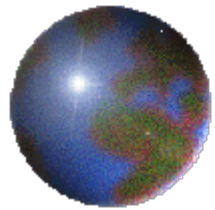


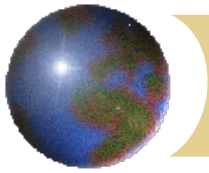
# *Negotiating Trade in Services*

Almaty, May 2012

Mário Marconini



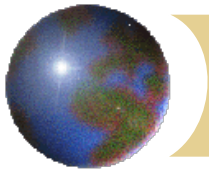
## *Zooming in on Specific Commitments*



## *Specific Commitments under GATS*

- Market access - Article XVI -
  - Members can impose limits, either by numerical quota or economic needs test on:
    - Number service suppliers
    - Total value of service transactions
    - Total number of services operations (I.e. quantity of output)
    - Total number of natural persons
  - As well as
    - Requirement of a certain type of legal entity or joint venture
    - Limitations on participation of foreign capital (e.g., maximum limit on foreign shareholding)

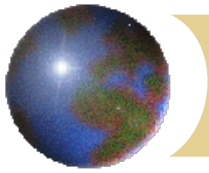
Can do all these but must be scheduled



# *Specific Commitments under GATS*

## National Treatment - Article XVII

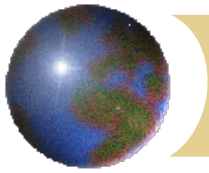
- § Treatment no less favourable than that granted to like domestic services and service providers
- § Treatment does not have to be identical - key idea is conditions of competition
- § Unlike GATT, can place limits on national treatment - but must schedule them.



# *Specific Commitments under GATS*

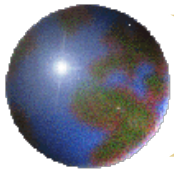
## Additional Commitments - Art. XVIII

- § Can negotiate additional commitments on measures not falling under Articles XVI and XVII
- § Including relating to qualifications, standards and licensing.
- § But other types also
  - Reference paper on basic telecoms



# *Which Policy, What Space*

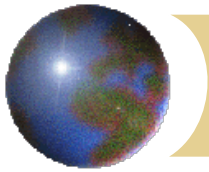
- ⊕ Mechanics of Liberalization, degrees:
  - ⊞ Full elimination of restrictions and the full binding within a certain time period;
  - ⊞ Full binding but not necessarily the full elimination of restrictions within a certain time period;
  - ⊞ Full binding, not full elimination *and* binding of future restrictive measures;
  - ⊞ Non-binding of sectors or modes of supply;



# Acesso a Mercados

Modos de prestação: 1) Prestação Trans-fronteiriça 2) Consumo no Exterior 3) Presença Comercial 4) Presença de Pessoas Físicas

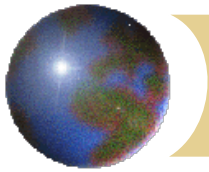
SECTOR OR SUB-SECTOR	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT	ADDITIONAL COMMITMENTS
Architectural Services (CPC 867)	<ul style="list-style-type: none"> <li>1. Unbound</li> <li>2. Unbound</li> <li>3. Foreign service suppliers can only supply services in the national market if affiliated with national service suppliers by means of a consortium. The national partner must keep the main executive function. The objective of the consortium must be clearly defined in the relevant contract.</li> <li>4. Unbound, except for the horizontal commitments inscribed in the horizontal section of the present schedule.</li> </ul>	<ul style="list-style-type: none"> <li>1. Unbound</li> <li>2. Unbound</li> <li>3. None</li>   <li>1. Unbound, except for the horizontal commitments inscribed in the horizontal section of the present schedule.</li> </ul>	



# *Acesso a Mercados*

	<b>Commitment with restrictions</b>	<b>Commitment without restrictions</b>
<b>Bound</b>	Describe the measure	Enter "None"
<b>Unbound</b>	Enter "Unbound"	Enter "Unbound"

