Introduction and overview

Pierre Sauvé and Anirudh Shingal

One of the striking features of trade diplomacy over the past two decades has been the seemingly unstoppable march of preferential trade liberalization and rule-making. Such a trend routinely extends to trade in services. Of the 81 preferential trade agreements (PTAs) in force before 2000, 70 (representing 86.4% of the total) featured provisions dealing exclusively with trade in goods. During the ensuing decade, more than a third of PTAs that have been notified to the World Trade Organization (WTO) and remain in force include provisions on services. To date, 118 PTAs covering services have been notified to the WTO. Such a trend signals both the heightened importance of services trade in general and the fact that, since the advent of the General Agreement on Trade in Services (GATS) at the end of the Uruguay Round, services trade forms a central part of modern trade craft.

If all trade agreements can be described as “incomplete contracts”, then market opening and rule-making in the services field is undoubtedly the most incomplete of all areas subject to multilateral governance. Indeed, close to two decades after the completion of the Uruguay Round, trade diplomats are still struggling with a complex set of unfinished issues. These include issues as diverse as the development of emergency safeguard provisions for services trade, to disciplines on trade and investment distorting subsidy practices in services markets, the trade-inhibiting effects of disproportionate or unduly burdensome domestic regulation of a non-discriminatory kind, as well as rules governing public procurement in services markets. Despite the rising salience of PTAs and a burgeoning literature devoted to its driving forces and main incarnations, there is surprisingly little literature on the services dimension of the phenomenon.

Rooted in research carried out at the World Trade Institute by several of the world’s leading services experts in the context of the NCCR-Trade Regulation project funded by the Swiss National Science Foundation (SNF), this volume addresses a range of novel issues arising from the theory and practice of preferential liberalization and rule-making in services trade. It notably explores the political economy of preferences and of
The preferential liberalization of trade in services

preference erosion in services trade. The two main research questions it addresses are: (i) just how “preferential” is the preferential liberalization of services trade? and (ii) what can be done to multilateralize preferential access and rule-making in services trade? The research on offer documents the nature, modal and sectoral incidence of the trade and investment preferences spawned by PTAs in services based on the most recent WTO data.

The novelty and analytical value-added of this edited volume derives from its focus on the most recent generation of service sector PTAs through the lens of comparative regionalism, exploring the forces which, across different geographical, institutional and developmental settings, have weighed on the advent of trade and investment disciplines in services and shaped the nature of market opening bargains struck under such agreements.

The volume explores to what extent, and in what way, PTAs have helped to fill the multilateral rule-making void in services trade, the degree to which PTAs have served as laboratories in which to experiment with novel rules and negotiating architectures for services and the extent of market opening that such agreements have generated. It does so by exploring meta-trends in services PTAs and in detailing observed advances across regional settings spanning Africa, the Americas, South and South-East Asia. Among the key research questions addressed in this volume’s various contributions are the following:

- How can developments in services PTAs inform approaches to market opening and rule-making and help complete the GATS contract?
- How do PTAs in services differ from the GATS?
- Do PTAs in services afford member countries space in which to explore new rule-making configurations and thus complete the “Unfinished Agenda” of GATS?
- How much further than the GATS have PTAs gone (i.e. GATS+ and GATS–X) in both rule-making and market opening terms and what are the key factors that have shaped such advances?
- What has been the trade effect of negotiated services PTAs?
- Do differences in negotiating architectures across PTAs matter and can they inform the WTO’s post-Doha architecture?
- What do we know and what can we say about preference erosion in services trade?
- Can PTAs in services be likened to optimal regulatory convergence areas?
- How great are cross-regional differences in services PTAs and what explains the differences observed in market opening and rule-making terms?
SKETCHING THE BROAD LANDSCAPE

Part I of the volume provides a broad-brush portrait of the services landscape through chapters that explore the GATS+ and DDA+ nature of the recently negotiated services accords, consider the policy implications of this recent wave of services preferentialism and use advanced econometric techniques to estimate the trade effects of negotiated services PTAs.

