

Der Einfluss internationaler Rahmenbedingungen auf die Erbringung öffentlicher (Infrastruktur)- Dienstleistungen

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Structure of the Presentation

1. Global developments and developments in the EU
2. Drivers of liberalization and privatization in the field of infrastructure services
3. Towards multi-scale politics?
4. The role of the global trade regime for the supply of infrastructure services, with focus on WTO Services Agreement GATS
5. Conclusions

Egon Matzner (2003):

“It is heuristically useful to distinguish between privatisation as a single measure of de-nationalisation and privatisation as a logical consequence of a privatisation mechanism. (The concept of mechanism is used in the sense suggested by Peter Hedström and Richard Swedberg , 1997). Singular measure privatisation has taken place in history now and then. The occurrence of a privatisation mechanism is a rather novel case. It triggers off a chain reaction. Privatisation is spreading like an epidemic disease. The persons in charge act under a privatisation mechanism by necessity, rather than by choice.”

Source: Matzner, E.: **A note on privatisation mechanisms, 2003** (<http://www.epoc.uni-bremen.de/home.htm>)

1. Global developments and developments in the EU

- Privatization programmes under the auspices of the IMF and World Bank during the 1980 and 1990s
- „Autonomous“ privatizations of individual countries(eg UK, USA, SWE)
- Promotion of Public-Private Partnerships by, in particular, International Financial Institutions
- Liberalisation initiatives through Trade Politics
 - Multilateral liberalisation initiatives, in particular the WTO-GATS agreement (1995)
 - Regional and bilateral initiatives, in particular via the trade policy of the US and the EU (since early 2000s)

2. Drivers of liberalization and privatization in the field of infrastructure services

- General ideological paradigm-shift („Neoliberalism“, Washington Consensus etc.): state failures, efficient market hypothesis etc.
- Financialisation of accumulation, i.e. financial capital looking for profitable investment opportunities
- Budget constraints on governments – dogma of restrictive fiscal policies (EU-SGP, proliferation of austerity programmes post financial crises, e.g. Latin America 1980s, East Asia 1997/98, Argentina 2001/02, EU fiscal pact post global financial crisis 2008)
- Competitive pressures from economic globalization and global governance mechanisms

The rising significance of services trade

Table 1: Top 90% (27 countries) of services trade 2010 (total trade and major categories)

Source: IMF EBOP

CATEGORY	Total trade (\$)*	% of world trade in services*	Transport	Travel	Personal, cultural and recreational services	Other services
TOTAL	5,064,304	100.0%	25.8%	24.9%	1.0%	45.6%
EU27	1,192,603	23.5%	6.2%	4.3%	0.3%	12.7%
United States	763,681	15.1%	2.9%	4.2%	0.3%	7.7%
China	348,552	6.9%	1.9%	2.0%	0.0%	3.0%
Japan	249,226	4.9%	1.7%	0.8%	0.0%	2.4%
India	236,851	4.7%	1.2%	0.5%	0.0%	3.0%
Singapore	190,592	3.8%	1.2%	0.6%	0.0%	1.9%
Korea, Republic of	162,381	3.2%	1.3%	0.5%	0.0%	1.3%
China, Hong Kong SAR	158,869	3.1%	1.0%	0.8%	n/a	1.4%
Canada	144,916	2.9%	0.6%	0.9%	0.1%	1.3%
Switzerland	121,085	2.4%	0.3%	0.5%	0.0%	1.6%
Russian Federation	109,624	2.2%	0.5%	0.7%	0.0%	0.9%
Australia	99,960	2.0%	0.4%	1.0%	n/a	0.6%
Brazil	86,791	1.7%	0.3%	0.4%	0.0%	1.0%
Norway	80,764	1.6%	0.5%	0.4%	0.0%	0.7%
Thailand	76,168	1.5%	0.6%	0.5%	n/a	0.5%
Chinese Taipei	72,026	1.4%	0.4%	0.4%	0.0%	0.7%
Malaysia	67,668	1.3%	0.3%	0.5%	n/a	0.5%
Saudi Arabia	61,342	1.2%	0.3%	0.5%	n/a	0.4%
United Arab Emirates	53,399	1.1%	n/a	n/a	n/a	n/a
Turkey	52,180	1.0%	0.3%	0.5%	0.0%	0.2%
Israel	40,763	0.8%	0.2%	0.2%	n/a	0.4%
Indonesia	40,131	0.8%	0.2%	0.3%	0.0%	0.3%
Mexico	37,709	0.7%	0.1%	0.4%	0.0%	0.3%
Egypt	37,337	0.7%	0.3%	0.3%	n/a	0.2%
China, Macao SAR	36,226	0.7%	0.0%	0.6%	n/a	0.1%
South Africa	29,639	0.6%	0.2%	0.3%	0.0%	0.1%

3. Towards multi-scale politics?

- Multi-level governance (local, regional, national, international/global) has become the norm
- Rise in importance of international level since 1980s (economic globalisation, global governance...)
- Formation of global trade regime with foundation of WTO 1995 (including services, IPRs etc.)
- Open question: is international level a driver of liberalization and regulatory change?