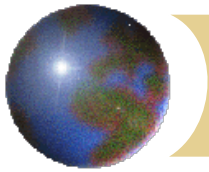




# *How Commitments are structured: Oman (Horizontal Section)*

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

<b>Sector or subsector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>
All sectors included in this schedule	<p>3) Commercial presence in the form of a company incorporated in Oman, with foreign equity limited to:</p> <ul style="list-style-type: none"><li>(i) 49%,</li><li>(ii) [...] no later than 1 January 2001, 70%.</li></ul> <p>Commercial presence allowed for representative offices, as from 1 Jan 2001. [...]</p>	<p>3) Purchase of land and real estate is not permitted to foreign companies. [...]</p>	

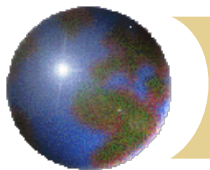


# How Commitments are structured:

## Oman

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

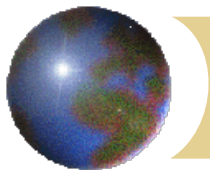
<b>Sector or subsector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>
<b>F. <u>Other Business Services</u></b>  a. Services incidental to mining, incl. oilfield drilling (CPC 883+5115)	1) None  2) None  3) Foreign equity limited to 51%  4) Unbound, except as indicated in the horizontal section	1) None  2) None  3) None  4) Unbound except as indicated in the horizontal section	



# How Commitments are structured: Oman

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

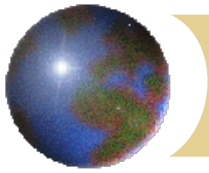
Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
COMMUNICATION SERVICES B. <u>Courier Services</u> CPC 7512	1) None 2) None 3) <b>None, starting no later than 1 January 2003.</b> 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	



# How Commitments are structured: Oman

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

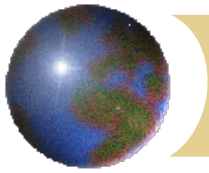
Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
B. Banking and other financial services  (a) Acceptance of deposits and other repayable funds from the public CPC 81115-81119	1) None for financial information services and financial advisory services. Unbound for other services. 2) None 3) (i) [...] Starting <b>no later than 1 Jan 2003</b> , commercial presence in the form of wholly foreign-owned subsidiaries and branches [...] permitted. (ii) The aggregate holding by [...] shall not exceed 35% of the voting shares of the bank. (iii) Number of bank branches in Muscat limited to four for each bank 4) Unbound, except as indicated in the horizontal section	1) None for financial information services and financial advisory services [...] 2) None 3) None  4) Unbound except as indicated in the horizontal section	



# *How Commitments are structured: Saudi Arabia (Horizontal Section)*

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

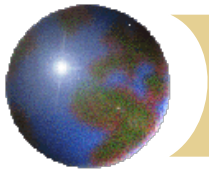
<b>Sector or subsector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>
All sectors included in this schedule	3) Commercial presence for all services listed in this Schedule, other than business services subject to incorporation under the Companies Act either as joint-stock companies or as limited liability companies. [...]	3) [...] Non Saudi business entities and foreign natural persons are subject to income tax while Saudi entities are subject to Zakat. Future changes in Saudi tax code will not be less favourable to foreign service providers than the existing code.	



# How Commitments are structured: Saudi Arabia

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

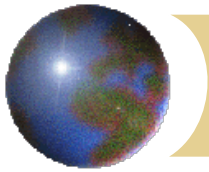
<b>Sector or subsector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>
All sectors included in this schedule	3) Commercial presence for all services listed in this Schedule, other than business services subject to incorporation under the Companies Act either as joint-stock companies or as limited liability companies. [...]	3) [...] Non Saudi business entities and foreign natural persons are subject to income tax while Saudi entities are subject to Zakat. Future changes in Saudi tax code will not be less favourable to foreign service providers than the existing code.	