Chapter 1 by Martin Roy presents the expansion of the dataset initially developed in Marchetti and Roy (2009).\(^1\) The data allow an assessment of the extent to which market access commitments undertaken by WTO Members in recent PTAs go beyond those made under the GATS and, more interestingly, the latest offers tabled in the context of the Doha Development Agenda.

While the dataset in Marchetti and Roy (2009) covered 37 Members in 40 PTAs, the one presented in this volume covers 53 Members in a much broader sample of 67 agreements. Roy’s dataset does not purport to represent the quality of commitments nor to determine their level of trade restrictiveness. Rather, his chapter’s focus is on the extent to which PTA commitments go beyond GATS commitments and services offers in the Doha Development Agenda.

Overall, Roy’s dataset highlights the fact that, on average, commitments undertaken in PTAs far outweigh those contained in WTO Members’ GATS schedules but also those offered in the current round of negotiations. Such results straddle both Modes 1 (cross-border supply) and 3 (commercial presence), and different levels of development, although, as may be expected, the level of GATS+ commitments varies significantly across Members. The analysis of an additional 16 new Members and 27 new PTAs has provided further evidence of such trends. Indeed, more recent agreements have matched or exceeded levels of commitments achieved by parties in earlier preferential agreements. Recent PTAs have also involved significant GATS+ commitments from a number of WTO Members that had previously not taken part in services PTAs (i.e. Pakistan and 12 CARIFORUM countries).

Figure I.1, reproduced from Chapter 1 in this volume, underscores that services commitments in PTAs far outweigh GATS commitments and offers for both Modes 1 and 3. It also shows that GATS+ commitments in PTAs have, on average, been more important in developing economies,

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\(^1\) Marchetti, Juan and Martin Roy (eds.) (2009), *Opening Markets for Trade in Services: Countries and Sectors in Bilateral and WTO Negotiations*, Cambridge: Cambridge University Press.
Note: The data reflect each Member’s “best” PTA commitment among all the PTAs to which it is a party. The index is brought onto a 0–100 scale, with 100 representing full commitments in all subsectors and relevant modes.

Source: Updated from Marchetti and Roy (2009) on the basis of the expanded dataset.

Figure I.1 Comparing services commitments across members and agreements
which is partly explained by the different levels of GATS commitments undertaken by these two groups of Members. In fact, through their PTA commitments, developing country Members have significantly reduced the gap with the levels of bindings attained by developed country Members. Figure I.1 also reveals that, on average, PTA advances have taken place in similar fashion for both Modes 1 and 3, irrespective of Members’ level of development.

Regional differences, which the chapters in Part II of this volume explore and document in considerable detail, are also found to be centrally important. Only a handful of countries in Africa and the Middle East have so far concluded services PTAs. Most agreements involve developed countries and developing countries from Asia as well as Latin America and the Caribbean. Comparing commitments undertaken by governments in Asia and Latin America shows that the latter have, on average, been significantly more ambitious.

Chapter 2 by Mattoo and Sauvé explores the economics of preferences in services and asks whether services trade differs sufficiently from trade in goods so as to require different policy instruments and approaches in the context of preferential liberalization. The chapter discusses whether and how PTAs in services allow for deeper forms of regulatory cooperation and highlights the importance for third countries of multilateral disciplines on PTAs and the criteria suggested by economic theory to minimize adverse effects on non-members.

Chapter 3 by Shingal is one of the first attempts in this literature to empirically explore the extent to which negotiated reciprocity, particularly in PTAs, is trade creating in the services field. The chapter endogenizes the impact of services preferentialism in estimating the trade effect of PTAs and also considers the “anticipation effects” of such agreements by using the OECD’s bilateral trade in services data during 1999–2003. The chapter further enriches the literature by distilling the trade effects of PTAs into those emanating from services and “goods only” agreements. In so doing, Shingal confirms the strong complementarities between the two types of trade. The chapter further studies the above relationships disaggregated by the economic status of partner countries (North–North; North–South and South–South) and by the level of reciprocity of commitments.

