for 50% of today’s exports, involved in 75% of all trade
- » Failure to negotiate product expansion (ITA2)
  - ▶ Gridlock over EU tariff dispute
  - ▶ Flat-screen TV, set top boxes, multi-use printers (also PDAs/smartphones, digital still cameras)
  - ▶ Defensive interests, legalistic interpretation of tariff schedules

## Unable to capture 15 years of technology development

- » Fastest pace of innovation in human history
  - ▶ Even products that are now outdated were yet to be invented in 1996
    - ▶ VHS; DVD; Blue-Ray; online downloads; cloud streaming
- » At least 4 innovation cycles, 12 product cycles and one industrial revolution
  - ▶ Internet, mobile technology

# » Trade policy challenges unique to the ICT industry

## Industry innovation versus legal commitments

- » Product development and convergence
- » Servification, for example:
  - Servification of goods – goods dependent on apps/software, outsourcing and consultancies
  - Actual transformation of goods – cloud computing (PaaS, IaaS), digital content
- » Then: digital divide – Now: balkanisation of the ICT industry

## New trade barriers

- » Non-tariff issues, data or services
- » Competences

## New signatories

- » Mexico (2.1%), Brazil (8.1%), South Africa (1.1%), Argentina (9%), Chile (3%), Russia (3.7%)

## Not a question of new 'issues', 'rules' or 'disciplines' – but what WTO should do when trade volumes take new forms

- » Needs already identified in the mid 90s
  - Cross-border data flows: WTO e-commerce moratorium
  - Infrastructure: WTO Reference Paper on basic telecoms
  - Goods: ITA

# » Elements for trade liberalisation

- ▶ Goods
- ▶ Services
- ▶ Infrastructure
- ▶ Competences

Email/SMS  
Video/**Still** camera  
Geo-positioning, GPS

Installations,  
application  
development

e.g. Lithium-Ion  
batteries

**Components**

**Assembly**



**infrastructure**

Network access

Voice/data

Network

Internet

Content

Operating systems

Applications

Software  
supply chain

# » Product coverage

## Current scope of ITA

- » List of agreed goods by tariff lines (annex A) or product descriptions (annex B)
- » Problems of a subjective criteria, 'professional use'
  - Definitions based on speed, capacity, available ports and connectivity are temporal
    - Examples: Monitors (televisions), still cameras (video cameras), 'professional' software (content, apps)
- » Inherent problems of the harmonized standard (HS) code: the tablet?

## Proposed extension of the product coverage

- » Definitions (+ parts, manufacturing equipment thereof)
  - Two tier criteria
    - 1. Any product whose main purpose is to register, store, process, communicate or render information
    - 2. Digital products
  - The new WTO proposal [ITA/W/36]:
    - a) products capable of processing digital signals
    - b) products that can send or receive digital signals with or without lines;
- » Category based commitments with negative list approach
  - Current commitments are on product level (HS 6/8 digit level)
  - New products require negotiations for each inclusion, cannot be automatically included

## The real coverage of current ITA

- » 65% of world trade in digital goods
  - Average 5.3% tariff on non-covered items (approx. \$ 12bn)

# » Non tariff barriers (NTBs)

## Examples

- » Certification requirements, safety marking – but also non-market driven product standards that are mandatory, local content requirement

## Economic impediment of NTBs exceeds tariffs

- » Trade costs arising from NTBs ~ \$250 bn (cf. tariffs \$12 bn)
- » Agreeing on testing/certification requirement on half of ITA goods would at least lead to 6~7% reduction of trade cost (equiv. to \$80~90 bn)

## Issue

- » ICT standards tend to be set by business under dynamic competition
  - WTO extremely ill-fitting to be a standard-setting body (ISO, IEC, ITU)
  - Principles for transparency or disproportionate discrimination actionable under dispute
- » Harmonisation on electromagnetic compatibility and interference (EMC, EMI)

## Competition from FTAs

- » MRAs, Self-declaration of conformity (SDoC)
- » No real reason (from consumer & business perspective) why these techniques cannot be applied in a plurilateral context
- » Product liability

# » Services

## Market developments

- » ICT services are the fastest growing category of services (\$1 trillion in US)
  - Value of software traded as a services doubles every 3 years
  - 75% of software distribution today online (previously floppy disks), rest via mode 4
- » Goods depend on access or bundling with online services
  - Tied to business and revenue models
- » Emerging markets participation
  - India largest service exporter in the world; China is the world's largest internet population

## ICT Services

- » Little restrictions in the GATS schedules of ITA members
  - ITA members cover 96% of all trade on computer and related services (CRS, CPC84)
  - Telecommunication: 85%
- » Limited members agreed on 'basic' telecom services (voice), not the internet
  - GATS annex – open access on reasonable and non-discriminatory terms
  - Reference Paper – universal service, interconnection, regulatory and licensing procedures
- » Locking in existing commitments on CRS
  - Making classification issues of software irrelevant

