

---

# Introduction and overview

*Pierre Sauvé and Martin Roy*

---

## BACKGROUND CONSIDERATIONS

While services have been supplied internationally for as long as cross-border commerce has existed, dating back several millennia, the study of services trade is of considerably younger vintage, whether as an object of economic enquiry and still more as a subject of economic diplomacy.

Placed for the first time on the multilateral trade agenda in preparatory work that led to the launch of the Uruguay Round in the fall of 1986, services are essentially three decades old when looked at through a trade policy lens. In that relatively short time span, few would dispute that considerable progress has been made in refining our understanding of the service economy, exploring its underlying regulatory complexity, better measuring its contribution to growth and development, and in enhancing our understanding of the gains that individuals, firms or countries may derive from their growing exchange and the sources of such gains (and potential losses). Still, it remains true that governments, academics and other stakeholders in the diverse mosaic that services bring together continue to confront significant analytical and policy challenges. While it is admittedly harder today to affix the word ‘new’ to services trade discussions, the sector’s ever-changing innovation-led texture continues to produce significant doses of learning by doing.

No better proof can be adduced in support of the above assertion than the fact that, unique among all issues in contemporary trade diplomacy, some 15 years into the World Trade Organization’s (WTO) Doha Development Agenda (DDA), Member states are still prosecuting the Uruguay Round and its long list of unfinished business in services trade.<sup>1</sup> Meanwhile, tectonic advances in digital technologies have spawned a universe of business transactions that the creators of the global services trade regime could not anticipate, let alone craft rules for its governance.

---

<sup>1</sup> For a fuller discussion of the unfinished rule-making agenda of the WTO’s General Agreement on Trade in Services (GATS), see Pierre Sauvé (2002), ‘Completing the GATS Framework: Addressing Uruguay Round Leftovers’, in *Aussenwirtschaft* (Swiss International Economic Review), Vol. 57, No. 3, (September), pp. 310–41.

The ever-increasing share of services entering trade as intermediate inputs into goods production and exchange, a phenomenon that has come to be called ‘servicification’,<sup>2</sup> the growing ease with which the production of services itself can be splintered across diverse geographies largely immune to the considerations of time and space that continue to weigh on goods trade, all attest to rule-making and market-opening ecosystems that bear little resemblance to those prevailing when the curtain fell on the Uruguay Round.

Approaching its task through a multi-disciplinary lens that draws on insights from empirical economics, law and global political economy, this Research Handbook takes stock of the learning done to date in services trade, explores a range of policy questions that continue to bedevil analysts and directs expert attention to a host of issues, old and new, confronting those interested in the service economy and its rising salience in cross-border exchange. Though significant advances in rule-making and market-opening have been made over the past two decades – more so through unilateral conduct and preferential negotiating than via global engagement, considerable scope remains for economies and their citizens to fulfil the full potential of service sector reforms.

Organized in three separate parts dealing in turn with the core economic/empirical, legal and political economy/developmental challenges in contemporary services trade, the 21 chapters of this Handbook aim to shed useful analytical light on a subject matter that defies sweeping, one-size-fits-all, generalizations, and whose substantive remit continues to be shaped by rapid evolutions in technology, data gathering, market structures, consumer preferences, approaches to regulation and by the resulting shifts in the frontier between the market and the state that the such evolutions generate.

## **I. Empirical Perspectives**

The Handbook’s first part features seven contributions addressing recent advances in our economic understanding of the services economy and of services trade. Martin Roy, a staff member from the WTO’s Trade in Services Division, paints the broad canvass against which subsequent

---

<sup>2</sup> We owe this awkward but ultimately powerfully evocative term to Sweden’s National Board of Trade. See Emily Aner and Magnus Renthzog (2012), *Everybody is in Services: The Impact of Servicification of Manufacturing on Trade and Trade Policy*, Stockholm: National Board of Trade, (November), available at: <http://www.kommers.se/Documents/dokumentarkiv/publikationer/2012/skriftserien/report-everybody-is-in-services.pdf>.

Handbook contributions are made, offering readers a synthetic depiction of recent trends in many of the most relevant metrics in contemporary services trade. His chapter, entitled '*Charting the evolving landscape of services trade policies: Recent patterns of protection and liberalization*', starts off by recalling how the widely shared objective of resisting protectionism in the wake of the deep economic and financial crisis of 2008–09 has led to greater monitoring of changes in trade policies alongside increased calls for heightened transparency. G-20 leaders agreed in 2008 to direct the WTO, together with the Organisation for Economic Cooperation and Development (OECD) and UN Conference on Trade and Development (UNCTAD), to monitor and publicly report changes in Members' trade and investment policies. While greater focus has arguably been cast on the analysis of policy changes affecting trade in goods in the aftermath of the crisis, Roy's chapter offers a broad overview of the evolving landscape of services trade policies since 2000, where the impact of policy changes – whether liberalizing reforms or moves toward more protection – has tended to be both more substantive and less easily reversible.

On the basis of information contained in the I-TIP Services database developed jointly by the WTO and the World Bank, work the author led on the WTO side, the chapter provides an X-ray of the significant changes observed in policy settings and market outcomes in services markets over the past 15 years. The chapter highlights relevant trends in the degree of policy openness observed over this period, depicts the key pockets of lingering restrictiveness, and describes the characteristics of countries and sectors where most trade facilitating and/or restrictive measures have been undertaken or maintained. The policy changes at play in Roy's chapter are also analyzed in terms of the various modes of supplying services affected, as well as the most prevalent types of barriers to market contestability. The chapter concludes by discussing the link between policy changes in the period under review and international commitments on services, both under the WTO's General Agreement on Trade in Services (GATS) and in preferential trade agreements (PTAs).

