



# Reflections on the Nature of Preferentialism in Services Trade

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# Services PTAs: A factsheet

- Before the year 2000, only 6 of the 55 WTO-notified PTAs covered services
- Since then, more than half of the 150+ PTAs have involved services
- 70 PTAs address both goods AND services; 6 are services-only PTAs
- 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 )



# GATS vs PTAs: Modal Differences in Levels of Liberalization and Margins of Preference

	GATS	DDA Offer	PTAs	GATS/PTA	DDA/PTA	PREF.
<b>MARGIN</b>		(0 to 100)		%	%	%
<b>Total score</b>	27	34	63	38	54	46-62
<b>Mode 1</b>	24	30	59	41	51	49-59
<b>Mode 3</b>	30	38	67	45	57	43-55
<b>OECD</b>						
<b>Mode 1</b>	43	51	59	73	86	14-27
<b>Mode 3</b>	53	59	67	79	88	12-21
<b>Non-OECD</b>						
<b>Mode 1</b>	18	23	60	30	38	62-70
<b>Mode 3</b>	23	32	67	34	48	52-66

Source : Author calculations based on Marchetti and Roy (2008).

# Comparing the level of services trade and investment liberalization across sectors

Sector	GATS	DDA (0 to 100)	PTA	GATS/PTA %	DDA/PTA %	Pref. Margin %
Professional	30	39	67	44,8	58,2	41,8 – 55,2
Computer	55	74	93	59,1	79,6	20,4 – 40,9
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	18	25	57	31,6	43,9	56,1 – 68,4
Environmental	20	30	62	32,3	43,4	56,6 – 67,7
Financial	36	40	53	67,9	75,5	24,5 – 32,1
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	12	23	57	21,1	40,4	59,6 – 78,9
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	21	24	58	36,2	41,4	58,6 – 63,8

u<sup>b</sup>

Source: Author calculations based on Marchetti and Roy (2008)

## 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.3** to adopt more restrictive rules of origin aimed at limiting benefits to insiders
- Rules of origin targeting cross-border supply (Mode 1) remain largely unaddressed (and weakly enforceable), and rules dealing with Mode 4 trade tend to be highly restrictive, typically bestowing temporary entry benefits only to citizens or permanent residents of PTA Parties

# 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
- Practicality of maintaining parallel regulatory regimes
- Tepid advances on MRAs in most PTAs
- 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 (accounting for the bulk of services trade)
- Preferences are most feasible 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 (also treated in non-trade deals, especially for lower-skilled movement)
- **Sectors such as land transport/logistics, MRAs in professional services lend themselves more readily and easily to “neighbourhood” approaches**

# Bottomline

- 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

- Notifying MRAs to the WTO under Article VII of the GATS
- Making preferences in services trade time-bound
- Showcasing PTAs with liberal denial of benefits provisions as best practice accords
- Negotiate voluntary best practice guidelines for services agreements



# Thank you!

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