The early empirical literature on gravity model estimation of bilateral services trade exhibits neither consensus nor conformity to economic theory in estimating the impact of the determinants of such trade. The role of bilateral goods trade in determining bilateral services trade has also not been explored in detail, nor has the separate impact of “goods only” and services accords on bilateral services trade ever been studied. Methodologically, only recent empirical work accounts for the influence
of heterogeneity in trading country pairs in determining bilateral services trade, but even this work fails to recognize the endogeneity of agreements in model estimation.

Chapter 3 by Shingal marks an improvement on all the above fronts. His results suggest a trade effect of 15% from having a services accord alone. This effect rises to 32.3% for intra-EU trading partners in the sample data. The total incremental impact of a “goods only” PTA is found to be 7.6% (with services PTAs accounting for one-third of this and “goods only” PTAs for the rest). Both North–North and North–South services agreements are found to generate positive trade effects, suggesting that the associated pattern of trade is both intra- and inter-industry. Moreover, within North–South agreements, and irrespective of the type of agreement, asymmetric accords always exert the largest observed trade effects, and these are always positive. The services trade effect rises to 59.7% once the anticipation effects of services accords are included in the analysis. These results also suggest that the maximum impact of a services accord is felt the farthest in time from actual entry into force. This would appear to imply that services agreements seem to have a significant “announcement effect”.

LESSONS FROM COMPARATIVE REGIONALISM

The broad overview of recent developments in services preferentialism suggests that this wave does travel beyond borders. Part II of the book provides a rich series of case studies of services PTAs across the globe, including two regions – Sub-Saharan Africa and South Asia – which have remained relatively under-studied to date.

In Chapter 4, chronicling the treatment of services liberalization in PTAs concluded in the Americas, Robert and Stephenson recall that the Western Hemisphere was the first of the world’s regions to embrace preferentialism wholeheartedly. The region has remained at the forefront in developing innovative approaches to the treatment of services trade. The authors note that the region has produced a major alternative to the multilateral liberalization of services trade in the form of the North American Free Trade Agreement (NAFTA) template. A subsequent generation of NAFTA-type agreements has further improved and refined the original template, incorporating key features of the GATS for both cross-border trade and investment in services. The NAFTA template has also been exported in numerous PTAs negotiated between countries of the Americas and extra-regional partners. Chapter 4 by Robert and Stephenson also shows that, although assessing the impact of PTAs remains a complex issue, for those
PTAs with an adequate dataset to merit an examination of trends, services trade has increased more between PTA partners than it has with the rest of the world after the entry into force of the agreements. Finally, Stephenson and Robert note that the increasing number of NAFTA-type agreements in the Americas has also given rise to a movement toward convergence and a rationalization of overlapping substantive trade disciplines and market access opportunities.

Chapter 5 by Streho chronicles the richness of the European journey on services trade, retracing the historical origins and jurisprudence-led evolution of the internal market rules governing services trade among an expanding group of advanced nations and identifying how the experience gained in building the internal market both influenced and paralleled the EU’s engagement with the rest of the world in services and notably how the EU experiment helped shape the nascent multilateral body of rules governing services trade in the WTO.

The depth and range of legal instruments and institutions deployed in the EU in pursuit of market integration objectives knows no equivalent. Such uniqueness needs to be borne in mind in pondering whether, how and to what extent lessons from the EU’s ongoing experiment at market integration are replicable in other regional settings and policy contexts. In most instances, the EU model is not easily transposable, resting as it does on a degree of pooling of regulatory sovereignty that few regional groupings appear capable of or even aspire to. It also bears noting that EU advances relate in no small measure to the Union’s first-mover advantages, with progress rooted in more than 60 years of policy- and rule-making experimentation on the internal front and close to three decades of external experimentation. Such a path has afforded all EU stakeholders – Member States, the European Commission, regulatory agencies, the European Court of Justice (ECJ) as well as private actors, considerable space in which to learn by doing, make mistakes, learn from them and fine-tune an evolving governance regime for services production, trade and investment.