Chapter 2 of the Handbook, by the WTO's Andreas Maurer, Joscelyn Magdeleine and Rainer Lanz, devotes attention to the measurement challenges deriving from the increasing fragmentation of production and the rise of value chains, a process long observed in the manufacturing sector but whose emergence in the realm of services production and exchange is both recent and massive, made possible in large measure by the combined interaction of the digital revolution, continued policy liberalization, especially of investment regimes, and the ever-increasing supply of talented, and hence mobile, service suppliers, a topic taken up in greater depth in the Handbook contribution of Rupa Chanda (see Chapter 16).

The chapter, entitled '*Measuring trade in services in a world of global*

*value chains*', chronicles the marked improvements in data availability and key trends in services data over the 2002–12 period. The chapter describes recent advances in core concepts and definitions flowing from the revision of international statistical frameworks applied to trade transactions between residents and non-residents, the international supply of services through foreign affiliates (so-called Foreign Affiliate Trade in Services (FATS)), and individuals who temporarily move abroad to supply services (so-called Mode 4 trade in services).

The chapter charts entirely new statistical territory by describing how a number of forward-looking issues, such as the statistical treatment of factoryless goods producers (so-called contract- or service-based manufacturing), the merchandising of services, or the definition of intermediate services, are today being measured in a statistical context. The chapter discusses the statistical implications of the recent – and welcome – policy emphasis placed on the contribution of services embedded in goods and other services – the concept of trade in value added, which has revealed that the share of cross-border trade in services in world trade is twice as high as compared to traditional balance of payments valuations. The chapter draws further attention to the latest developments in measuring trade in services in a supply chain context. In doing so, the authors sketch a roadmap of future developments in services trade statistics and the policy use which improved and refined metrics can serve.

The Handbook's following contribution, co-authored by the OECD's Sébastien Miroudot and Ben Shepherd, from Developing Trade Consultants in New York, entitled '*Trade costs and global value chains in services*' (Chapter 3), offers a vivid illustration of the use to which the nascent statistical developments depicted in the preceding chapter by Maurer, Magdeleine and Lanz can be put to inform sound policy design in services.

Miroudot and Shepherd recall how the rise of global value chains (GVCs) and the variety of roles that services – including internationally traded services – play within them reinforces the importance of services policies from the point of view of promoting economic activity, increasing productivity, and supporting exports and imports. From one perspective, services are important because they are the 'glue' holding GVCs together. The GVC business model simply cannot function without cross-border flows of transport, logistics and distribution, finance, and business services, amongst others. However, this role is not the only one that services play in GVCs. They also enter directly into the production function of goods (and other services) traded within GVCs.

Using the OECD's TiVA dataset, the chapter by Miroudot and Shepherd builds upon recent work measuring trade in value added and developing

methodologies for estimating trade costs and applies such advances in assessing the key drivers of production fragmentation and GVCs in service industries. The chapter offers estimates of trade costs in intermediate versus final services; trade costs in intermediate services absorbed in the importing economy versus those exported to third countries; as well as trade costs for redirected trade in services. The chapter combines the above estimates of services trade costs along with new policy data emerging from the OECD's Services Trade Restrictiveness Index (STRI) to analyse the determinants of trade costs in selected service sectors.

Miroudot and Shepherd's work advances several important policy findings. For one, they observe that final trade costs in services are higher in all sectors than are intermediate trade costs, and that they are falling more slowly. Their work also offers robust empirical support to the link between restrictive services trade policies and the level of trade costs, with evidence suggesting that intermediate trade costs are more sensitive to applied services trade policies than are final trade costs. This is an important finding when one considers the rising contribution of intermediate trade in services for production and trade of both services and goods in the GVC era.

Miroudot and Shepherd's work makes clear why services trade negotiators should not limit their attention solely to barriers in services trade. Since service exporters also use goods as inputs, they are also affected on the import side. An equally important policy corollary is that the level of restrictiveness maintained in the service sector has a detrimental impact on exports of manufacturing goods. The chapter offers empirical support to the fact that many manufacturing industries would export more if they were not limited by the barriers on their service inputs. The authors rightly conclude that paying increased attention to services barriers is an important part of taking a value chain view of trade policy.

In '*Ricardo does services: Service sector regulation and comparative advantage in goods*' (Chapter 4), Eric van der Marel, from the Brussels-based European Centre for International Political Economy (ECIPE), explores the extent to which policy affecting services may constitute a source of comparative advantage with respect to trade in goods. His chapter investigates whether the ability of countries to provide complementary domestic regulatory policies accompanying liberalization can indeed form a source of comparative advantage in goods trade, a question that has received scant empirical attention to date in the trade literature. Recalling that many service sectors have experienced far-reaching trade and investment liberalization in recent years, van der Marel observes that service markets also require complementary domestic regulatory policies in order to optimize market structures and create a competitive environment. This will ultimately affect the production and trade patterns of

downstream goods industries, thus becoming a potentially important source of comparative advantage.

Situating his enquiry in the growing body of literature devoted to goods-services linkages, van der Marel notes that most of the factors that determine comparative advantage in goods also play a significant role in services, although with variations across sectors, countries and income levels. For instance, since services tend to be characterized by higher degrees of labour intensity, the supply of skilled labour arguably forms a stronger source of comparative advantage for services than for goods.

Van der Marel posits that a specific feature of institutions, namely regulatory capacity in key input (upstream) service industries, exerts a particularly strong influence on observed trade patterns in (downstream) goods production. Any industry that uses a high amount of service inputs will be strongly affected by the manner in which service markets are organized. The chapter recalls the above average regulatory intensity of service markets given the pervasive nature of market failure across the full spectrum of service industries. Van der Marel's work lends empirical support to the notion that a country possessing institutions capable of enacting sound regulatory policies in key (service) input industries once trade liberalization has taken place will experience greater ease in exporting goods which are more dependent on such regulated services.

