

# CHAPTER 4

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## Services

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## 4.1. INTRODUCTION

Over the last two decades, preferential trade agreements (PTAs) that liberalize trade between two or more economies have proliferated. Many of these include rules for the liberalization of trade and investment in services. As of end-December 2016, 144 PTAs containing such rules have been notified to the WTO.<sup>1</sup> Despite this clear upward trend, there are still significant gaps in the collection and systematization of information on services PTAs for the purpose of policy analysis. This chapter presents a new, comprehensive database on the design and depth of 144 PTAs covering trade in services signed by 105 WTO members (considering the EU as one member).

This new dataset on services PTAs covers the most important aspects of these agreements, from the framework and general rules to specific commitments on liberalization. There appears to be no equivalent dataset, in terms of either the scope or coverage of services PTAs. The first section of the dataset comprises the coding of the main architectural and design features of services PTAs, while the second comprises the coding of liberalization commitments/reservations made by each signatory under each of these PTAs. This chapter focuses on the former. It provides a first overview and analysis of the rules that the agreements create to enhance market access, including rules on data flows, state-owned enterprises, government procurement of services, and competition policy. The commitments made in the context of these PTAs will be the focus of future analysis.

The chapter is organized as follows. The next section reviews previous attempts at coding different aspects of services PTAs. The third section describes the new dataset and explains the main coding assumptions. The fourth section provides a first overview of results and trends in the design of PTAs arising from the database. The final section concludes.

## 4.2. PREVIOUS ATTEMPTS AT SURVEYING AND CODING SERVICES PTAs

A few attempts have been made in the recent past to collect and systematize information on services PTAs – what is generally called coding. These previous studies (Table 4.1) typically covered a limited number of agreements and restricted themselves to either a few architectural features (i.e., the main features of the rule book), or to assessments of the value added brought by PTA commitments in comparison with GATS commitments or Doha Development Agenda (DDA) offers.<sup>2</sup> In addition, a database of PTAs covering goods, services,

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<sup>1</sup> The information has been drawn from the Regional Trade Agreements Information System (RTA-IS) maintained by the WTO, available at <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>.

<sup>2</sup> DDA offers refer to the offers of new or improved commitments submitted by WTO members since the start of the Doha round of multilateral trade negotiations (also known semi-officially as the Doha Development Agenda). The negotiations were formally launched at the 4th WTO Ministerial Conference, held in Doha, Qatar, in November 2001. Initial offers were submitted by end-March 2003, and revised offers were submitted by end-July 2006.

or both is maintained by the WTO Secretariat, on the basis of WTO Members' notifications to WTO. This database identifies the coverage of those agreements (goods/services), and provides links to their official texts and relevant annexes.<sup>3</sup>

Another relevant source of information is the Integrated Trade Intelligence Portal (I-TIP) kept by the WTO and the World Bank. I-TIP Services is a set of linked databases that provides information on WTO Members' commitments under the GATS, services commitments in PTAs, applied services trade policies and regulations, and services statistics. The PTA module of this database allows users to access and search information on WTO Members' commitments and reservations in agreements notified under GATS Article V. At the time of writing, it included information on commitments in around 95 PTAs. These commitments and reservations are coded by sector/subsector, mode of supply, type of limitation (market access, national treatment – NT), or obligation concerned (for negative-list-type agreements).<sup>4</sup>

In a series of papers using the same methodology,<sup>5</sup> commitments made by 53 WTO members in 67 PTAs in modes 1 (cross-border supply) and 3 (commercial presence) were compared across 142 and 152 services subsectors, respectively.<sup>6</sup> The comparison was run both across PTAs (i.e., commitments entered into by individual trading partners in the various PTAs to which they were parties), and between PTAs and GATS schedules/DDA offers (i.e., for each trading partner, the best commitment across its PTAs was compared with its latest DDA offer, or—in cases where no offer had been submitted in the DDA negotiations—compared with its GATS schedule). Apart from sectoral coverage, the studies focused on the value added from PTA commitments over GATS schedules/DDA offers. The value added was gauged by comparing, for each services subsector and mode under consideration (modes 1 and 3), whether the GATS commitment or DDA offer evolved from a partial commitment (i.e., a commitment with some market access limitation) to a full commitment (i.e., without any market access limitation), or from a partial commitment to a better partial commitment (i.e., with lesser limitations).<sup>7</sup> These studies also

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<sup>3</sup> See footnote 1.

<sup>4</sup> More information on I-TIP Services can be found at <http://i-tip.wto.org/services/>.

<sup>5</sup> Roy et al. 2007, Marchetti and Roy 2009, Roy 2011.

<sup>6</sup> The 4 modes of services supply in trade agreements are mode 1: cross-border supply; mode 2: consumption abroad; mode 3: commercial presence; and mode 4: presence of natural persons.