## » Mode 4 (Temporary movement of physical persons)

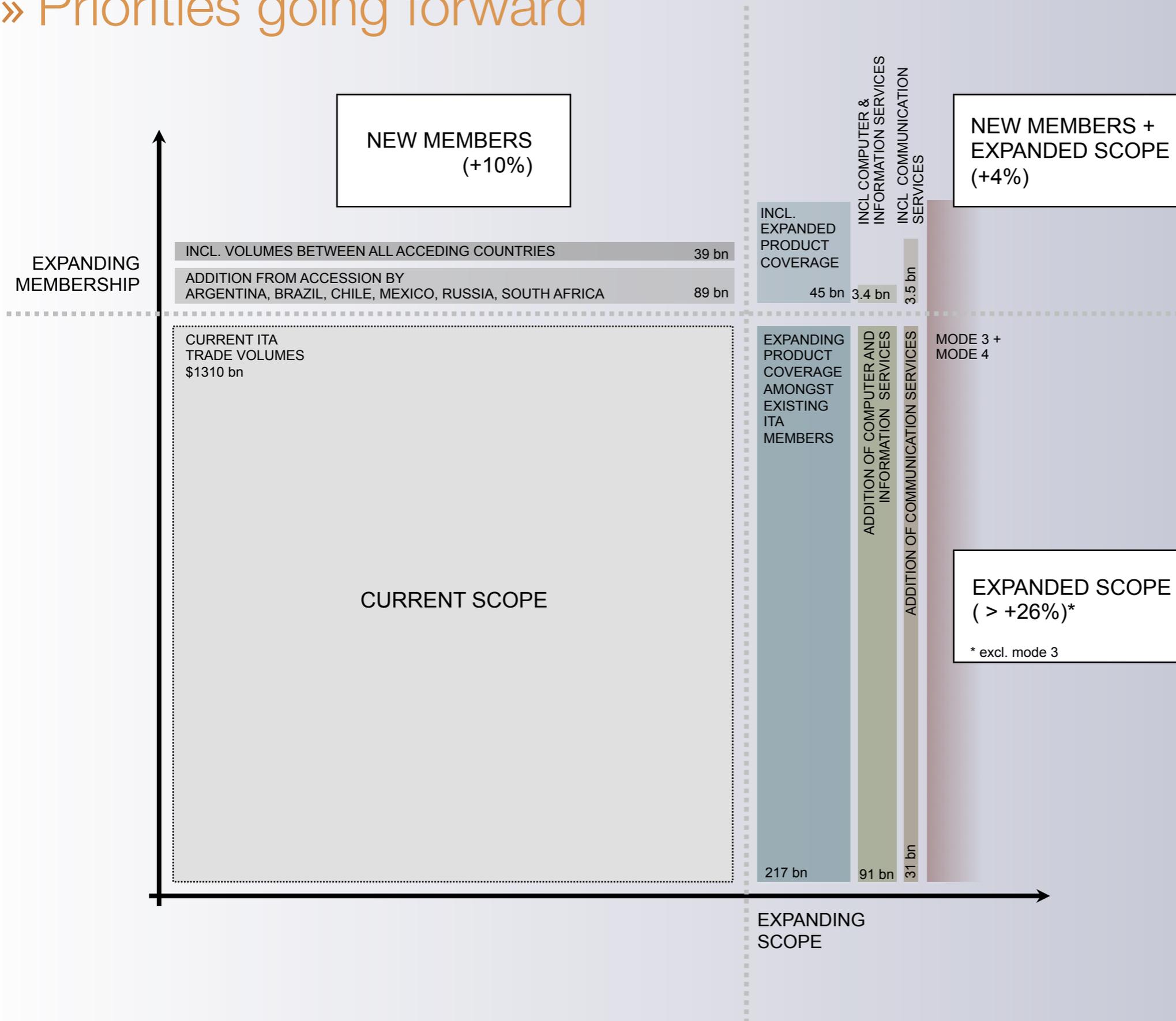
### Global supply-chain of competences

- » Services fragmentation of multinational corporations (MNCs)
- » Market driven licensing/certifications under dynamic competition
- » Part of most new generation FTAs – ICT services (CPC84) more likely to be free. Less concerns about migration
- » EU FTAs: Mode 3 require Mode 4; India

### Possible solutions

- » Intra corporate transfers
- » Abolishment of ENTs and similar requirements
- » Numerical quotas

# » Priorities going forward



# » Plurilaterals in the current policy climate

## Plurilaterals: A WTO of variable geometries?

- » Liberalisation wherever it can be achieved
- » Failure of single undertaking, modalities and Hong Kong sequencing (Unctadification)
- » Critical mass agreements or non-mfn?
  - ▶ Alternatives are non-MFN FTAs outside the WTO
  - ▶ Services (ISA, ICT-only), TRIPS (ACTA) are deadlock pillars of the WTO
  - ▶ Non-MFN plurilaterals are infeasible in current state of play