Van der Marel's chapter readily acknowledges that the twin processes of liberalization and regulation are complex and subject to multiple sources of causality. He thus urges caution in the interpretation of his research findings, calling for greater empirical scrutiny across a larger sample of countries and sectors. There can indeed be no predefined template for each sector or country and therefore the design and conduct of regulatory institutions and regimes will tend to exhibit strong country-specific characteristics.

Countries increasingly resort to preferential agreements to secure so-called WTO+ and WTO-X commitments, i.e. commitments that go deeper than those prevailing under the WTO-GATS (WTO+) or in sectors not yet subject to multilateral disciplines (WTO-X). However, as in the case of agreements governing trade in goods, PTA commitments on services show highly contrasting levels of ambition in terms of actual provisions. It thus bears enquiring whether such agreements actually induce greater volumes of services trade once the varying extents of liberalization embodied in these provisions are taken into account.

Chapter 5, by Anirudh Shingal of the University of Bern's World Trade Institute (WTI), entitled '*Going beyond the 0/1 dummy: Estimating the effect of heterogeneous provisions in services agreements on services trade*', recalls how the proliferation of PTAs featuring commitments on trade in

services and the improved availability of data on bilateral services trade flows have facilitated a growing literature devoted to the theoretical and empirical assessment of services trade reforms. However, this literature has yet to carefully consider the varying degrees of market opening in different PTAs while estimating the agreements' trade effects.

Shingal's chapter revisits the above issue by taking into account the heterogeneity of services provisions across PTAs, using the Design of Trade Agreements (DESTA) database developed at the WTI, which has coded information on the design features of 587 PTAs over the 1947–2010 period. The chapter bases its empirical analysis on latest developments in the estimation of structural gravity models. Shingal's results reveal a paradox worthy of additional research: accounting for the observed heterogeneity in services provisions reduces the magnitude of the estimated trade effects: the largest services trade flows are not associated with more provisions on services in PTAs.

Chapter 6, by the World Bank's Sebastián Sáez and Daria Taglioni, entitled '*Nurturing the competitiveness of services exports: Metrics and policy options*', recalls how services play a key strategic role in enhancing the competitiveness of countries. Not only are services an increasingly important source of export diversification, they also enter into the production of many downstream competitive products. Not surprisingly, and as the Handbook contributions by Miroudot and Shepherd and van der Marel also show, the competitiveness of most goods exported on global markets depends not only on access to raw material inputs but also to critical service inputs, including efficient, competitively priced utilities (e.g. ICT, energy), transport and logistics, financial services (e.g. banking, accounting, insurance) and other commercial services (e.g. consulting, legal, marketing, telecommunications).

Drawing on work both authors have led at the World Bank, Sáez and Taglioni's contribution offers a comprehensive conceptual framework for conducting the analysis and diagnostics of trade competitiveness in service industries. The methodology developed in their chapter usefully identifies the main constraints weighing on service sector competitiveness and the appropriate policy responses available to countries that are intent on assigning to services and to heightened efficiency in services a central role in development and growth strategies.

Chapter 7 foreshadows the Handbook's later exploration of challenges arising at the interface of services trade liberalization and domestic regulation (see Chapters 9–11) with a contribution from the World Bank's Martín Molinuevo and Sebastián Sáez entitled '*Services trade and regulatory reform: A methodology for developing countries*'.

The chapter recalls how service sector policies and regulations often fail

to respect the basic principles of transparency and non-discrimination by imposing restrictions on foreign ownership, market access, and the operation of services providers, among others. The quality of the domestic regulatory environment depends not only on the regulation-making process but also on that of regulatory institutions. In many developing countries, such institutions are often afflicted by weaknesses in technical skills and enforcement capacities.

Reforming regulations affecting trade in services requires an assessment of whether a country should also remodel, strengthen, or create the regulatory institutions responsible for issuing and enforcing national (or regional) laws and regulations. Policy-makers need to address both regulations and the framework in which they are designed, adopted, and applied to reap fully the benefits of services trade and mitigate inevitable downside risks.

The empirical literature on services trade identifies a number of factors that affect performance in the sector. Chief among them are the quality of regulations, regulatory institutions, and governance. But countries confront a number of different options when undertaking policy reforms. The chapter by Molinuevo and Sáez proposes a set of methodological means to assist countries in identifying restrictions to services trade, assessing their impact, and developing suitable regulatory alternatives where these exist. The methodology on offer also covers the institutional setting and institutional arrangements for reform, because the way governments administer and implement their laws and regulations will likely affect trade and influence the investment climate.

## **II. Legal Perspectives**

The Handbook's second section explores a range of legal and rule-making challenges, old and new, confronting policy-makers in services trade. The seven chapters that follow take stock of the limited degree of judicial activism displayed to date in services trade and the reasons for the stark contrast observed with respect to trade in goods given the continued faster rise of services over merchandise trade since the multilateral legal order embedded in the GATS was established two decades ago. Attention is also given to a number of outstanding rule-making challenges left over from the days of the Uruguay Round, most notably those relating to non-discriminatory domestic regulation, necessity and proportionality as well as the more complex political economy of standard-setting in services trade. The section takes up a number of forward-looking challenges arising by the spectacular, post-Uruguay Round, rise of digital trade and related cross-border data flows, issues of trade governance that have recently been

engulfed in broader (and at times societal) debates over differing collective preferences in matters of privacy or the preservation of domestic policy space.

In a contribution entitled '*Twenty years of GATS case law: Does it taste like a good wine?*' (Chapter 8), Eric Leroux from Panamericana University in Mexico City, assesses two decades of services trade jurisprudence, noting that, absent negotiating progress, the vast majority of significant developments under the GATS have resulted from decisions by WTO adjudicatory bodies. Despite the relative paucity of GATS litigation to date, itself a reflection of the Uruguay Round's limited market opening harvest, Leroux argues that a critical body of case law touching upon several key issues concerning the interpretation and application of this agreement has nonetheless emerged over two decades in a domain of trade governance that easily ranks among the most complex and opaque of all existing WTO agreements.