<sup>7</sup> The evolution from a restrictive to a less restrictive commitment but without reaching full liberalization was assessed on the basis of an improved Hoekman methodology: GATS commitments were coded as 0 (unbound), 0.5 (partial), and 1 (no restrictions or full commitment). The movements between 0.5 and 1 were coded as half the difference between 0.5 and 1 (0.75). In cases of further improvements by the same trading partner in other PTAs, the new – better – commitment would be coded as half the difference between 0.75 and 1 (0.875). All the figures, that is, all the codes for all subsectors by each trading partner, were then aggregated and normalized to 100. The higher the value, the higher the value added provided by PTA commitments over GATS schedules/DDA offers. This index did not provide the actual level of restrictiveness of policies – in other words, it did not constitute a proper Services Trade Restrictiveness Index (STR.I). The latest iteration of this dataset (2011) is available at [http://www.wto.org/english/tratop\\_e/serv\\_e/dataset\\_e/dataset\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/dataset_e/dataset_e.htm).

looked into two design features of PTAs, namely, the liberalization approach (negative or positive list) and the existence of a GATS-type market access obligation for mode 3.<sup>8</sup>

Another study assessed the value added of PTAs in East Asia for the four modes of supply.<sup>9</sup> Covering commitments in the four modes of supply in 154 subsectors, the exercise yielded 616 entries per PTA, which were classified into four categories: (a) subsectors and modes for which only a GATS commitment exists or a PTA does not offer any improvement (GATS only); (b) subsectors and modes for which a partial GATS commitment exists and a PTA eliminates or relaxes one or more remaining trade-restrictive measures (PTA improvements); (c) subsectors and modes for which no GATS commitment is available but a PTA commitment is made (PTA new sectors); and (d) subsectors and modes for which neither a GATS nor a PTA commitment exists (unbound). A PTA commitment was counted as an improvement over existing GATS commitments if at least one trade-restrictive measure was relaxed or eliminated.

A follow-up paper by the same authors<sup>10</sup> looked into some of the design features of the same sample of 25 East Asian PTAs, in particular (a) the scheduling approach (positive vs. negative list); (b) the treatment of investment (by looking at the definition of commercial presence in services chapter, the definition of investment in horizontal investment disciplines, and the relationship between services and horizontal investment disciplines); (c) the treatment of the movement of natural persons (by looking at the definition of mode 4, and the existence or not of a separate chapter or agreement related to the movement of natural persons); (d) rules of origin (for juridical and natural persons); (e) dispute settlement (state-to-state and investor-state); and (f) other elements (inclusion of provisions on recognition of other parties' standards, domestic regulation, government procurement, subsidies, and emergency safeguard measures).

A fourth study examined services commitments in 56 PTAs to which an OECD country is a party.<sup>11</sup> The preferential content of those agreements, and the value added as compared to the

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<sup>8</sup> As explained in Roy et al. 2008, “[w]hile various PTAs still follow either the NAFTA or GATS structure..., a number of the PTAs reviewed in this chapter have evolved into a combination of the two approaches, the aim being to achieve greater coherence between services and investment disciplines so as to avoid discrepancies in the treatment of investment in goods and services or in the treatment of trade in services under different modes of supply. Combined approaches therefore seek to ensure that services trade under all modes of supply are subject to the same core disciplines and that mode 3 is covered by generic investment disciplines. In such cases, mode 3 is typically subject to some obligations in both the investment chapter and the services chapter. Unlike in NAFTA, mode 3 is subject to the services chapter’s disciplines on non-discriminatory quantitative restrictions, as in GATS (i.e. Article XVI). However, in addition to GATS and as in NAFTA, generic investment disciplines apply to mode 3. A number of the services PTAs reviewed in this chapter have adopted variants of such a combined approach; e.g. all the recent PTAs involving the United States....”

<sup>9</sup> Fink and Molinuevo 2008a. The authors’ dataset is not publicly available.

<sup>10</sup> Fink and Molinuevo 2008b. The authors’ dataset is not publicly available.

<sup>11</sup> Miroudot, Sauvage, and Sudreau 2010.

GATS, was assessed through an analysis of market access and national treatment commitments at the level of 155 services subsectors. Three levels of commitment (and value added) were distinguished: (a) status quo (when a subsector is “unbound” or when the commitment is the same as in GATS, this is the status quo and the PTA is not preferential); (b) GATS+ or preferential “binding” (where PTA commitments improve on existing GATS commitments or cover new sectors); and (c) GATS- (where PTA commitments are less stringent than GATS commitments). Additionally, partial commitments were further broken down according to nine categories, four of which correspond to market access (scope of subsector limited, restrictions on foreign ownership, quantitative restrictions on the service or service supplier, restrictions on the movement of people), and five of which correspond to national treatment (nationality/residency requirements and licensing; restrictions on the movement of people; discriminatory measures on subsidies or taxes; discriminatory measures on property/land; and other discriminatory measures). Finally, the study provided an overview of rules of origin for service providers and most-favored-nation (MFN) clauses in services chapters in order to see whether commitments granted might be extended to non-parties to minimize discrimination among foreign service suppliers.

A similar study<sup>12</sup> looked at the design features of about 55 PTAs, covering 13 aspects or provisions: MFN, national treatment, market access (non-discriminatory quotas), domestic regulation, emergency safeguards, subsidy disciplines, government procurement, rules of origin (denial of benefits), scope/coverage, negotiating modality (positive vs. negative list), treatment of investment in services, right of non-establishment, and ratchet mechanism (which implies that restrictions removed by a PTA signatory cannot be reintroduced, thus locking in reform undertaken subsequent to the agreement).