# How Commitments are structured: Saudi Arabia

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
All sectors included in this schedule	4) Unbound, except for measures concerning the entry and temporary stay of natural persons in the following categories: (i) <u>Business visitors</u> [...] (ii) <u>Intra-corporate transferees</u> [...] (iii) <u>Contractual service suppliers</u> [...] (iv) <u>Independent professionals</u> [...] (v) <u>Installers and maintainers</u> [...]	4) Unbound, except as in the column for limitations on market access	

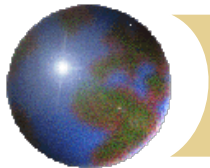


# *How Commitments are structured: Saudi Arabia*

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

<b>Sector or subsector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>
G. <u>Pipeline transport</u>  a. Transportation of fuels (CPC 7131)	1) None  2) None  3) None  4) Unbound except as indicated in the horizontal section	1) None  2) None  3) None  4) Unbound except as indicated in the horizontal section	

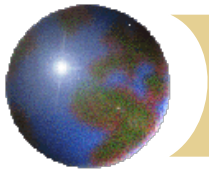




# *How Commitments are structured: Vietnam (Horizontal Section)*

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

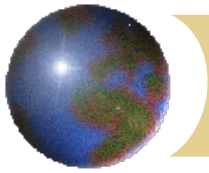
<b>Sector or subsector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>
All sectors included in this schedule	3) One year after accession, the 30% foreign equity limitation for acquisition of Vietnamese enterprises shall be eliminated, except for capital contribution in the form of buying shares of joint-stock commercial banks. [...]	3) Eligibility for subsidies may be limited to Vietnamese service suppliers, i.e. to juridical persons established within the territory of Viet Nam, or a part thereof. [...] Unbound for subsidies for Research and Development. Unbound for subsidies in the Health, Education and Audio-visual sectors. Unbound for subsidies aimed at promoting the welfare and employment of ethnic minorities.	



# *How MFN Exemptions are structured: Saudi Arabia*

## **THE KINGDOM OF SAUDI ARABIA – LIST OF ARTICLE II (MFN) EXEMPTIONS**

<b>Sector or subsector</b>	<b>Description of measure indicating its inconsistency with Article II</b>	<b>Countries to which the measure applies</b>	<b>Intended duration</b>	<b>Conditions creating the need for the exemption</b>
Road Transport Services	Reciprocal preferential treatment for cross-border services.	Egypt, Jordan	Indefinite	Existing bilateral agreements
Maritime Shipping and Road Transport Services	Preference for use of national shipping lines and road transport vehicles in bilateral trade.	Egypt, Tunisia	Indefinite	Existing bilateral agreements
Road Transport Services	Reciprocal preferential treatment	Lebanon, Syria, Turkey	Indefinite	Existing bilateral agreements

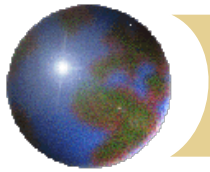


## *Country pattern of commitments*

WTO Members	Average number of commitments per Member	Range (Lowest/highest number of sectors per schedule)
Least-developed countries	<b>24</b>	1 – 111
Developing countries	<b>41</b>	1 – 123
Developed countries	<b>105</b>	86 – 115
<b>Accessions since 1995<sup>a</sup></b>	<b>102</b>	37 – 147
<b>ALL MEMBERS (147)</b>	<b>50</b>	1 -147

a Transition economies (11) and developing countries (9). They are not included in other groups.