Leroux notes that while some of the issues in contention, such as the relationship between the GATS' market access and national treatment obligations, were the object of lengthy discussions by negotiators with a view to providing (negotiated) clarifications, it is mainly through subsequent judicial interpretation that the job was done. This should hardly surprise given that the WTO's Membership is today so large and diverse as to make explicit consensus, the rule upon which decisions are made and agreements concluded in Geneva, next to impossible.

Leroux's chapter offers a careful and detailed review of GATS jurisprudence and an assessment of the key issues that have been addressed, determined and settled to date via the dispute settlement route. Asking whether WTO adjudicatory bodies have succeeded in clarifying the areas left grey by the negotiating process, Leroux posits that, on balance, the GATS reveals attributes of quality wine – getting better, if ever so incrementally, over time. Still, he argues both for systemic changes to the very basis of decision-making in the WTO while also advancing a number of generic (i.e. applicable to decisions affecting both goods and services) and GATS-specific recommendations able in his view to strengthen the WTO's adjudicatory functions and enhance the legitimacy and effectiveness of judicial decisions.

In '*Domestic regulation and services trade: Lessons from regional and bilateral free trade agreements*' (Chapter 9), Markus Krajewski from the University of Erlangen-Nuremberg, in Germany, revisits one of the most perennially contentious issues in services trade law, and does so through a comparative regionalism lens. Developing rules for non-discriminatory domestic regulations remains, indeed, one of the key elements of the unfinished rule-making agenda of the GATS.

Krajewski notes that while negotiations carried out within the GATS Working Group on Domestic Regulation have generated a considerable level of consensus in recent years, concerns remain that such consensus may have been reached at the cost of developing only shallow disciplines and eschewing meaningful rules on necessity and proportionality. Agreed language on Domestic Regulation disciplines – the GATS Article VI:4 negotiating mandate – has indeed yet to emerge.

The period since the curtain fell on the Uruguay Round has seen a proliferating set of PTAs concluded among WTO Members, the vast majority of which today feature detailed rules and market opening commitments in services trade. This live experiment begs the question of the extent to which PTAs have been able to do what the broader WTO Membership has shown itself incapable (or rather unwilling to) in regard to domestic regulation and whether any such negotiated advances could inform and serve as a model for the GATS.

Krajewski's research reveals that the presence of more advanced disciplines on domestic regulation in PTAs is far less pronounced than one could have expected. However, many PTAs, particularly those of more recent vintage, feature chapters on regulatory matters that set out principles for specific sectors as well as, most recently, rules (whose binding and enforceable nature remains generally weak) aimed at promoting greater regulatory cooperation and coherence. Krajewski's chapter suggests that developing effective regulatory disciplines for services may well prove more feasible if approached on a sector-specific level rather than on a generic, horizontal, one, a lesson that should be applied and pursued both under the GATS and in other plurilateral or mega-regional negotiations currently underway.

Chapter 10 of the Handbook features a jointly authored contribution from Bernard Hoekman, from the European University Institute in Florence, and Petros Mavroidis, from Columbia University in New York, entitled '*A technical barriers to trade agreement for services?*'. Their contribution explores, in a manner complementary to Markus Krajewski's musings on GATS Article VI disciplines, the scope that may exist to adopt disciplines targeting the form and substance of standard-setting in service industries.

As is well known, trade protection in services stems exclusively from domestic regulation, making services negotiations akin to discussions on the trade- and investment-distorting and/or inhibiting effects of non-tariff measures in goods trade. Regulation, in turn, is influenced by political economy considerations as well as by genuine concerns to address distortions arising from, inter alia, asymmetric information and network effects.

Hoekman and Mavroidis recall that, as things currently stand, the

GATS does not require WTO Members to adopt 'efficient' regulations. Accordingly, there is currently no effective international discipline to ward off purely politically driven regulations, conceived to support and protect local service suppliers rather than to correct market distortions.

At the same time, the standardization of services – both technical and regulatory – has significantly increased in recent years. Standardization efforts, however, proceed in entities outside the WTO. Hoekman and Mavroidis further note that, unlike the GATT, the GATS features neither disciplines on standards nor an elaborate system aimed at building a bridge towards the standardizing community – all as a means of ensuring that the 'protectionist' or excessive component of domestic standards are reduced, if not eliminated.

While the negotiating mandate contained in GATS Article VI:4 to establish disciplines on qualification, licensing and technical standards is a step in the above direction, Hoekman and Mavroidis argue that the services community has not paid enough attention to the letter and practice of the GATT's Agreement on Technical Barriers to Trade (TBT), from which valuable lessons could be drawn. In their chapter, the authors start from the rationale for the TBT Agreement – the agreement that provides the link between trade in goods and the standardizing community, and ask whether and how similar disciplines could be made to fit the services trade context. Their main argument is that the TBT Agreement could provide a useful basis for reflecting on the need and proper means for deepened and more regular dialogue between the trade and regulatory communities, the undeniable upshot being the fact that the trading community is accustomed to such interaction.

Hoekman and Mavroidis believe, however, that important lessons can be learned from observed shortcomings in TBT-induced regulatory interaction, such that the design of a similar anchor for services trade would need to be tweaked and improved to better correspond to the evolving needs of the trading community and concerns of civil society. The chapter concludes by exploring the rationale for – as well as the practice of – standard-setting in services, with particular attention paid to the objectives and nature of services standards, the institutions involved at the international level, the international decision-making process, and the enforcement mechanisms applied at the domestic level. It is against such a background that the chapter identifies elements of a possible TBT Agreement for the GATS.

In '*Standard-setting in services: New frontiers in rule-making and the role of the EU*' (Chapter 11), Panagiotis Delimatsis from Tilburg University in the Netherlands, pursues the conversation initiated in the chapters by Krajewski and Hoekman and Mavroidis. Delimatsis recalls how increased standardization efforts respond to the demand of consumers for better and

safer products and for enhanced access to the product of technological innovation. Such demand is equally fuelled by a desire to expand global trade by reducing needless or duplicative regulatory barriers that stand in the way of freer cross-border commerce.

