

Reflections on the Preferential Liberalization of Services Trade

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“ Selected Outstanding Issues in Services,
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Services PTAs: A factsheet

- There were 81 agreements in force before the year 2000
- Only 11 of these covered services
- Since then, 74 of the 147 PTAs agreements in force have involved services
- 62% of services PTAs feature an OECD Member; 13% are N-N, 49% N-S and 38% are S-S – yet 74% of services trade is N-N (no EU-US PTA in services)
- Such trends broadly mirror specialization patterns in services trade

Broad results from literature

- Even as the Vinerian approach to estimating the welfare effects has lesser analytical relevance...
- ...there are lower costs of trade diversion from preferential access than in the case of goods trade
- However, the sequence of liberalization may matter more in services trade esp. in sectors with network externalities...
- ...because location-specific sunk costs of production are important so that even temporary privileged access for an inferior supplier can translate into durable longer-term market advantage deterring future market contestability

We know little about preferences and their possible erosion in services trade...but preference margins are real (if possibly theoretical)

- The scope for – and political economy of – preference erosion in services trade is understudied and hard to gauge
 - Do PTAs entrench regional preferences or facilitate WTO commitments? (This remains an important empirical question to which the end of the DDA will provide measurable answers)
 - There is considerable “water” both in GATS commitments and the latest DDA offers (This may be entirely tactical and linked to the DDA’s state of play on agriculture and NAMA)

PREF. MARGIN

GATS vs PTAs: Modal Differences in Levels of Liberalization and Margins of Preference
(0 to 100) %

Total score	27	34	63	38	54
	46-62				
Mode 1	24	30	59	41	51
	49-59				
Mode 3	30	38	67	45	57
	43-55				
OECD					
Mode 1	43	51	59	73	
	86	14-27			
Mode 3	53	59	67	79	
	88	12-21			
Non-OECD					
Mode 1	18	23	60	30	
	38	62-70			
Mode 3	23	32	67	34	

Comparing the level of services trade and investment liberalization across sectors

Sector Margin

GATS DBA PTA GATS/PTA DBA/PTA PTA

(0 to 100) % %

%

Professional	30	39	67	44,8	58,2	41,8 - 55,2
Computer	40,9	55	74	93	59,1	79,6 - 20,4 -
Postal/Courier	14	20	53	26,4	37,7	62,3 - 73,6
Telecom	51	58	80	63,8	72,5	27,5 - 36,2
Audio-visual	17	20	50	34,0	40,0	60,0 - 66,0
Construction	40	46	75	53,3	61,3	38,7 - 46,7
Distribution	32	41	76	42,1	53,9	46,1 - 57,9
Education	68,4	18	25	57	31,6	43,9 - 56,1 -
Environmental	20	30	62	32,3	43,4	56,6 - 67,7
Financial	32,1	36	40	53	67,9	75,5 - 24,5 -
Health	8	11	34	23,5	32,4	67,6 - 76,5
Tourism	51	61	83	61,4	73,5	26,5 - 38,6
Maritime	78,9	12	23	57	21,1	40,4 - 59,6 -
Rail	14	20	52	26,9	38,5	61,5 - 73,1
Road	16	18	56	28,6	32,1	67,9 - 71,4
Auxiliary transport	63,8	21	24	58	36,2	41,4 - 58,6 -

But what about rules of origin?

- The restrictiveness of rules of origin determines the extent to which non-members can benefit from trade preferences negotiated in agreements
- Given that a majority (62%) of WTO-notified agreements involve a developed country member, the majority of PTAs covering services adopt the most liberal (i.e. substantial business operation) rule of origin, with a view to promoting third country FDI inflows into the integrating area and extending the benefits of integration to all investors that are established in one of the PTA Parties. **In such instances, the preferential liberalization of Mode 3 largely approximates MFN liberalization**
- **South-South PTAs make increasing use of the space afforded them under Article V** to adopt more restrictive rules of origin aimed at limiting benefits to insiders (e.g. Andean Pact, Mercosur, ASEAN). The TPP, on the other hand, would adopt liberal RoO given its N-S membership
- Rules of origin targeting cross-border supply (Mode 1) remain largely unaddressed (and weakly enforceable), those on Mode 2 are largely immaterial and rules of origin for Mode 4 trade tend to be highly restrictive, typically bestowing temporary entry benefits only to citizens or permanent residents of PTA partners

So do preferences really matter? Are they more theoretical than real?

- Feasibility constraints in enforcement-poor regulatory settings – many developing and most least developed countries do not have the regulatory means to enforce preferences, least of all overlapping ones
- The dubious practicality of maintaining parallel regulatory regimes
- Tepid advances can be reported on MRAs in most PTAs. How effectively trade facilitating have MRAs proven to date under AFTA?
- Preferences appear weakly enforceable for many Mode 1 transactions and are of least relevance for Mode 2 trade
- Article V.6 all but multilateralizes preferential liberalization for Mode 3 for N-N and N-S PTAs (these PTAs account for the bulk of services trade)
- Preferences appear most feasibly enforceable where the border matters, such as for Mode 4 trade (but this concerns the smallest share of trade and of commitments, <5%)

Moreover, some issues are thorny still for PTAs

- **Sensitive sectors tend to be the same across negotiating settings** despite the fact that in almost all instances, PTAs have generated forward movement (especially true of N-S PTAs and those involving the US)
- **Progress on Mode 4 trade remains uneven and generally limited even in PTAs**, though the possibility to contain MFN leakage helps to raise comfort levels at the trade-migration interface (arguably treated more effectively in non-trade bilateral migration agreements, especially for lower-skilled temporary worker movement)
- **Sectors such as land transport/logistics, MRAs in professional services lend themselves more readily and easily to “neighbourhood” approaches**

Bottom line

- Even as the potential downsides of preferential services liberalization may be less ominous...
- ...preferential access does result in significant first-mover advantages, which can be used to deter entry for more efficient third-party suppliers
- Also, PTAs are here to stay...
- ...even though one cannot deny that the gains from multilateral liberalization are likely to be larger

Multilateralizing services preferentialism

- Mandating the pursuit of MRAs under the open regionalism logic of Article VII rather than the closed properties of Article V of GATS
- Making preferences in services trade time-bound (with differentiated transition periods by level of development of WTO Members)
- Requiring that any PTA featuring a member that accounts for at least 1% of world trade adopt the most liberal rule of origin for Mode 3 trade
- Showcasing PTAs with liberal denial of benefits provisions as best practice accords
- Negotiating voluntary best practice guidelines for preferential services agreements

Thank you!

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