Meanwhile, while its aims have in essence been more modest on the global stage, the EU has nonetheless engaged with the world through all possible negotiating means at its disposal – multilaterally in the WTO-GATS, and preferentially through a series of bilateral, regional, plurilateral and bloc to bloc agreements aimed at affording EU services and service providers wider and progressively freer markets in which to operate, whilst also harnessing the gains to be had from the reciprocal opening of the EU’s internal market to efficient third country services and service suppliers.

Chapter 6 by Sauvé and Ward takes stock of the nascent state of play of preferential trade negotiations in services in Africa. It explores the factors
that lie behind the general reluctance of African governments to bind service sector policy under international treaties. The chapter chronicles several ongoing initiatives aimed at deepening intra-regional trade and investment among the eight regional economic cooperation areas found on the continent. It also describes external liberalization efforts engaging Africa with the rest of the world in services trade, devoting particular attention to negotiations under way with the European Community (EC) with a view to concluding WTO-compatible Economic Partnership Agreements (EPAs). In so doing, the chapter draws attention to several novel features of the EC-CARIFORUM EPA in the services field and discusses its possible implications for Africa’s ongoing processes of integration in services markets at both the intra- and extra-regional levels.

On the whole, the chapter highlights the considerable policy precaution that African governments continue to profess in the field of services trade and investment, preferring instead to experiment with reversible autonomous policy change. The authors question how governments in the region will meaningfully tackle the imperative of economic diversification, support the insertion of African producers into regional and global supply chains in manufacturing, take advantage of a new international division of labour in remotely supplied services, meaningfully improve the transparency and efficiency of domestic and regional regulatory regimes and live up to the lofty aims embedded in the numerous integration schemes under negotiation without a deeper commitment to the progressive liberalization of services trade and investment throughout the continent.

In Chapter 7, devoted to services PTAs in Asia, Chanda analyses the relationship and dynamics between multilateral and preferential trade rules and commitments. She does so using a sample of eight PTAs involving Asian countries. Her chapter examines the evolving universe of rules and negotiating architectures in services and the extent to which PTAs have gone beyond the GATS. The analysis reveals that although countries tend to commit more sectors and subsectors under PTAs than under the GATS, these commitments are not deeper within subsectors or modes and are typically less liberal than existing policies. Where PTAs most improve upon the GATS is in terms of their overall architecture by including additional chapters and annexes which go into considerable detail on a variety of cross-cutting, sector-specific and emerging issues. The analysis suggests that North–North agreements tend to cover some of the more difficult issues, such as government procurement, while North–South agreements have a predominant focus on issues such as the recognition of qualifications which relate to the importance of Mode 4 in North–South services trade. South–South agreements further tend to focus on institutional cooperation, reflecting the need for strengthening capacity and institution
building in these countries. However, overall, there is considerable diversity among PTAs. These do not follow a uniform pattern, indicating that the negotiating dynamics vary by partner countries and across PTAs.

In Chapter 8, devoted to the India-Sri Lanka Closer Economic Partnership Agreement (CEPA), Abeysinghe explores how India, an emerging global power in services trade, approaches negotiations in the sector. The India–Sri Lanka CEPA is the first trade agreement negotiated by Sri Lanka to include services. This agreement, together with the South Asian Association for Regional Cooperation (SAARC) Agreement on Trade in Services, will form the basis of future services agreements in South Asia. The chapter analyses the CEPA’s architecture and content and the degree to which it goes beyond the GATS in promoting transparency, credibility and the actual liberalization of trade in services. Complementing the chapter by Chanda, the chapter also compares CEPA with other services agreements in the region to identify key features that will determine the future regional trade policy of India and Sri Lanka in services. The chapter suggests that the CEPA has made little progress beyond GATS in terms of its architecture. In liberalization terms, although both India and Sri Lanka have moved beyond GATS, this still largely reflects the status quo and at times even falls significantly short of it, a trend that obtains more broadly throughout the region. The chapter concludes that liberalization of the services sector and the expansion of services trade in South Asia is likely to result more from the “silent” forces of market dynamics in the region as well as from unilateral reform efforts than from negotiated reciprocal liberalization efforts. The best that reciprocal liberalization can achieve is to enhance transparency and policy credibility by offering means of harvesting autonomous liberalization and by compelling countries to share information on non-conforming measures. Yet given the flexibility of the GATS-type architecture adopted in the region, even the latter good governance-promoting outcome cannot be guaranteed.