Delimatsis notes how standardization is emblematic of the increasing complexity in defining exactly the confines of 'law'. Standardization is a quasi-legal form of self-regulation and, depending on the circumstances and legal context, can be a form of co-regulation. It can also just as well involve hybrid public-private partnerships. However, little is known about the international standardization processes and its properties. If standardization in goods markets remains somewhat vague, standard-setting in services is largely uncharted territory. This should come as no surprise. Owing to their nature as 'experience goods', services are harder to standardize. However, interest in this area is growing. Delimatsis recalls that in the controversial EU Services Directive, and subsequently in the Single Market Act, the European Commission has been called upon to lead the development of voluntary European standards to facilitate compatibility among services, whereas EU Regulation 1025/2012 provides the legal basis for a new era in services standard-setting in the EU.

As a normative (i.e. rule-diffusing) power, the EU exports its standards and standard-making processes through PTAs with key trading partners. Reviewing such developments, Delimatsis' chapter maps this new and promising area of rule-making in services, analyzing standard-setting procedures and institutions with a view to identifying how successful such a novel endeavour can be in promoting expanded trade in services and promoting sound regulatory practices and enhanced governance. In so doing, the chapter chronicles the advances made in a number of sectors, paying particular attention to recent regulatory standardization advances in financial and professional services.

Among the newest generation of issues in trade and investment governance not salient when the GATS rules were initially framed is the rising trade and investment clout, particularly (but not exclusively) in emerging countries, of state-owned enterprises active in a growing number of service sectors and markets. This trend parallels the spectacular recent rise of outward foreign direct investment (FDI) from emerging countries. Such new developments, and the calls for new disciplines they have spawned, form the backdrop of the contribution by Gary C. Hufbauer, from the Peterson Institute for International Economics, in Washington, D.C., and Sherry Stephenson, from the Geneva-based International Centre for Trade and Sustainable Development (ICTSD).

Their chapter, entitled '*Service and state-owned enterprises*' (Chapter 12) performs the yeoman's task of summarizing (the generally weak) available

data, mainly from developed country sources, on the size of state-owned enterprises (SOEs) in the service industries of major countries and estimates (on the basis of equally patchy data) the importance of such SOEs in cross-border trade (GATS Mode 1) and overseas foreign direct investment (FDI) (GATS Mode 3).

Hufbauer and Stephenson then proceed to identify some of the major gaps in the GATS and selected PTAs with respect to disciplines on the potentially trade, investment and competition-impairing effects of SOE practices, both domestically in their home markets (e.g. by using their administrative powers to block foreign entrants) and in their international operations (e.g. through heavily subsidized entry into foreign markets, weak financial accountability and reporting).

Shedding useful light on disciplines that were most recently at play in the Trans-Pacific Partnership Agreement (TPPA) or proposed for adoption in on-going negotiations towards a plurilateral Trade in Services Agreement (TiSA), the chapter advances a set of policy recommendations on new or additional disciplines on SOEs, rooted for the most part in the concept of competitive neutrality first developed among OECD countries and which could usefully be adopted in their view in the WTO-GATS context as well as in preferential trade agreements.

A Handbook targeting the most challenging research frontiers in service sector reforms and in services trade and investment would be remiss if it did not feature forward-looking contributions on the digital revolution and its rising incidence on service delivery and governance. Two such contributions, by Mira Burri from the University of Luzern (Chapter 13) and by Lee Tuthill, from the WTO's Trade in Service Division (Chapter 14), perform this task by advancing a wealth of ideas on how best to adapt the rules of global commerce to the digital age in a manner that strikes an acceptable balance between the need for cyberspace freedoms and the legitimate right to regulate activities whose growth and policy narrative have to date been imbued with strong doses of regulatory abstinence.

In '*Designing future-oriented multilateral rules for digital trade*' (Chapter 13), Mira Burri recalls how the Internet revolution and the digital environment have spurred a significant amount of innovative activity that continues to have far-reaching, spill-over effects on many sectors of the economy. For a growing group of countries – both developed and developing – digital goods and services have become important engines of growth and a clear priority in their economic, development and trade strategies.

Burri notes that neither the rapid technological developments associated with digitization, nor their increased societal significance, have yet to be reflected in international economic law in a comprehensive manner. The

law of the WTO in particular, drafted prior to the digital age, has scarcely adapted in a coherent, proactive, manner. A pertinent question that arises is whether existing WTO rules, despite tepid evidence of adaptive governance, are still useful and able to accommodate the new digital economy or whether they have been rendered dated and incapable of dealing with the tectonic changes brought about by the advent of e-commerce and the digital revolution.

In advancing a set of answers to the above questions, Burri's chapter maps the key issues and e-governance challenges the WTO faces, both due to the Uruguay Round's unfinished rule-making agenda and its E-Commerce Work Programme, as well as in light of the latest generation of digital trade barriers, such as forced localization requirements. The chapter critically reviews the uneven patchwork of regulatory responses to digital trade matters found in PTAs and sketches a number of elements of improved multilateral disciplines in the area. Depending on the political will and commitment of WTO Members, Burri argues that such elements could range from variations on an expanded Information Technology Agreement (ITA), new disciplines in the on-going plurilateral TiSA, or a dedicated Digital Economy Trade Agreement breaking down the goods and services divide in trade governance. Burri's chapter concludes by assessing the pros and cons of the various policy options on offer and identifying the essential elements of future-oriented multilateral rules for digital trade.

In '*Cross-border data flows: What role for trade rules?*' (Chapter 14), Lee Tuthill recalls, as Burri does, that trade negotiators have recently begun to address so-called 'new age' issues related to trade in commercial services embodied in data flows across national boundaries. There is mounting evidence that online information-oriented service providers now face obstacles with greater frequency than in the past as their activities span the globe. Spurred in part by concerns raised by the ICT industry, a number of recent PTAs (the US-Korea FTA, the TPP) feature provisions aimed at helping to alleviate problems arising in cross-border digital trade.