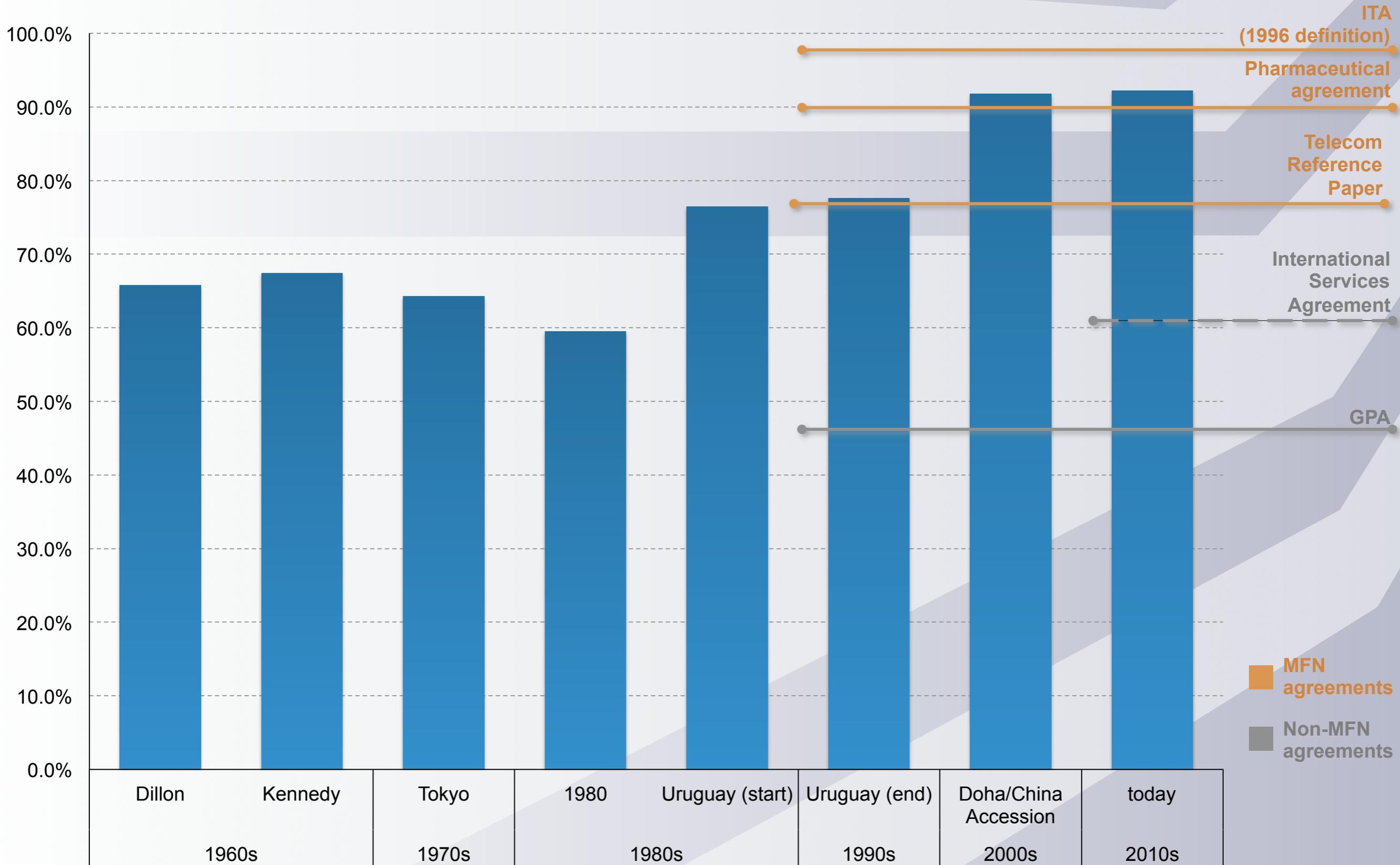
## Conclusions from ITA

- » Sectors where interests cut through north/south divide
  - ▶ More likely with supply-chain fragmentation without net importer mercantilism
  - ▶ General purpose sectors (trade facilitation); Export enablers for emerging economies
- » Market access-only, clarity in definitions (cf. the Pharmaceutical Agreement)
- » MNC driven sectors, avoiding issue-linkages
  - ▶ Trade negotiators reluctant to zero-for-zero
  - ▶ WTO so far incapable of delivering regulatory co-operation – seeking solutions elsewhere
  - ▶ Leveraging into non-market access issues

## Prospects of multilateralising

- » Plurilaterals move elements from bilateral FTAs into the WTO system

# » Multilateral and plurilateral coverage



# ECIPE — European Centre for International Political Economy

Hosuk Lee-Makiyama  
Director

[hosuk.lee-makiyama@ecipe.org](mailto:hosuk.lee-makiyama@ecipe.org)