A significant step in the codification of PTAs design features has been the Design of Trade Agreements (DESTA) project.<sup>13</sup> DESTA is a comprehensive database that identifies and codes the main chapters, provisions, and features of PTAs. As of February 2017 (latest information available on the project’s website), DESTA researchers have manually coded design features for more than 620 agreements in force since 1945, of which 178 appear to have significant provisions on trade in services. The coding includes 8 basic aspects related to trade in services embedded in those PTAs: existence of substantive provisions on trade in services, liberalization approach (positive vs. negative list), existence of MFN, existence of NT, right of non-establishment, movement of natural persons, review provisions, and sectoral coverage. With the exception of sectoral coverage, most questions require a binary (yes-no) answer, but some can be answered in one of three ways (e.g., for the question on national treatment, the reply may be “0” if no national treatment clause is included in the service chapter, “1” if the national treatment clause is included in the service

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<sup>12</sup> Mattoo and Sauv e 2011.

<sup>13</sup> <https://www.designoftradeagreements.org/>.

chapter but is limited in scope to specific sectors, and “2” if the national treatment clause is included in the service chapter and is not limited to specific sectors).

When it comes to the review of provisions applicable to services trade, the most comprehensive exercise thus far<sup>14</sup> identified 48 significant provisions in services PTAs, divided into 7 broad themes and further into sub-themes. The themes are architecture, scope, beneficiaries, core obligations, permissive provisions, domestic regulation and recognition, and institutional provisions (Table 4.2).

**Table 4.1: Previous datasets on services PTAs**

Study	Number of PTAs covered	Main features
Fink and Molinuevo 2008a and 2008b (F&M)	25 in East Asia	Liberalization valued added in 154 services subsectors (based on W/120 classification) and 4 modes of supply identified under the GATS. Key architectural elements: approach to scheduling commitments, treatment of investment and movement of natural persons, rules of origin, dispute settlement.
Houde, Kolse-Patil, and Miroudot 2007	20 (investment disciplines) and 10 (commitments)	Key investment disciplines in PTAs’ investment and services chapters. Coding of investment-related commitments/reservations in 12 big sectors of W/120 (but only for 10 PTAs).
Roy, Marchetti, and Lim 2007; Marchetti and Roy 2009; Roy 2011 (M&R)	67 (by 53 Members)	Liberalization value added in 152 services subsectors in mode 3 and 142 services subsectors in mode 1 (based on W/120 classification).
Miroudot, Sauvage, and Sudreau 2010 (M&S&S)	56 (where an OECD is a party)	Examines services schedules of commitments in 155 services subsectors (based on W/120 classification) in the 4 modes of supply. Partial commitments are broken down according to nine categories of non-conforming measures (4 on market access and 5 on national treatment).
Design of Trade Agreements (DESTA) Database (Baccini et al. 2011)	178	Identifies and codes 8 key variables: existence of substantive provisions on trade in services, liberalization approach (positive vs negative list), existence of MFN, existence of NT, existence of right of right of non-establishment, movement of natural persons, review provisions, sectoral coverage.
Latrille and Lee 2012 (L&L)	80	Analysis of 48 key provisions structured under 7 themes commonly found in PTAs: architecture, scope, beneficiaries, core obligations, permissive provisions, domestic regulation, institutional provisions.
Mattoo and Sauvé 2011 (M&S)	55	Looks into 13 key features: MFN, national treatment, market access (nondiscriminatory quotas), domestic regulation, emergency safeguards, subsidy disciplines, government procurement, rules of origin (denial of benefits), scope/coverage, negotiating modality (positive vs. negative list), treatment of investment in services, right of non-establishment, and ratchet mechanism.

Source: Deep Trade Agreements Database.

<sup>14</sup> Latrille and Lee 2012.

**Table 4.2: Design of PTAs: Coverage of issues in previous datasets / exercises**

	M&R	F&M	M&S&S	L&L	M&S	DESTA
Number of PTAs covered	67	25	56	80	55	178
Coverage of modes of supply (incl. investment)	X	X		X	X	
Relationship between cross-border trade in services (CBTS) and investment chapters				X		
Separate sectoral chapters/annexes				X		
Sectoral exclusions				X		X
Policy exclusions						
Gov. procurement		X		X	X	
Subsidies		X		X	X	
Liberalization approach						
Positive vs. negative	X	X		X	X	X
Standstill				X		
Ratchet				X	X	
Market access				X	X	X
National treatment				X	X	X
MFN		X	X	X	X	
Prohibition of local presence requirement				X	X	X
Prohibition of performance requirements				X (1)		
Export						
Local content						
Technology transfer						
Prohibition of nationality/residence req.				X (2)		
Disciplines on monopolies						
Additional commitments						
New issues (e.g., cross-border data flows)						
Phase-in sectoral liberalization						
Domestic regulation		X (1)			X (1)	
Necessity test				X		
Oblig. to inform on licensing decision				X		
Oblig. to inform on application status				X		
Single windows						
Time-bound decisionmaking						
ROI administration of regulations				X		
Mutual recognition		X		X		
Transparency						
Publication				X		
Allow prior comment				X		
Independent authority						
Exceptions						
General						
Security						
Prudential						
Other						
Safeguards						
Emergency safeguard		X		X		
Renegotiation of commitment						
Balance of Payments (BoP)				X		
Natural persons						X (1)
Specific provisions		X		X		
Coverage of specific categories		X				
Coverage of employment						
Rules of origin						
Juridical persons		X	X	X		
Natural persons		X	X			
Dispute settlement						
State-state						
Investor-state						
Other						

*Note:* Issues/areas identified in the first column are those covered by the Deep Trade Agreements Database; (1) the existence of this provision/discipline is only covered in general terms; (2) nationality or residence requirement for senior managers or members of the boards of directors. Definition: ROI = reasonable, objective, and impartial. Full title of datasets are provided in Table 4.1.