Tuthill's chapter examines the problems associated with online services flows and evaluates those measures which may represent barriers to trade and investment in services. The chapter then reviews the existing and proposed provisions that industry and governments hope will establish trade principles governing cross-border data flows, including multilateral provisions within the GATS. Tuthill also assesses the possible implications of the GATS provisions and of other proposals under consideration within various trade negotiating settings. The main questions she addresses include whether, and in what ways, these may or may not adequately

address the obstacles identified or offer viable trade governance solutions in the digital age.

### **III. Political Economy and Development Perspectives**

The Research Handbook's third part addresses a range of political economy challenges that reveal the extent to which services and the process of economic development have become so centrally intertwined. This should hardly surprise in light of the linkages revealed and documented by the Handbook's earlier contributions, but the scale of the changes, both on the ground and, perhaps most importantly, in thinking and thus policy-making, cannot be underestimated. That such change is not yet palpable at the multilateral level chiefly reflects the negotiating dynamics of a stalled Doha Round in which services failed to play an adequate complimentary lubricating role alongside tortuous talks over agriculture and non-agricultural market access issues.

In preferential negotiating settings, in their marked propensity to enter, voluntarily, into bilateral investment agreements aimed at protecting and attracting greater doses of FDI, notably in services, where two-thirds of cross-border investment flows have concentrated in recent decades, and, most spectacularly in the extent to which they have practiced unilateral liberalization, developing countries have shown far greater openness and acceptance of the central importance of effective service delivery for development than is often assumed or acknowledged. That such a sea-change could emerge over such a short time span is all the more remarkable when one considers the strong opposition that developing countries put up against the very idea of placing services on the multilateral trade agenda prior to and in the early days of the Uruguay Round.

In chronicling a changed negotiating landscape, and the prospects for greater development benefits to be reaped through pro-competitive service sector reforms, continued strengthening of supply capacities and heightened engagement in services negotiations, the seven contributions that follow take up a host of development policy challenges and their underlying political economy. These range from the choice of negotiating architecture in services trade agreements; prospects for enlarged labour mobility in the midst of rapidly changing global demographic trends; the essential complimentary role that competition law and pro-competitive market regulation must play alongside trade and investment liberalization in sectors partial to market concentration and state intervention; the growing insertion of developing country firms in business service supply chains; the critical need to buttress the capacity of developing service suppliers, particularly in the most acutely resource-constrained settings, if

they are to take fuller advantage of negotiated market opening, as well as the promise – and limits – of a recent WTO Ministerial Decision, yet to be implemented, aimed at affording non-reciprocal market access benefits to least developing country Members. The Handbook closes with a historical overview of multilateral engagement in services trade, asking where we have been and, most importantly, where we are heading in a field of trade governance whose importance to overall growth, development and social justice has become increasingly obvious.

The Handbook's third part starts off, in Chapter 15, with a contribution entitled '*The behavioural dynamics of positive and negative listing in services trade liberalization: a look at the Trade in Services Agreement (TiSA) negotiations*', co-authored by Tomer Broude, from Hebrew University in Jerusalem, and Shai Moses, from the University of Geneva's Institute of Global Studies. The chapter takes a law and economics approach to negotiating dynamics in services negotiations, exploring the interaction between 'negative' vs. 'positive' listing, on the one hand, and the continuum of multilateralism, plurilateralism, and bilateralism, on the other hand.

Broude and Moses argue that insights from cognitive psychology and behavioural economics, in particular prospect theory as well as endowment and framing effects, predict that states will generally prefer positive over negative listing, but that such a preference may be relaxed in bilateral settings, as well in some regional or plurilateral settings. Under conditions of uncertain gains from counterpart concessions due to the difficulty of assessing the value of services gains in a globalized economy, the prospect of non-discriminatory market opening may well bias commitments against multilateral liberalization.

The authors posit that cognitive effects induce palpable impacts on negotiating positions, treaty design and forms and levels of bound commitments. In their view, negotiators are acutely aware of the importance of framing negative or positive commitments, despite the rational similarity, if not identity, between the two approaches. When differing perspectives on the desirable choice architecture of an agreement become entrenched, the introduction of ternary choices, such as the hybrid approach favoured in the TiSA context, suggests that negotiators can be susceptible to cognitive compromise effects, ultimately agreeing to adopt elements of treaty design that likely would not have been acceptable to them if presented with a binary choice. Although Broude and Moses suggest that negative listing, from a behavioural perspective, appears more conducive to exacting a higher level of market opening commitments in services, in practice, the complexity of negotiating positions makes it difficult, if not impossible, to make any such conclusive finding.

In '*Demographics and labour markets: Implications for Mode 4 trade*'

(Chapter 16), Rupa Chanda from the Indian Institute of Management, in Bangalore, takes up the issue of a potential grand bargain on labour mobility in trade agreements, one of the most hotly debated issues in services trade governance and perhaps that which has proved most frustrating for countries richly endowed with mobile human capital at various skill levels.

Chanda's chapter highlights the close link between demography, trade and migration and the consequent implications for trade in services through the temporary cross-border movement of labour. Taking stock of current and prospective global demographic imbalances, Chanda argues that Mode 4 trade in services can be a useful avenue for addressing labour market shortages and skills deficits, with mutual benefits for both sending and receiving nations. However, the effective realization of these opportunities is constrained by punitive barriers to Mode 4 trade in importing countries and by limitations in the supply capacity of sending countries. Chanda suggests that host countries need to take steps to ease border and 'behind-the-border' measures that currently impede the entry and stay of foreign workers while source countries need to pay greater attention to the supply side challenges to the exports of Mode 4, through education and training policies, labour market policies and supporting institutional frameworks.