Total number of sectors: ~160

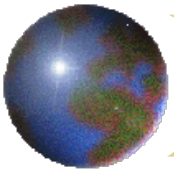


# *Phase-in Commitments*

## *(Per cent of participants)*

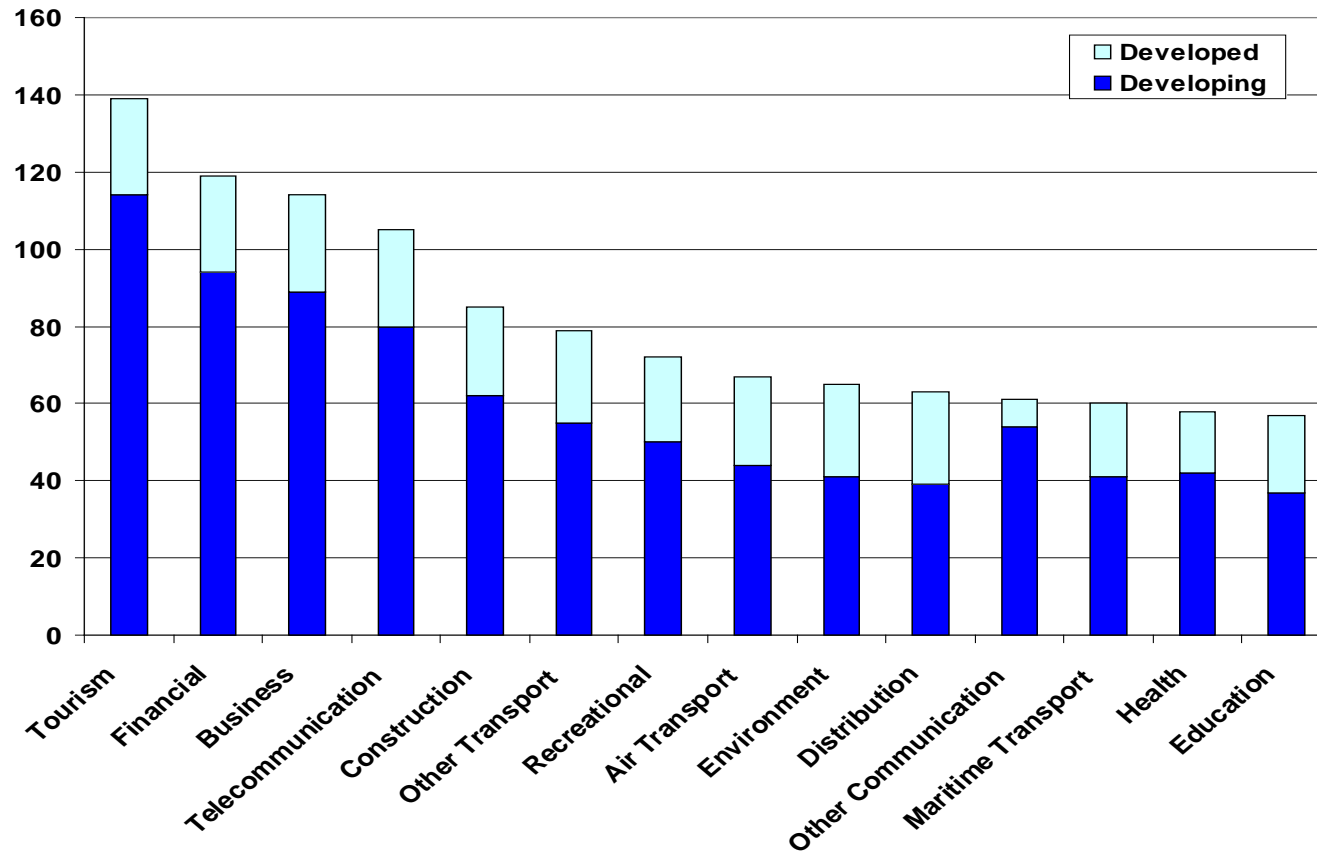
n Uruguay Round (1993/94):	13 %
n Doha Round Offers (2003-2007):	9%
n Extended UR negotiations (1997)	
- Financial Services:	3 %
- Basic Telecom:	60%
n Preferential Agreements (2001-06):	67%
n WTO Accessions (1996-2007):	86%*

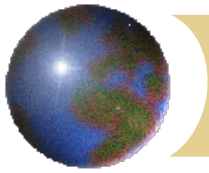
\* Sector focus: Telecom, Banking & Insurance, Distribution, Business Services, Postal & Courier Services, Construction