### 4.3. THE NEW DATASET

The dataset on which this chapter is based breaks new ground in the analysis of services PTAs by providing a comprehensive coding of both the design features of the sample of 144 services PTAs and the types of restrictions in their liberalization commitments.

The dataset consists of two sections: the first comprises the coding of the main architectural and design features of the PTAs, while the second comprises the coding of liberalization commitments/reservations made by each signatory under each of the PTAs. The new dataset represents an improvement over previous coding attempts in terms of both the extensive margin (more PTAs are covered) and the intensive margin (more PTA aspects are covered and with further granularity). While it builds on information already contained in the PTA module of I-TIP Services, the new dataset includes additional PTAs, provides for a more detailed coding of commitments/reservations, and introduces a new framework for coding service provisions.

#### 4.3.1 Design section of the dataset

The first part of the dataset identifies 8 main areas or aspects of services PTAs: (a) structure; (b) scope and coverage; (c) substantive disciplines; (d) exceptions; (e) safeguard mechanisms; (f) movement of natural persons; (g) rules of origin; and (h) dispute settlement. These areas are further broken down into subareas, for a total of about 50 questions/variables for each PTA.

The structure area identifies how the four modes of supply are covered in the agreement, and – in the case of the inclusion of an investment chapter or the existence of an investment protocol – if and how the hierarchy between chapters is defined in case of inconsistency between those chapters. The structure area also looks into how specific sectors are treated in the agreements, namely, as chapters or annexes (the former being an indication that the sectors are considered more substantial).

The scope and coverage area focuses on the sectors included or excluded from the agreement, the policy exclusions (government procurement, subsidies, treatment of job seekers under mode 4), as well as the liberalization approach adopted (GATS-type, negative, or other approaches).

With respect to the substantive disciplines, the database captures information on a diverse set of provisions related to market access (how it is defined); non-discrimination (MFN and NT); local presence requirements (for cross-border trade in services); performance requirements or obligations on members of firms' boards of directors (for mode 3/investment in services); discipline of monopolies; and possibility of undertaking additional commitments<sup>15</sup> or

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<sup>15</sup> “Additional commitments” are provided for in GATS-type agreements—they allow parties to undertaken additional obligations on measures not considered as market access or national treatment limitations.

coverage of new issues (e.g., cross-border data flows). This section also deals with domestic regulation (e.g., procedural aspects of licensing, single window, mutual recognition, necessity test) and transparency (publication, prior comments on new regulations, and availability of appeal procedures).

The template for this exercise also includes questions on (a) the existence of exception clauses (general, security, or prudential matters); (b) safeguard mechanisms (emergency issues, possibility of renegotiating commitments, balance-of-payments difficulties); (c) the movement of natural persons (analyzed by including questions relating to the scope of mode 4 in the agreements); (d) rules of origin for firms and natural persons; and (e) the type of dispute settlement possibilities foreseen in the agreements (state-state and/or investor-state).

Annex Table 4.A.1 provides the complete questionnaire used to code the main design features of the agreements, while Table 4.2 (above) shows how these variables have been covered in previous datasets or exercises. In comparison with those previous datasets, the new dataset addresses the design of services PTAs much more comprehensively.<sup>16</sup> In particular, it improves significantly on the coding of domestic regulation and transparency, performance requirements, coverage of new issues (such as cross-border data flows), dispute settlement, and additional commitments/phase-in liberalization commitments.

### **4.3.2 Commitments/reservations section of the dataset**

The second part of the dataset codes the commitments for all 144 PTAs in the sample. The analysis of the commitments will be presented in a future paper. For this analysis, the PTAs were divided into two categories on the basis of their liberalization approach – those following a GATS-type approach, and those following a negative-list-type approach. In the case of the former, all market access and national treatment commitments in the four modes of supply have been coded, identifying the level of commitment (full, unbound, or partial). Whenever a partial commitment was encountered, the dataset identifies the market access and/or national treatment limitation concerned. Market access limitations are those contained in the GATS; namely: (a) limitations on the number of suppliers; (b) limitations on the value of transactions/assets; (c) limitations on the total number of operations; (d) limitations on the number of natural persons that may be employed; (e) requirements regarding types of legal entities or joint ventures; and f) foreign equity limitations. A category of “other” was added to make allowance for market access limitations not clearly falling into any of these six categories. In the case of national treatment limitations, scheduled limitations were allocated to any of the following 14 categories: (a) tax measures; (b) subsidies or grants; (c) other financial measures; (d)

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<sup>16</sup> Only one previous exercise – reported in Latrielle and Lee 2012 – comes close in that regard, but the results were only summarized in narrative form in their paper, and the actual data were not presented.

nationality requirements; (e) residency requirements; (f) licensing, standards, and qualifications; (g) registration requirements; (h) authorization requirements; (i) performance requirements; (j) technology transfer requirements; (k) local content requirements; (l) ownership/rental of land/property; (m) and other national treatment requirements.