Chanda's chapter stresses the fact that without greater attention to capacity and quality issues in sending countries, the latter will not be able to leverage their demographic surpluses and will also face trade-offs between exporting services through Mode 4 and meeting their domestic labour market needs. Absent the proper policy response, demographic dividends can easily become demographic liabilities. In addition to unilateral measures, Chanda argues that sending and receiving countries need to actively pursue bilateral labour agreements as well as broad-based economic cooperation and partnership agreements that cover services, investment and labour mobility, so as to benefit from their demographic complementarities.

Chapter 17, entitled '*The changing landscape of global trade in business services and value chains: Are emerging economies taking over?*', is co-authored by Andrew Berry and Nanno Mulder from the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), in Santiago and Timon Bohn, from the University of Groningen, the Netherlands. Their chapter looks into the growing involvement of emerging economies in global trade in business services and value chains over the past two decades.

In the wake of India's earlier rise in the provision of a wide range of business services, other developing and transition economies such as Brazil, China, Colombia, Costa Rica, Mauritius, Mexico, Poland, Russia,

Rwanda, Senegal, South Africa and the Philippines have also entered the sector in a significant way. The sector is indeed growing at a fast pace – it even displayed counter-cyclical tendencies by profiting from the cost-cutting pressures that came in the wake of the financial and economic crisis of 2008–09, and an increasing number of developing countries from Africa, Asia, Eastern Europe, and Latin America are today actively participating in GVCs in business services at various levels of sophistication and value added.

The chapter by Berry, Bohn and Mulder begins with a statistical analysis of the growing participation of emerging countries in business service GVCs, using export data expressed in both gross and value added terms. Using several indicators from the GVC literature, the authors document the striking ascendancy of emerging countries in global trade and investment in business services and their rising embodiment in final goods and services. The chapter moves on to describe how emerging countries from around the world have penetrated and upgraded in the three prominent segments of business service GVCs: information technology outsourcing (ITO), business process outsourcing (BPO) and knowledge process outsourcing (KPO). The chapter identifies contributing factors, and the underlying policy choices, that have facilitated growing developing country involvement in business services trade and their growing integration in GVCs.

In *'Opening services markets in developing countries: What role for competition law?'* (Chapter 18), Joseph Wilson, who until recently headed his native Pakistan's Competition Commission, in Islamabad, illustrates the central contribution that competition law and policy must play, alongside trade and investment liberalization and sound (pro-competitive) regulation in securing the benefits from market opening in service markets.

His work recalls the extent to which most developing countries, including those hailing from South Asia whose applied regulatory regimes in services bear little relation to their bound commitments under international agreements, have in recent decades promoted greater market contestability by opening up their service markets to foreign competition. However, Wilson's main contention, which he anchors in a number of case studies of frustrated market opening initiatives conducted in Pakistan and the broader sub-region, is that, while necessary, negotiated market opening will rarely be sufficient to secure hoped-for efficiency and consumer-welfare gains. It is thus imperative that a robust competition regime be in place to provide all market players, irrespective of size, nationality or ownership characteristics, with a level playing field.

Wilson contends that the perceived benefits of services trade liberalization may well fail to trickle down to consumers in the absence of an

effective competition regime. There is indeed a direct nexus between trade liberalization (including FDI) and credible competition policy enforcement, a conclusion that the various case studies on offer in Wilson's chapter strongly confirm.

Chapter 19 of the Handbook, entitled '*The services trade agreements of developing countries*', by Craig VanGrasstek of the Harvard Kennedy School and UNCTAD's Mina Mashayekhi, explores the reasons why developing countries take very different approaches to the negotiation of PTAs in general, and more particularly those PTAs that include substantial commitments on trade in services. There is, on the one hand, a small but growing number of countries that have enthusiastically taken up the opportunities presented by PTAs, which many of them appear to view not as substitutes but as complements to multilateral liberalization. On the other hand, there is also a large but diminishing number of countries that view trade and investment liberalization in services – regardless of whether it is pursued on a discriminatory or a most-favoured-nation (MFN) basis – with a deeper sense of policy apprehension.

VanGrasstek and Mashayekhi's chapter shows that members of the former group have negotiated PTAs with large numbers of partners, both developed and developing, and are willing to assume WTO-+ commitments in those PTAs on services and other issues. The members of the second group often confine their PTA negotiations to partners in their own region, and generally favour agreements that are confined to trade in goods or, when they tackle services, rarely go much further than existing multilateral commitments. This latter conduct begs the very question of the policy relevance and expected signalling benefits of PTAs in services.

Between these two extremes, VanGrasstek and Mashayekhi find other countries that have intermediary goals and experiences, but many among them are moving from fewer and shallower PTAs to more and deeper agreements. Their chapter shows that there are identifiable patterns in countries' choices between these various options. Taken as a group, the countries that opt to negotiate more and deeper PTAs tend to have higher per capita incomes, and to share other attributes that suggest both their more active participation in global markets (e.g. more trade-intensive economies) and their better preparation to engage in competition (e.g. larger and more developed service sectors and more sophisticated regulatory regimes and enforcement capacities). The latter group of countries generally profess greater interest in trade liberalization overall than they have in obtaining preferential access to large(r) markets, as most of these countries are equally active in multilateral negotiations. The differences between developing countries are both regional and rational. Countries in some regions (especially Latin America) are clearly more eager to negotiate PTAs than

other countries are (especially in Africa); within a region, richer countries whose firms are better able to compete outside their borders will often be more prone than their neighbours to negotiate PTAs.

The authors note that it is difficult to say whether the above attributes are the cause or the consequence of those countries' decisions to negotiate, but in practice it is clear that the diverging trends on offer serve to widen the divide between those developing countries that do or do not actively engage in globalization.