Moving next to Australia, Chapter 9 by Bosworth and Trewin argues critically that Australian PTAs have delivered little significant actual services trade liberalization, and may have even obstructed its pursuit. Moreover, on the few occasions where such agreements have changed regulatory measures, Bosworth and Trewin are of the view that their economic value is questionable at best, since they entail discriminatory measures and/or policy changes that have not been adequately assessed economically, instead being touted as “negotiated outcomes”. Their chapter also explains recent trade policy developments in Australia, and outlines the authors’ belief that the Australian Government’s planned return to unilateralism offers greater liberalization potential than the pursuit of PTAs.
FINAL AND FORWARD THOUGHTS

Despite the many arguments for and against it, preferentialism in goods and services trade is here to stay. The chapters in this volume both provide a broad overview of recent developments in services preferentialism and document regional experiences across five different continents. The volume’s two final chapters, by Sauvé and Shingal\(^2\) and by Sauvé, synthesize many of the key findings emanating from the volume and ponder the scope for forward movement likely to emanate from ongoing efforts to craft a plurilateral (and most likely preferential) Trade in Services Agreement (TISA) that would co-exist alongside the GATS and some of the systemic challenges that such rule-making and market-opening parallelism could entail.

Chapter 10 by Sauvé and Shingal takes stock of the forces that lie behind the recent rise of preferential agreements in services trade. Drawing on the findings reported in Chapter 2 by Mattoo and Sauvé, such a rise is seen as lying in a number of distinguishing features of services trade that set it apart from trade in goods and which has shaped trade liberalization and rule-making approaches in the services field. Much like Roy in Chapter 1, the authors probe more deeply into the nature, modal and sectoral incidence of trade and investment preferences spawned by services PTAs.

In light of the issues taken up in this volume, the chapter also addresses the critical question of just how “preferential” is the preferential treatment of services trade. The short answer holds in two words: not very. Sauvé and Shingal cite examples where de jure preferential liberalization becomes de facto MFN liberalization and highlights the case of Article V.6 of the GATS that requires North–North and North–South commitments to adopt the most liberal rule of origin via a “denial of benefits” provision of particular salience to commercial presence – the most important mode of contesting services markets. As the authors point out, this is far from trivial – Mode 3 trade accounts for close to two-thirds of services trade and, most importantly, is that against which the greatest share of commitments are typically scheduled in all negotiating settings (generally in excess of 60% of commitments).

While there is generally little debate over whether services PTAs offer economic welfare gains relative to the status quo ex ante, still one cannot deny that the gains from multilateral liberalization are likely to be larger

as most favoured nation (MFN)-based competition is not only unbiased but also thwarts the first-mover advantages of possibly second-best service providers. Chapter 10 concludes by advancing a number of suggestions on how best to multilateralize preferential access and rule-making in services trade.

The volume’s closing chapter by Sauvé explores a number of considerations arising from ongoing attempts to craft a plurilateral Trade in Services Agreement (TISA) among the so-called “Really Good Friends of Services” coalition of WTO Members. The chapter suggests that considerable scope exists to move forward a multilateral negotiating agenda on services that both the digital revolution and a continued surge of preferential rule-making has rendered increasingly obsolete. As the most significant attempt to date to craft a GATS Article V-compatible PTA in services, TISA offers considerable promise. The chapter, however, cautions that the case for embedding TISA in the architecture of WTO rules alongside the General Agreement on Trade in Services or in its place is weak on both procedural and substantive grounds. This is so to the extent that the ongoing talks take place behind doors that remain closed even to the WTO Secretariat, let alone to many of the world’s leading developing country suppliers of services, and involve potentially significant departures from GATS rules liable to complicate any hoped-for multilateral migratory journey.