In the case of negative-list-type agreements, the basic assumption is that services that are not excluded from the sectoral coverage of the agreement or by virtue of Annex 2 reservations (i.e., reservations for future measures), or for which no reservations have been made in Annex 1 (i.e., existing non-conforming measures) are considered to be fully liberalized. For those services for which reservations have been filed (through either Annex 1 or Annex 2), the reservations have been allocated to the relevant modes of supply.<sup>17</sup> In general, these agreements allow for the filing of reservations with regard to the following disciplines: market access, national treatment, MFN, local presence requirements, nationality/residence of boards of directors and/or managers, and performance requirements. The reservations on market access and national treatment have been allocated to the market access and national treatment categories identified above.

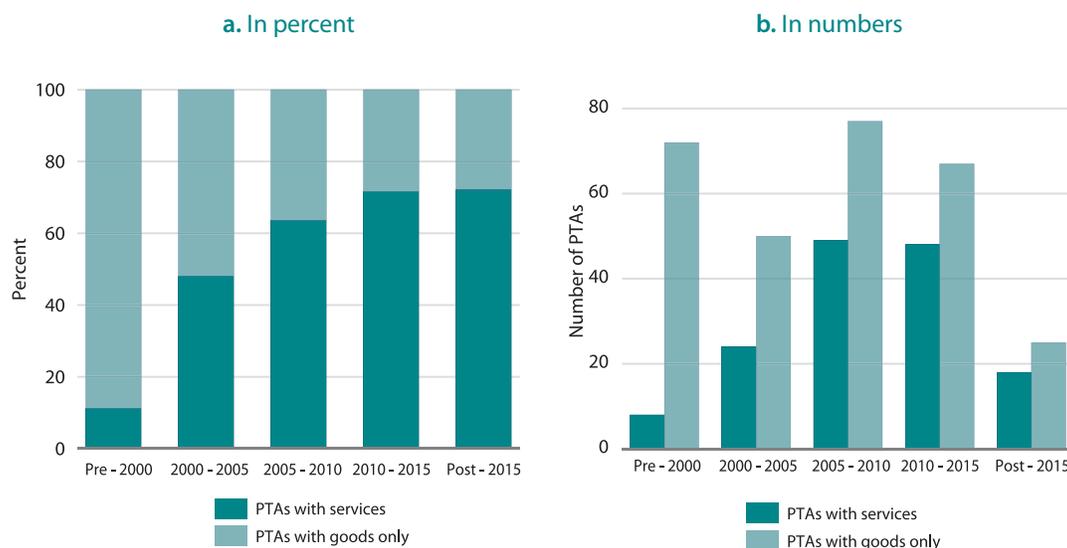
#### 4.4. OVERALL TRENDS IN PTAs WITH SERVICES

As can be seen in Figure 4.1, the trend towards the inclusion of services trade in PTAs intensified in the 2000s, probably as a reflection of services regulatory reform worldwide. From a political economy perspective, the relationship between this trend and developments in the Doha Round of negotiations (which started at the end of 2001) is unclear. Governments seem to have turned their attention to services at every negotiating front – whether multilateral or plurilateral or bilateral – and that may explain the increasing number of PTAs covering services trade even in the first half of 2000s, when there was still hope that the Doha negotiations could be concluded. As of 2006, it became clear that bilateral or plurilateral PTAs were the only channel through which governments liberalized, committed to further liberalization, or complemented unilateral efforts to liberalize trade in services. The obligation to notify these agreements to the WTO, by virtue of GATS Article V and the additional “RTA transparency mechanism” adopted by WTO in 2006, has made it possible to keep track of these trends. Arguably, services have become a major component of PTAs, featuring prominently in mega-regional negotiations such as the Trans-Pacific Partnership (CPTPP), Transatlantic Trade and Investment Partnership (TTIP), Regional Comprehensive Economic Partnership (RCEP), and in the broad, services-only Trade in Services Agreement (TISA) initiative (which remains unfinished and deadlocked at the time of writing).

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<sup>17</sup> Reservations to cross-border trade (CBT) have been allocated to modes 1, 2, and 4, or to modes 1 and 2 (depending on the definition of CBT used in the PTA). Reservations appearing in the investment chapter and concerning services have been all allocated to mode 3.

**Figure 4.1: Proportion of PTAs with services over time**



Source: Deep Trade Agreements Database.