The role of the global trade regime for the supply of infrastructure services:

The specific role of the WTO Services Agreement
GATS

“If GATS is fully put into force, we, or our children and grandchildren, will be faced with a panorama of privatised police, armies, schools, universities, hospitals, public old age provision, transport facilities, theatres, orchestras, museums, parks, public media, parliaments, governments, lakes and water resources.”

Source: Matzner, E.: **A note on privatisation mechanisms, 2003**
(<http://www.epoc.uni-bremen.de/home.htm>)

Proposition 1:

GATS is not the preeminent forum for the liberalization of services, rather it is the central forum for the constitutionalization of already achieved liberalization/privatization of infrastructure services – goal is de-facto irreversibility („lock-in“)

GATS – Structure

- Framework Agreement, Annexes and Schedules (Specific Commitments & MFN-Exemptions)
- Scope: all Services with the exception of those provided in the exercise of governmental authority and Air Transport Services

GATS – Classification: 12 main categories, over 150 Sub-sectors

1. Business Services (Prof.S., Comp.S., R&D S., Real Est.S., Rental/Leas.S., Other Bus.S.)
2. Communication Services (Postal/Courier Serv., Telecom S., Audiovisual Serv.)
3. Construction and related Engineering S.
4. Distribution Services
5. Educational Services (Primary, Second., Tertiary, Adult, Other)
6. Environmental Services (Sewage, Refuse Disposal, Sanitation, Other)
7. Financial Services (Insurance, Banking, Other)
8. Health Related and Social Services (Hospital, Other Human Health Serv., Social Services, Other)
9. Tourism and Travel Related Services
10. Recreational, Cultural and Sporting Services (Entertainment, News Agency, Libraries, Museums, Sporting)
11. Transport Services (Maritime, Air, Space, Rail, Road, Pipeline, Auxiliary Serv.)
12. Other Services not included elsewhere

GATS and Public Services

- Art I.3 (b): Services „supplied in the exercise of governmental authority“ are exempted from GATS. Art I.3 (c) defines these services as those, which are “supplied neither on a commercial basis, nor in competition with one or more service suppliers.”
 - Examples explicitly stated in the GATS (Annex on Financial Services, Art 1.2.):
 1. activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 2. activities forming part of a statutory system of social security or public retirement plans; and
 3. other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
 - **→ 1.,2.: but only as long as not in competition with private service suppliers!!!**
- Lack of legal clarity: what, if a service is supplied by both public and private suppliers (e.g. in Austria: education, health, social services)

Framework-Agreement – Principles (I)