# *Sector pattern of commitments*

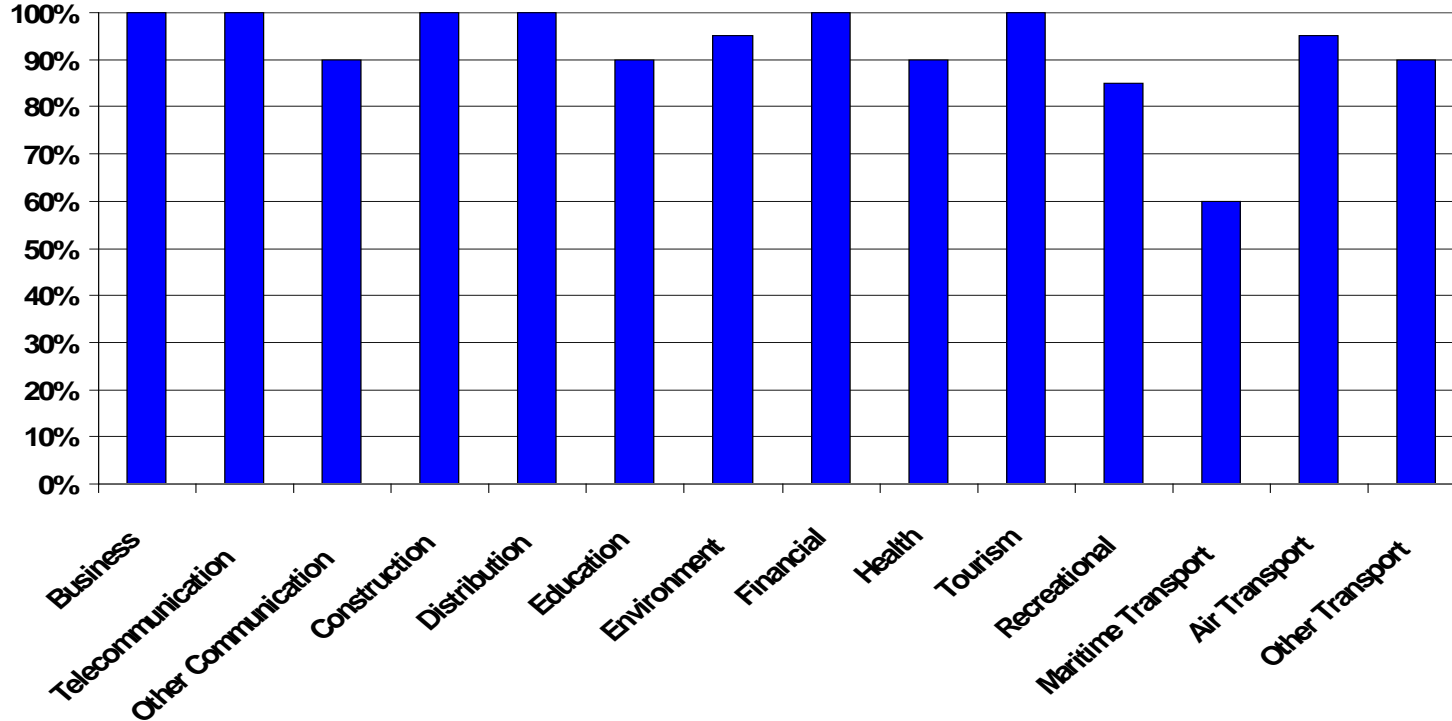
*(All Members, January 2005)*



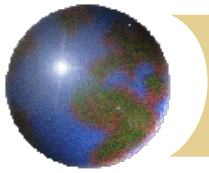


# *Sector patterns of acceded Members*

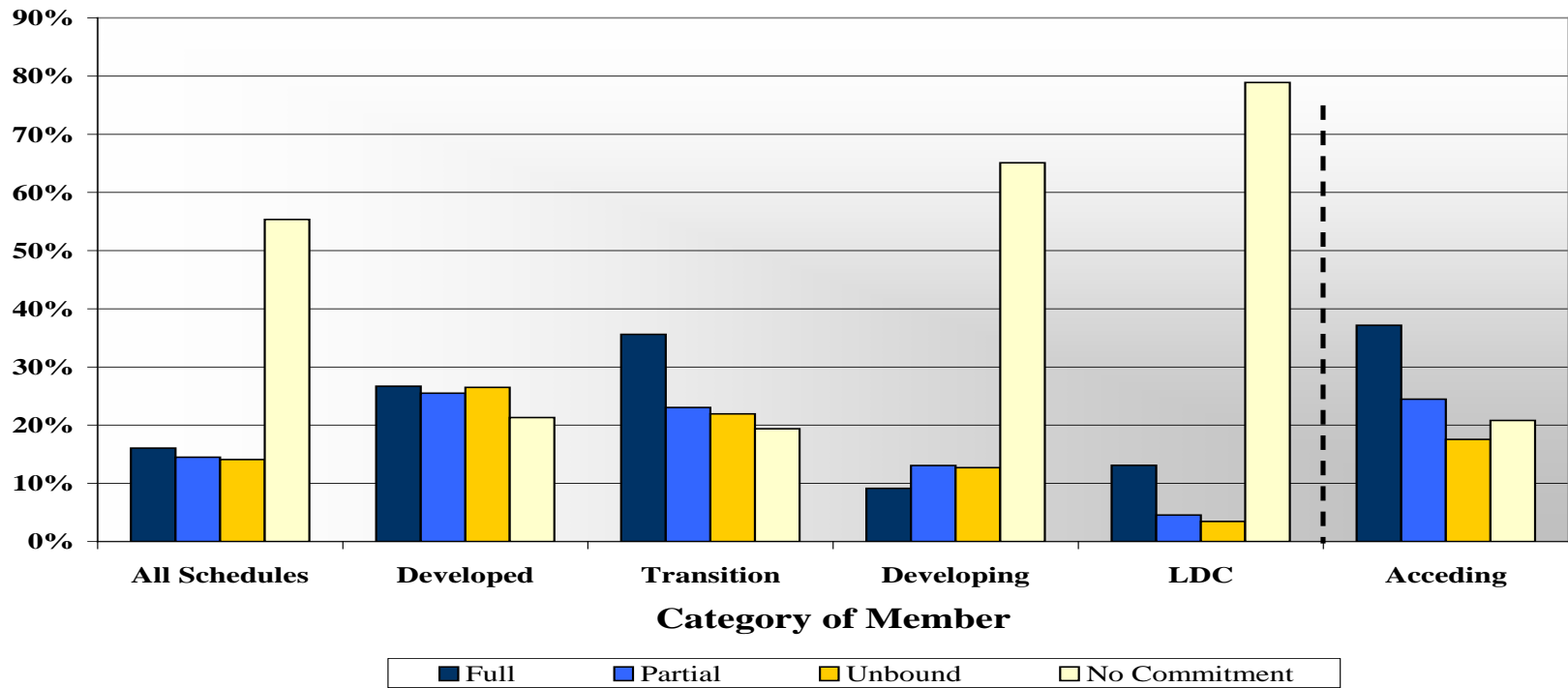
*(March 2005)*



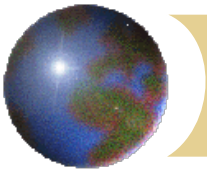
Source: Adlung, R. & M. Roy, *Turning Hills Into Mountains? Current Commitments Under the GATS and Prospects for Change*, WTO Staff Working Paper ERSD-2005-01, WTO.