**Figure 4.2: PTAs with services by level of development**

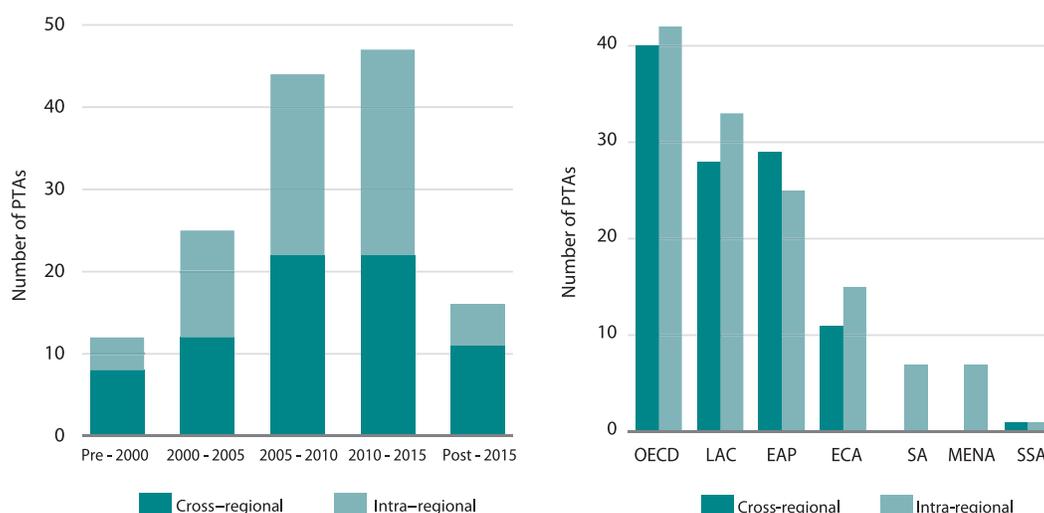


Source: Deep Trade Agreements Database.

The majority of services PTAs have been signed between developed and developing countries and the share has remained persistent over time. However, the involvement of developing countries has been growing, as evidenced by the growing number of developed-developing PTAs as well as developing-developing PTAs. Especially since 2005, the share of services PTAs signed between developing countries has increased (Figure 4.2).

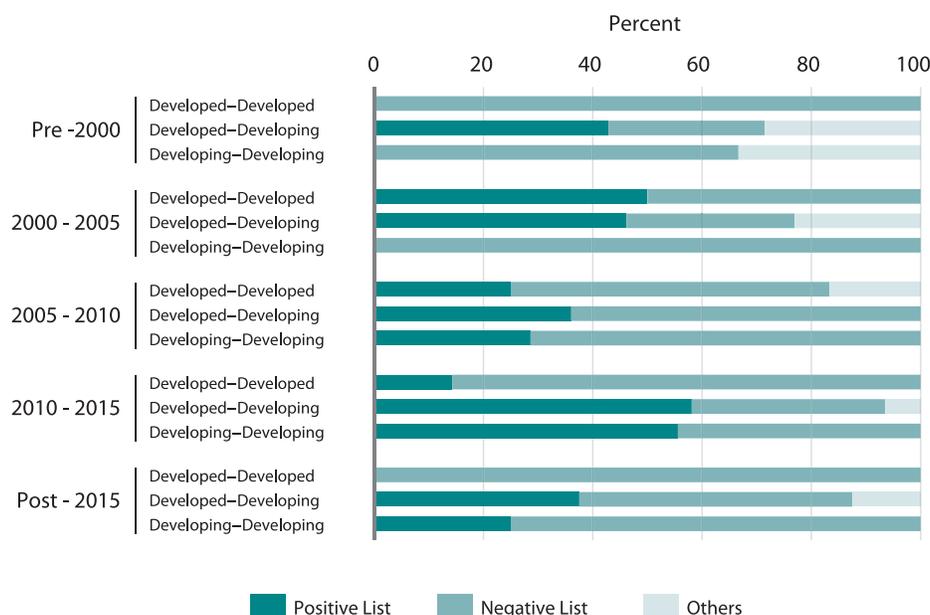
While before 2000, trade liberalization in general took place within regions or among neighboring economies (e.g., the EU, NAFTA, ASEAN, MERCOSUR), cross-regional agreements (between partners in different regions of the world) have become common. While this is a general trend, it was only natural in the case of services, where modes of supplying internationally are less dependent on proximity factors (technological means, foreign direct investment, and movement of people). Also, it appears that countries in Latin America and the Caribbean (LAC) and East Asia and the Pacific (EAP) are more likely to be involved in PTAs with services, as evidenced by much larger shares of PTAs signed by parties in these regions. The countries in South Asia, the Middle East and North Africa (MENA), and Sub-Saharan Africa have the lowest number of PTAs with services (Figure 4.3).

**Figure 4.3: Number of PTAs with service, intra-, and extraregional groupings**  
**a. Regional groupings: overall**                      **b. Regional groupings: by region**



*Note:* Cross-regional grouping means that at least one party to the PTA is outside the region of the other parties. If all parties are in the same region, they fall into an intra-regional grouping. In panel b, the same PTA can appear in more than one region, depending on the parties to the PTAs. If one of the parties to a PTA is in the OECD region and the other party is in the LAC region, the PTA is grouped under both regions. In panel b, LAC means Latin America and Caribbean, EAP means East Asia and Pacific, ECA means Eastern and Central Asia, SA means South Asia, MENA means Middle East and North America, and SSA means Sub-Saharan Africa.

Over time, as shown in Figure 4.4, there seems to have been a premium placed on negative-list approaches to liberalization of trade in services (see the definition in the previous section). PTAs signed among high-income or developed countries are more likely to follow a negative-list approach. However, the trends are less clear in the case of developing countries: PTAs signed by developing countries with developed partners tend to follow either approach, while, interestingly, a significant number of PTAs between developing countries follow a negative-list approach. This latter development may be an indication of the political will and background – economies having already embarked on unilateral reform processes – underpinning negotiations between developing countries.

**Figure 4.4: Liberalization approaches**

Source: Deep Trade Agreements Database.