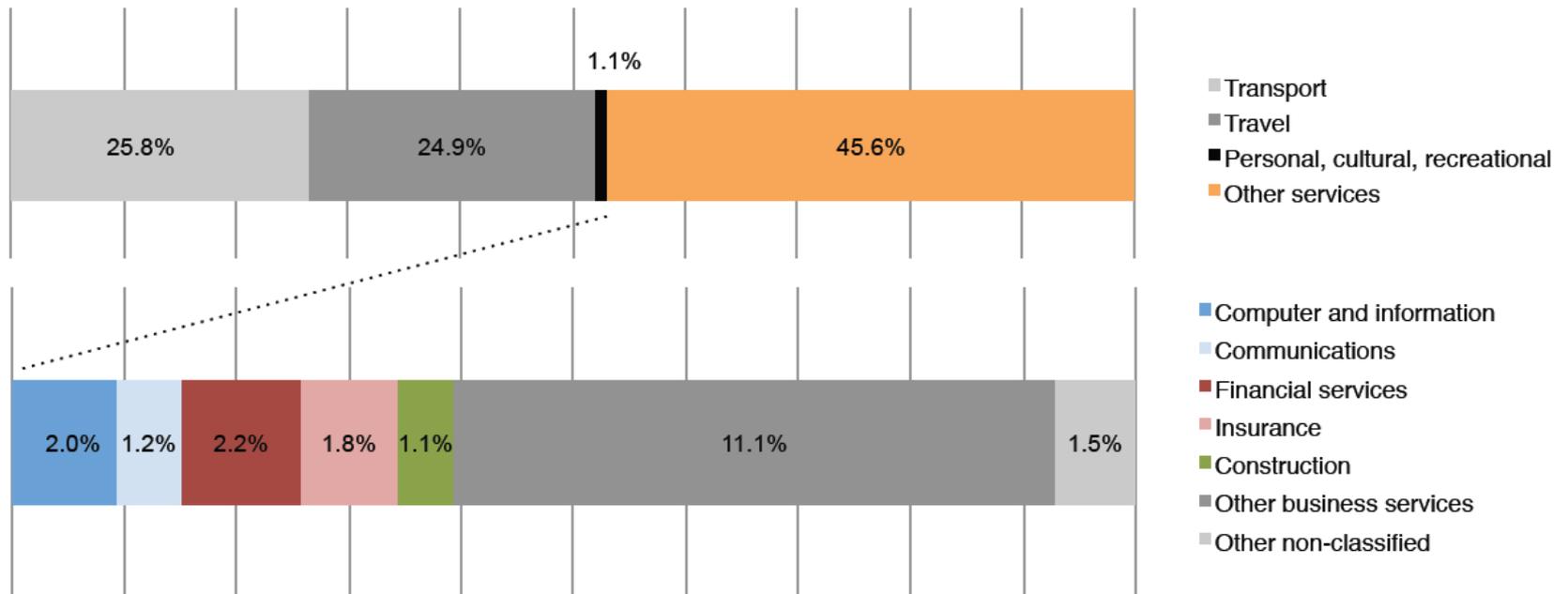
Art I: Definition of services trade, concept of 4 modes of supply:

- Mode 1: cross-border supply (e.g. bus transfer from Austria to Ukraine)
- Mode 2: consumption abroad (e.g. ship transfer from Athens to Zakynthos)
- Mode 3: commercial presence abroad (e.g. establishment of subsidiary in third country)
- Mode 4: supply of service through temporary migration of natural persons (e.g. OeBB executive manages subsidiary in Hungary)

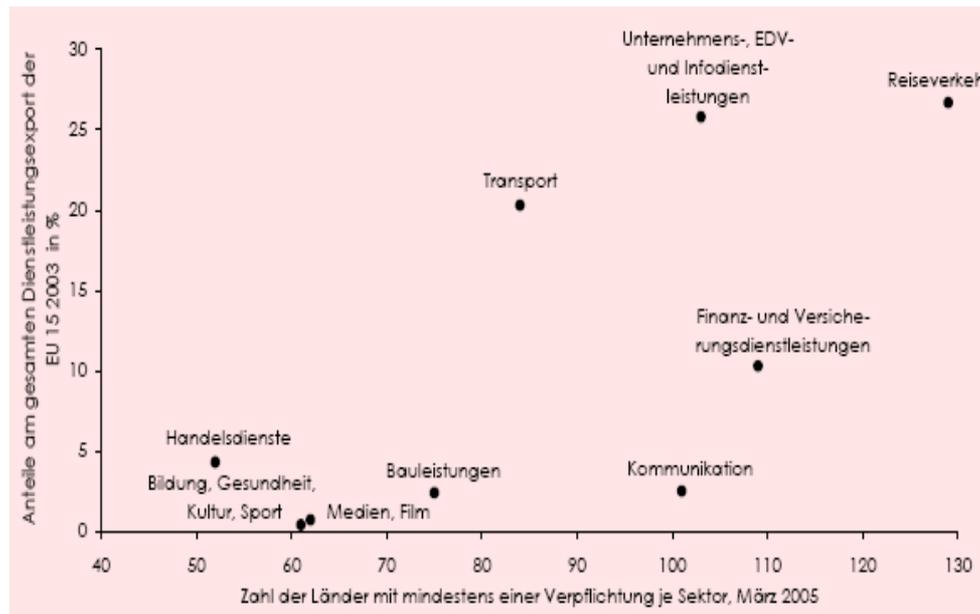
Framework Agreement - Rules (II)

- Art XIX – Progressive Liberalization: successive rounds of negotiations with a view to achieving a progressively higher level of liberalization
- Modification of Commitments (Art XXI): modification/ withdrawal of commitments only after three years, at request negotiations for compensation with the goal of maintaining a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations. No agreement: arbitration procedure
- Art XXIII- Dispute Settlement: GATS subject to dispute settlement under DSU