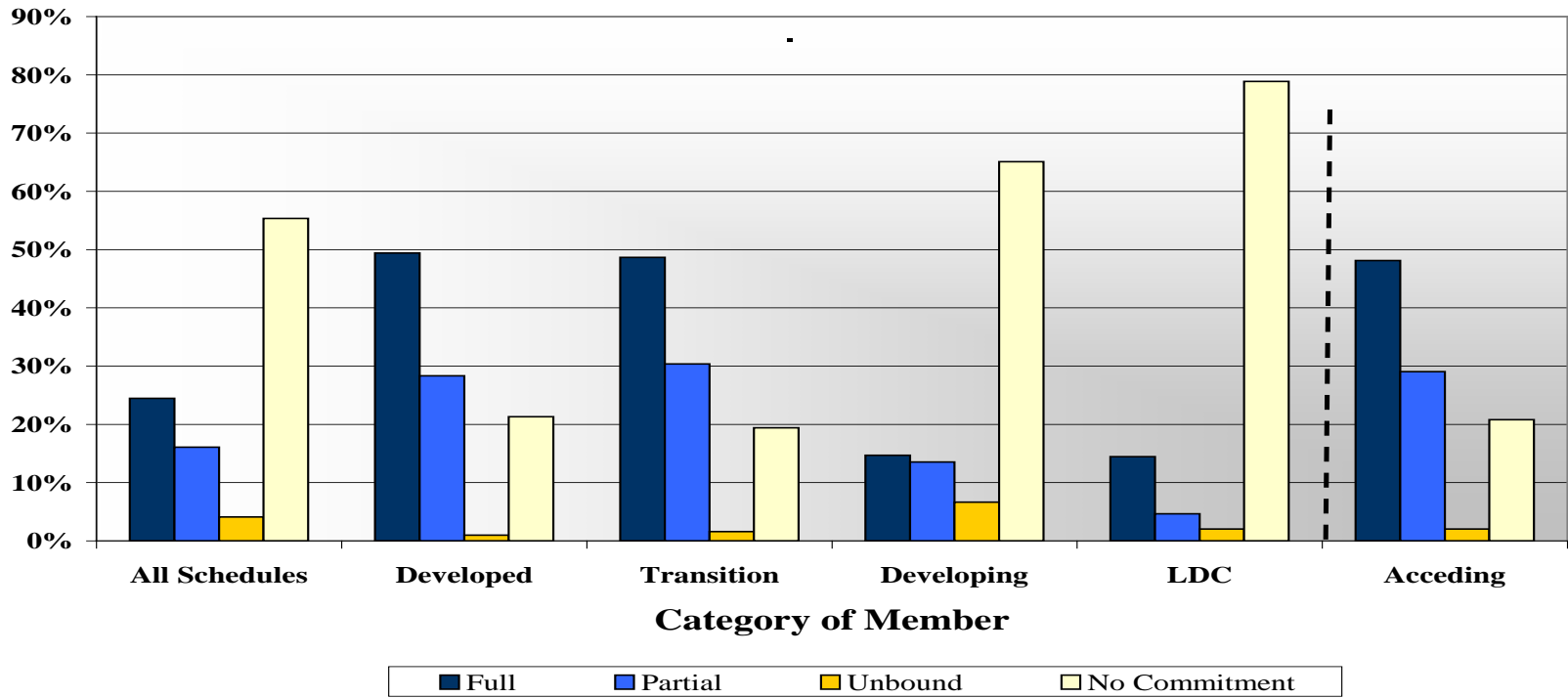
# Type of commitment undertaken in selected sectors (market access), mode 1



Source: Adlung, R. & M. Roy, op .cit.