## 4.5. THE DESIGN OF SERVICES PTAs

A basic distinction between services PTAs is based on their approach to liberalization commitments. In agreements following a “negative-list” approach, the relevant obligation (e.g., national treatment) will apply to all the services sectors falling under the purview of the chapter unless the party lists relevant non-conforming measures (for example, in the Annex on existing non-conforming measures) and/or identifies sectors or sub-sectors to which the obligation does not apply (for example, in the Annex on “future” measures). This is unlike agreements following the so-called “positive-list” approach, like the GATS, where the relevant obligation (e.g., national treatment) applies only to those sectors that are listed or committed in the Member’s schedule (positive-listing) and subject to any conditions and qualifications set out therein. An additional difference between both approaches concerns the obligations that may be subject to reservations. While positive-list-type agreements only allow for reservations on market access and national treatment, negative-list-type agreements allow for reservations to be filed with respect to not only market access and national treatment but also MFN, the obligation to forbid local presence requirements, the obligation to eliminate performance requirements, and the obligation not to request nationality/residency senior management personnel and members of boards of directors. Finally, negative-list-type agreements are usually accompanied by a ratchet mechanism which locks in future liberalization. The distinction between these two liberalization approaches is important

since the choice of liberalization approach may have an impact on the negotiation's dynamic, the actual prerequisites in terms of parties' preparation, and the actual effects – the negative-list-type agreements being considered more ambitious and therefore more demanding on the parties.

There is also a third category of agreements. The “other” or hybrid category includes some EU-related agreements and others that do not fit either the positive- or negative-list category. The common features of these hybrid other agreements are a neither/nor approach to the scheduling of commitments, the absence of modes, and the use of alternative concepts such as freedom to provide services and freedom of establishment.

The 144 PTAs with services components can be grouped into three main categories: those based on a GATS-type positive list (58), those with a negative-list approach similar to NAFTA, (75), and those that include elements from both these approaches as well as other characteristics (11).

The main features of each type of PTA are analyzed below on the basis of the 8 broad areas identified in the dataset. As noted above, these areas are (a) structure; (b) scope and coverage; (c) substantive disciplines; (d) exceptions; (e) safeguard mechanisms; (f) movement of natural persons; (g) rules of origin; and (h) dispute settlement. Items within each area are analyzed based on the types of agreements (positive, negative, or other types).

### 4.5.1 Structure

The structure of a services PTA refers to the way that services trade has been covered in the agreement; i.e., the definition and inclusion of different modes of supply (Table 4.3); relevance of the investment chapter and its relation to the services chapter and other services provisions (Table 4.4); and the existence of specific sectoral rules, either in separate chapters or in annexes/annotations to the main services chapter (Table 4.5 and Table 4.6).

**Table 4.3: Structure of services trade, number of PTAs**

Category	A.	B.	C.	D.
	All 4 modes (M) covered in a self-contained chapter	All 4 modes (M) covered in a self-contained chapter (plus an Annex on M4) and an additional investment chapter/protocol	Chapter on cross-border trade in services (M1, M2, M4), plus chapter on investment (M3) and other chapters/annexes on movement of persons	Chapter on cross-border trade in services (M1, M2), plus an investment chapter (M3), plus a chapter on movement of persons (M4)
Positive	10	46	0	2
Negative	3	9	59	4
Other	4	3	3	0
<b>Total</b>	<b>17</b>	<b>58</b>	<b>62</b>	<b>6</b>

The positive-list PTAs are more likely to have a category A or B structure and the majority of negative-list agreements feature a category C structure (see Table 4.3). Whatever the approach, it is clear that trade in services is predominantly governed by a combination of chapters, and that disciplines on investment have become a major component not only of PTAs but also of the framework through which trade in services is liberalized. Most negative-list agreements (60 out of a total of 75) contain provisions clarifying the relationship between the investment chapter/protocol and the other chapters as indicated in Table 4.4.

**Table 4.4: Inclusion of provisions clarifying the hierarchy/relationship between the investment chapter/protocol and trade in services chapter**

	Number of PTAs
Positive	14
Negative	60
Other	2

In addition to the main provisions relating to services trade (whether covered in cross-border trade in services or investment chapters), often some sectoral disciplines are also included in trade agreements. The GATS contains three sectoral annexes on air transport, telecommunications, and financial services, which generally develop or clarify GATS provisions on sector-specific features (telecom and financial services annexes) or define the coverage of the sectors (financial services and air transport). As shown in Tables 4.5 and 4.6, services PTAs present a variety of approaches, including separate sector chapters or annexes that provide for trade and investment disciplines for specific sectors (financial services in US PTAs).

Of the 144 services PTAs in the dataset, 57 percent contain sector-specific chapters for financial, telecommunications, or air transport services, and 53 percent have sector-specific annexes to a trade in services or investment chapter. Sector-specific rules contained in these chapters and annexes do not vary significantly from agreement to agreement.

**Table 4.5: Inclusion of separate sector-specific chapter**

	Number of PTAs
Positive	20
Negative	59
Other	3
<b>Total</b>	<b>82</b>

**Table 4.6: Inclusion of services sector-specific annexes to a trade in services or investment chapter**

	Number of PTAs
Positive	33
Negative	37
Other	6
<b>Total</b>	<b>76</b>

## 4.5.2 Scope and coverage

The scope and coverage of a services PTA refers to sectoral exclusions (e.g., services supplied in the exercise of governmental authority; air transport services, in line with the GATS<sup>18</sup>); the exclusion of specific policies (e.g., government procurement, subsidies, employment); and the general liberalization approach.