Sectoral distribution of global trade in services



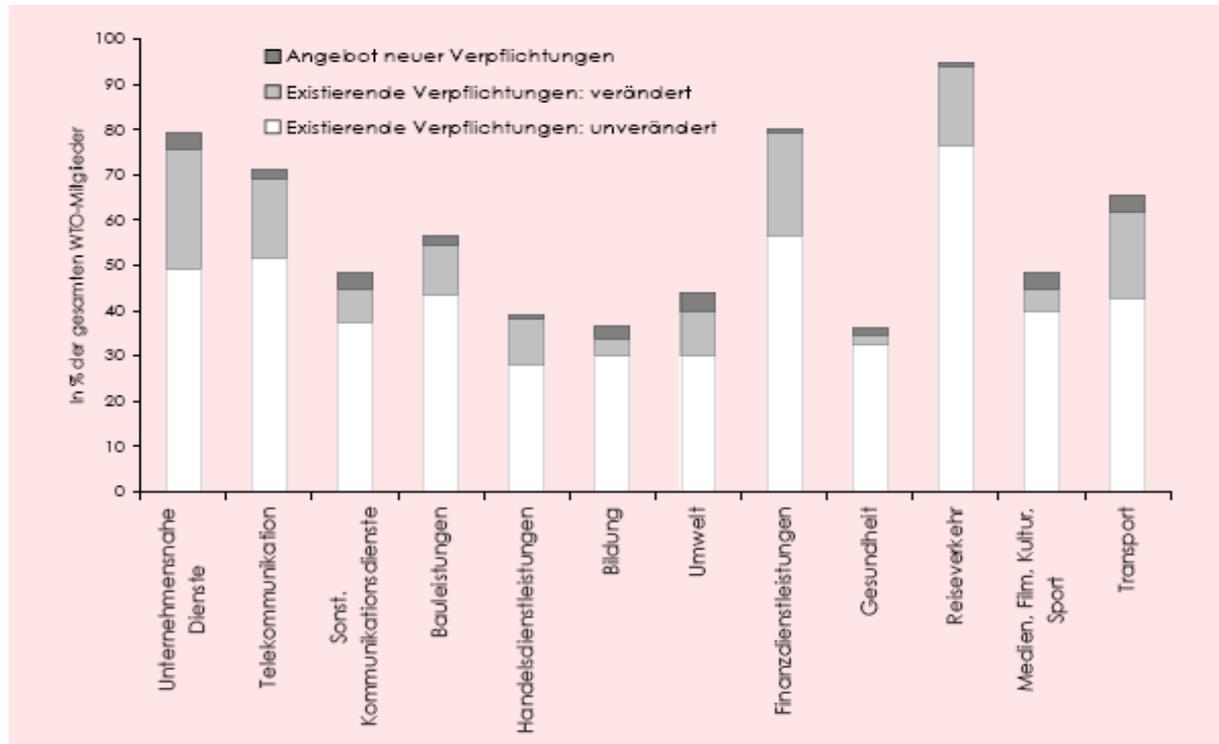
No. of commitments in services pre- DDA negotiations*



Source: Kronberger/Wolfmayr 2005

* Including new WTO Members

Liberalization Commitments in the DDA (per March 2005)



Source: WTO, Adlung/Roy 2005

Bilateral initiatives

- Since early 2000s US and EU focus on bilateral FTA negotiations
- All bilateral FTAs contain comprehensive chapters on services
- Currently, almost 100 FTAs notified to WTO with comprehensive coverage of services
- Of those, about 50 contain a structure similar to negative listing
- US initiative to negotiate plurilateral agreement (International Services Agreement) by end 2011