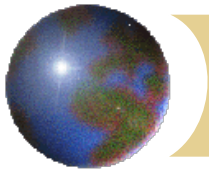


# Type of commitment undertaken in selected sectors (market access), mode 2

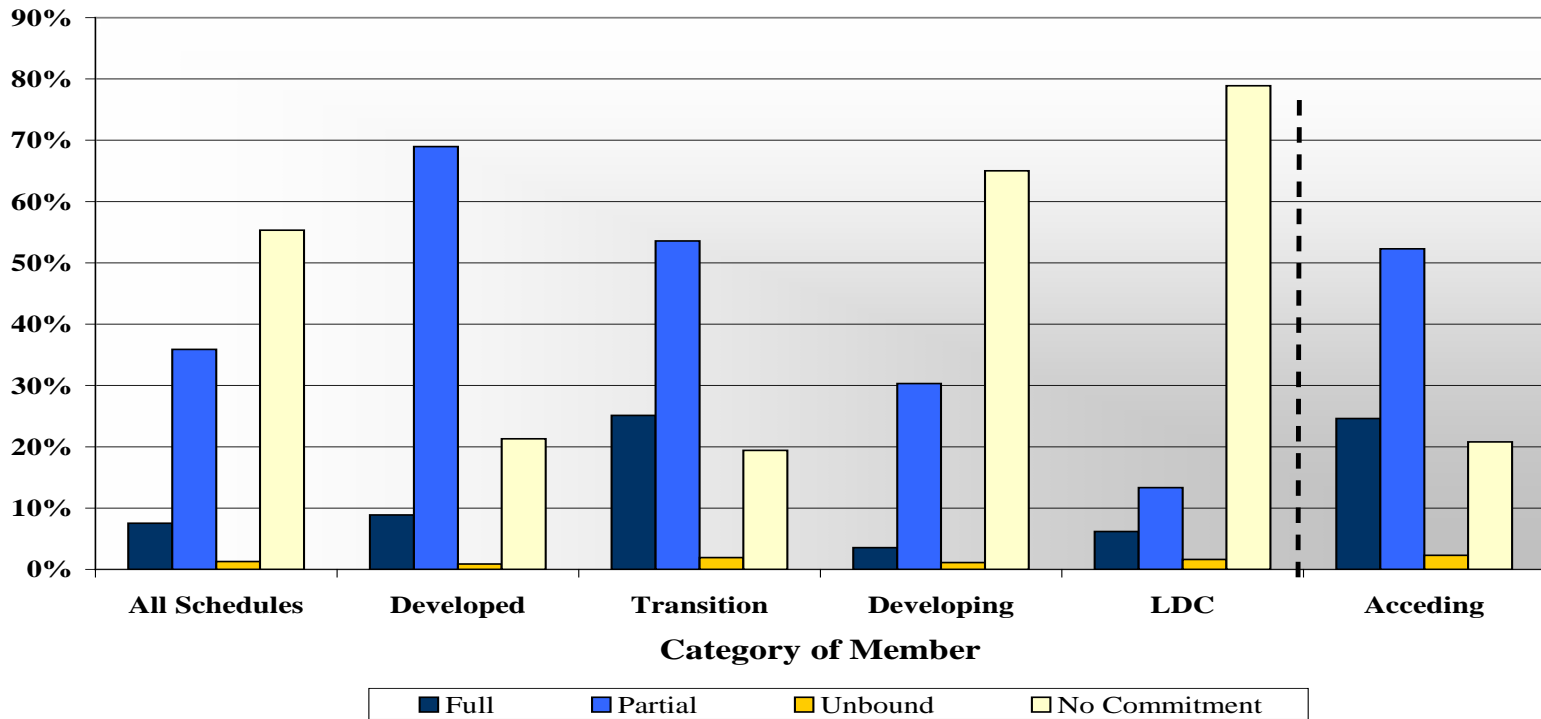


Source: Adlung, R. & M. Roy, op .cit.

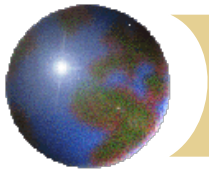




## *Type of commitment undertaken in selected sectors (market access), mode 3*

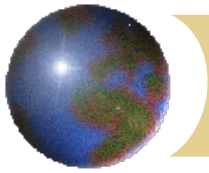


Source: Adlung, R. & M. Roy, op .cit.



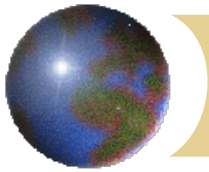
## *Obligations related to MA: Saudi Arabia*

- ✦ To implement regulations for foreign bank branches in line with international practices, e.g., parent bank's capital to be relied on in determining capital adequacy.
- ✦ To complete necessary regulatory reforms in the insurance sector by a specific date (e.g., May 2006). Ensure consistency with int'l standards and principles, including from the IAIS, the IMF, and the OECD
- ✦ Branches of foreign insurance companies not to be subject to economic needs tests or numerical limitations; be permitted to operate on the global capital of the parent company
- ✦ No separate licenses for non-life and protection and savings insurance



## *Obligations on other regulatory matters*

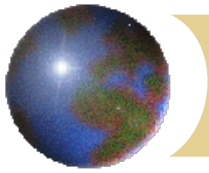
- ✦ No regulation to become effective prior to publication in an official journal (e.g. Armenia, Lithuania)
- ✦ All laws, regulations, rulings, etc. related to trade in services to be published in an official publication for public review at least two weeks prior to implementation (e.g. Armenia, Nepal)



# *Obligations on other regulatory matters: China*

## Regulatory transparency:

- ❖ Licensing procedures and conditions to be published prior to becoming effective
- ❖ Specify reasonable time frames for review and decision by all relevant authorities (licensing procedures and conditions)
- ❖ Applicants may request licences without individual invitation
- ❖ Fees charged to be commensurate with the administrative cost of processing an application
- ❖ After receipt of application: inform applicant whether the application is complete and, if incomplete, identify the additional information required and provide the opportunity to cure deficiencies



*Thank you*