VanGrasstek and Mashayekhi conclude that competitiveness in services trade is neither a prerequisite nor a by-product of PTAs, but instead a matter of policy. Trade negotiations are most likely to achieve the intended result not when they are treated as an independent area of public policy, but rather when they are conceived as complements to domestic economic reforms. Not all developing countries are equally prepared to undertake such reforms, and for those countries it would be a mistake to treat PTAs as substitutes rather than complements. An important policy lesson to draw from their analysis is that the adequate design, pacing, and sequencing between domestic reform and regional and multilateral liberalization holds the key to ensuring a coherent policy and regulatory mix.

Chapter 20 of the Handbook, co-authored by Pierre Sauvé from the University of Bern's World Trade Institute and Natasha Ward, a Barbados-based partner at ACP International Trade Advisors, offers a critical reading of the decision of WTO Ministers, decreed at the multilateral trade body's Eighth Ministerial meeting held in Geneva in 2011, to adopt a waiver releasing Members from their legal obligation to provide non-discriminatory treatment to all trading partners under the GATS. Entitled '*A trade in services waiver for least developed countries<sup>3</sup>: Towards workable proposals*', the chapter questions why, some five years down the road, implementing the Ministerial Decision continues to prove challenging. The chapter starts off by drawing attention to a number of conceptual and political economy considerations that those responsible for framing specific waiver requests (and offers) should bear in mind moving forward. In doing so, the chapter's aim is to narrow the scope of the conversation on the services waiver to what could be deemed feasible, mutually acceptable, commercially relevant and development-friendly proposals for its operationalization.

Sauvé and Ward consider the services waiver a genuinely useful advance for least-developed countries (LDCs) given its promise to address a number

---

<sup>3</sup> The waiver grants WTO Members legal cover to provide preferential market access to LDCs in services trade and negotiations and is set to last 15 years from the date of its adoption.

of important external barriers and internal supply-side bottlenecks to services provision. The chapter cautions however that many of the export difficulties faced by LDCs in services markets have a distinctly regional or neighbourhood character and are thus potentially amenable to neighbourhood solutions, all the more so as most LDCs trade with and invest in other LDCs, particularly in sub-Saharan Africa. Before considering a WTO waiver, or alongside its implementation, there may well be compelling reasons, on subsidiarity grounds, to determine whether efficient bilateral or regional policy solutions exist that can be fast-tracked or tweaked to mitigate underlying market access and supply side problems. Technical assistance aimed at helping LDC governments implement with greater efficacy the various regional public goods anchored in on-going economic integration schemes and promoting greater connectivity – both physical and digital, between parties to such regional groupings, could well yield greater, more immediate, and more sustainable development dividends.

The chapter further argues that in addition to the strong regional dimension of LDC trade and investment activity, the stark reality remains that LDCs are typically confronted by crippling supply-side constraints for which domestic policy initiatives enjoying the support of the aid for trade community through targeted technical assistance represents a first-best response. There is indeed little to be gained from zeroing in on barriers maintained in the most advanced services importing countries if the supply capacity of LDC providers to actually make use of any preferences granted to them remains significantly constrained.

Finally, Sauvé and Ward note that although the LDC services waiver has been hailed as the services equivalent of the GATT's Enabling Clause, LDCs should be mindful of the differences. Preferences in goods trade are more easily granted as WTO Members are able to clearly assess and measure what is on offer by way of tariff preferences. By contrast, the removal or partial reduction of regulatory barriers to services trade involves far more complex policy determinations likely to induce precaution in those responding to LDC requests.

The Handbook's concluding chapter, entitled '*Services negotiations: Where have we been and where are we heading?*' (Chapter 21), by Gabriel Gari, from Queen Mary University in London, draws attention to the underlying factors that account for the poor performance of multilateral negotiations on services and discusses various ways to address them. Recalling the key moments in the crafting of the GATS and the lessons drawing from its subsequent implementation and legal interpretation, Gari argues that the lack of negotiating traction generated by the GATS cannot be explained solely by factors contingent to the context in which the GATS negotiations are currently taking place.

For starters, Gari recalls that the liberalization of trade in services faces a number of what he terms 'idiosyncratic' challenges. While it is broadly accepted that barriers to trade in services are not negotiable in the manner of barriers to goods trade, services negotiators largely rely on the same procedures and practices used under the GATT.

Gari further notes that the multilateral trading system – as indeed has the very fabric of international trade – has undergone tectonic transformations in the short time span since it was created. In particular, Gari considers that it has become increasingly difficult to reconcile: (a) the emergence of new trading powerhouses such as Brazil, China and India with the negotiating flexibilities granted by special and differential treatment provisions to developing countries; and (b) a growing and varied WTO Membership and a progressively complex trade agenda with mega rounds subject to the single undertaking rule and its explicit consensus premise.

Looking forward, Gari's chapter suggests that those Members willing to move forward on the liberalization of trade in services should be allowed to do so within the WTO but on a variable geometry basis, negotiating in an open and transparent manner, and with a view to extending whenever feasible negotiating outcomes to non-participants on an MFN treatment basis. The chapter explores the various legal avenues offered by the WTO and GATS to conclude plurilateral agreements to be extended on an MFN basis and advances a number of considerations about the current state of affairs that suggest in his view that a bargaining package able to command the support of a genuine critical mass of WTO Members may well be within reach given the stronger appreciation that prevails today over the tangible benefits of services liberalization and the growing realization that multilateral solutions are almost inherently development friendlier.

The chapter concludes by suggesting that to ensure the effective liberalization of trade in services, it is necessary to go beyond a narrow market access approach and complement trade negotiations with a variety of non-negotiating initiatives both within the WTO (e.g. enhancing transparency of measures affecting trade in services, trade monitoring and surveillance activities, clarification of ambiguities and capacity building and technical assistance for developing countries) and outside the WTO's remit (e.g. the implementation of adequate mechanisms for regulatory cooperation in relevant sectors and further academic research on the impacts of services liberalization on various metrics of trade and development).