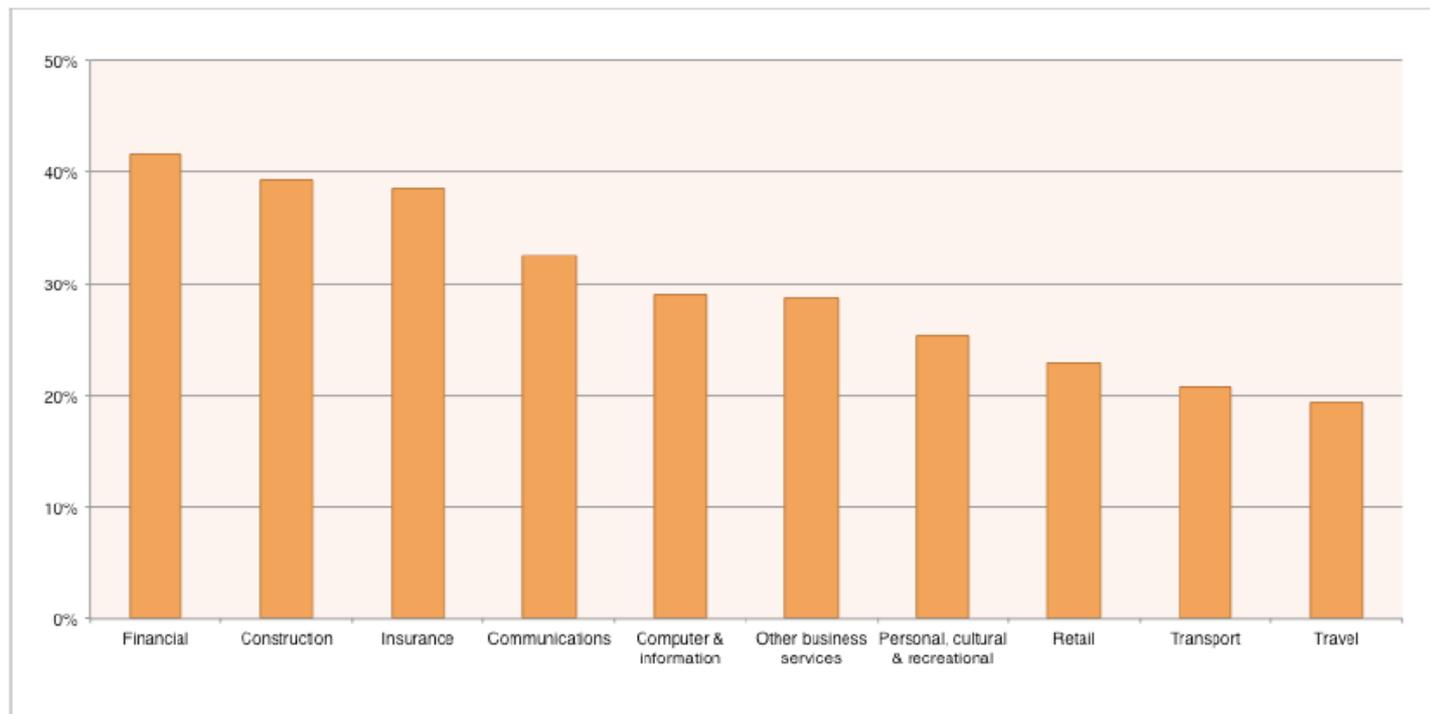
Proposition 2:

GATS is an important forum for demand and re-regulation of national regulatory standards

Trade restrictiveness in services trade

Table 4: Trade restrictiveness in services trade (tariff ad valorem equivalents) by sector weighted by trade volumes

Source: Own calculations based on Fontagné, Guillin, Mitaritonna (2010), GTAP, IMF EBOP





Framework-Agreement - Rules (I)

- Art XVI – Market Access: Members shall not maintain
 1. measures relating to the number of service suppliers,
 2. the total value of service transactions,
 3. limitations on the total number of service operations,
 4. Limitations on the total number of persons employed,
 5. measures which require specific types of legal entities, or
 6. limitations on foreign equity participation
- Art XVII – National Treatment: Non-Discrimination of foreign and domestic service suppliers (*de-jure & de-facto* identical treatment)



Framework Agreement – Rules (II)

- Art VI: Domestic Regulation: [Recognizing the right of Members to regulate, and to introduce new regulations in order to meet national policy objectives]. But in sectors where commitments have been taken:
 - Measures affecting trade in services must be administered in a reasonable, objective and impartial manner.
 - Service providers must be granted rights of information, consultation, and of legal appeal
 - Measures taken by Members relating to qualification and licensing requirements must not nullify or impair specific commitments taken by that member

GATS – Art VI (cont'd)

- Art VI.4: Working Program for development of sectoral and/or horizontal „Disciplines“ for measures relating to qualification requirements and procedures, technical standards and licensing requirements with the aim that these measures do not constitute unnecessary barriers to trade in services (Working Party for Domestic Regulation). Disciplines shall aim to ensure that domestic regulatory measures are:
 - based on objective and transparent criteria, such as competence and the ability to supply the service;
 - not more burdensome than necessary to ensure the quality of the service;
 - in the case of licensing procedures, not in themselves a restriction on the supply of the service.

GATS Doha Negotiations

1. Interests in Rules Negotiations:

EU:

- Definition of horizontal disciplines on domestic regulation covering transparency, prior notification, necessity (?),
- Regulatory Harmonisation (Telecom, E-Commerce, Postal, Financial Services, Competition Rules, Technical Standards) along *EU acquis*

US:

- Horizontal disciplines on domestic regulation covering transparency only;

LDCs:

- Majority of LDCs (Brazil...): against inclusion of necessity test
- Minority of DCs (India, HKC..): in favour of inclusion of necessity test

5. Conclusions – Implications of GATS

1. Central forum for the constitutionalization of liberalization/privatization of (infrastructural) services– goal is de-facto irreversibility („lock-in“)
 2. Forum for de- and reregulation (restrictions on national policy autonomy, pressure to homogenize regulatory standards on international level; conceptual guideline: pro-competitive regulation)
 3. Template for services liberalization in bilateral FTAs (also for EU!),
 4. Momentum for new liberalization initiatives has decisively shifted to bilateral avenue
- ➔ *Egon Matzner was not wrong about the growing importance of privatisation per se (and its imminent dangers), but he somewhat overestimated the importance of the GATS agreement in that process!*

Thank you for your attention!

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Proposition 3:

GATS is one, but not the only
forum for liberalization of public
services

GATS and Public Services (II)

EU safeguard clause on Public Utilities:

„All EC Member States: services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators“

„Explanatory note: Public utilities exist in sectors such as related scientific and technical consulting services, R&D on social sciences and humanities, technical testing and analysis services, environmental services, health services, transport services and services auxiliary to all modes of transport. Exclusive rights on such services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service obligations. Given that public utilities often exist at the sub-central level, detailed and exhaustive sector-specific scheduling is not practical. **This limitation does not apply to telecommunications and to computer and related services.**“

- ➔ Agreement with WTO Members on extending Public Utilities Clause to all EU Member States was reached in July 2006 (Art XXI procedure), US compensation claims for telecom and computer services.

b. The role of bilateral/bi-regional Free Trade Agreements of the EU

Strategic agenda: „Global Europe: competing in the World“, Communication of the European Commission (4/10/2006); „Trade, Growth and World Affairs“, Communication of the European Commission (November 2010)

1. Forum-Shifting: Multilateralism plus Bilateralism

2. Territorial/Geopolitical Dimension:

- Preparation for Accession (e.g. Western Balkans)
- Neighbourhood Policy (EUROMED, Ukraine)
- Market Access to Emerging Markets: Asia (Korea, India, ASEAN), Latin America
- Access to Raw Materials: Africa, ACP-Countries

3. Commercial Substance:

- **WTO Plus:** Goods, Services, Intellectual Property Rights
- „New Issues“: Investment/Establishment, Public Procurement, GI-Extension
- Regulatory Harmonisation (Telecom, E-Commerce, Postal, Financial Services, Competition Rules, Technical Standards)
- Sectoral Liberalization: telecoms, postal services, energy, transport, water...

4. „Developmental“ Dimension:

- Sustainability Chapters (ILO Core Labour Standards, MEAs, monitoring but weak enforcement)
- Economic Partnership Agreements (EPA) - Initiative
- GSP, EBA, GSP+
- Political and cultural cooperation
- Development funds aimed at trade facilitation

On-going bilateral EU trade negotiations

Country/Region (Start of negotiations)	Objective	Current State of Affairs
ACP-countries (2000)	EPAs – Economic Partnership agreements	Interim EPAs concluded with: CARIFORUM, two Western African Countries (Ivory Coast, Ghana); one central African country (Cameroon), most ESA countries, EAC countries, three out of 5 SACU countries (Botswana, Lesotho, Swaziland), two Pacific states (Papua New Guinea, Fiji)
Mercosur (2000)	Association Agreement	On-going (Suspended between 10/2004 – 2009)
Mexiko (2004)	Inclusion of Services & Investment into AA	?
EUROMED (2004)	Inclusion of Services & Investment in AA	On-going, (2010)
Centralamerican Countries (2007)	AA	Concluded
Andean Community of Nations (2007)	AA	Suspended with Bolivia, Ecuador retreated , concluded with Peru, Columbia (2010)
ASEAN, India (2007)	FTA	?
China (2007)	PCA	?
Korea	FTA	Negotiations concluded 10/2009
ACTA-Negotiations (Anti-Counterfeiting)	Plurilateral Agreement	IPR enforcement, concluded (2010)