### 4.5.2.1 Sectoral exclusions

In line with the GATS, 85 percent of PTAs (122 out of 144) exclude from coverage those services supplied in the exercise of governmental authority.<sup>19</sup> Some PTAs use the GATS definition of governmental authority, and others use a non-exhaustive list of examples such as Republic of Korea-Singapore (Article 9.2.3) or Panama-Taiwan, China (Article 11.02.3 (c)). Some agreements use both the GATS criteria and the list of examples.

In the case of air transport services, about 86 percent of the PTAs do not cover air traffic rights (cross-border air transport). However, about 31 percent cover air transport services beyond the three ancillary air transport services covered by the GATS (Table 4.7, column 4). The majority of these cases appear in the negative-list agreements and involve specialty air services relating to aerial work; i.e., services using a plane for purposes other than passenger or freight transport (such as for crop spraying, aerial photography, aerial advertisement). Notably, air transport provided via mode 3/commercial presence is not excluded from the investment chapters of the agreements.

**Table 4.7: Sectoral exclusions from services and/or investments sections**

Number of PTAs	Excluded services supplied in exercise of governmental authority	Excluded air traffic rights (cross-border air transport)	Air transport services covered beyond (a) computer reservation systems, (b) marketing and sale services, or (c) maintenance and repair services	Excluded other services
Positive	50	47	8	27
Negative	66	71	37	54
Other	6	6	0	5
<b>Total</b>	<b>122</b>	<b>124</b>	<b>45</b>	<b>86</b>

<sup>18</sup> The following air service sectors are generally excluded from both the GATS and PTAs: air traffic rights; air transport services beyond (a) computer reservations, (b) marketing and sale services, and (c) maintenance and repair services.

<sup>19</sup> These services are not identified by means of a list of sectors but are rather characterized through a sort of test (services supplied in the exercise of governmental authority must be supplied “neither on a commercial basis nor in competition with one or more service suppliers”). [GATS Article I.3(c)]. Results, and therefore the actual sectoral coverage of the GATS, may differ by Member. For example, prison services in the US belong to merchant services and hence are subject to general services disciplines of the PTAs. This is not the case for other Members, for which prison services are exclusively provided by the public sector.

Other excluded services sectors cover financial services, telecommunications services, and maritime cabotage services (i.e., maritime transport between two ports located within the same country). Some of these sectors are excluded from the general services disciplines of the PTAs but are covered by the sector specific chapters/annexes and rules, which go beyond the generic services disciplines or GATS disciplines.

#### 4.5.2.2 Policy exclusions

Taking the GATS as a benchmark, policy exclusions cover government procurement, subsidies, and employment on a permanent basis. In the template, allowance was made for other policy exclusions in a catch-all category simply called “others.” As shown in Table 4.8, in 90 percent of the agreements, government procurement is not covered by services disciplines (mainly MFN, market access and national treatment). About 80 percent of the PTAs exclude provisions on subsidies, and on employment on a permanent basis. The agreements that do not exclude these areas generally involve EU/EC and EFTA members.

**Table 4.8: Policy areas excluded from PTAs**

Number of PTAs	Government procurement	Subsidies	Job seekers, citizenship, residence, or employment on a permanent basis	Other
Positive	55	43	41	5
Negative	73	69	68	2
Other	2	1	6	1
<b>Total</b>	<b>130</b>	<b>113</b>	<b>115</b>	<b>8</b>

#### 4.5.3 Core obligations

The core disciplines included in the dataset are market access, MFN, national treatment, and standstill and ratchet obligations, as well as obligations to avoid local presence, performance, and local content requirements.

##### 4.5.3.1 Market access

Market access is an obligation universally found in PTAs. The purpose of this question is to find out how the agreements define this obligation, which is aimed at curbing quantitative limits on market access. Specifically, do PTAs define market access limitations as in the GATS, where prohibitions focus on quantitative restrictions (whether in the form of quotas or economic needs tests), legal forms of entry or foreign equity limits (Box 4.1); or as in negative-type agreements (which have become a model for other countries), where prohibitions focus on non-discriminatory measures, thus excluding foreign equity ownership limits?

#### Box 4.1. Market access limitations in the GATS

- ...on the number of service suppliers (quotas, monopolies, exclusive service suppliers)
- ...on the total value of service transactions or assets
- ...on the total number of service operations or on the total quantity of service output
- ...on the total number of natural persons that may be employed in a particular service sector or company
- ...on specific types of legal entity or joint venture requirements
- ...on foreign equity ownership

Out of 144 agreements, 56 define market access according to the GATS definition; 42 use the negative-list-type approach, therefore omitting foreign equity limitations; and 42 adopt other definitions. Most GATS-type or positive-list agreements use the market access definition with 6 limitations (Table 4.9). The negative-list-type agreements use the market access definition with 5 limitations. Surprisingly, the other category mostly comprises negative-list-type agreements; these use a definition of market access different from the first two categories or do not contain market access provisions. For example, Chile–Japan, Chile–Korea, and Japan–Mexico PTAs, which are all negative-list agreements, do not contain a provision on market access.

**Table 4.9: Obligation on market access**

Number of PTAs	Market access definition covering 6 limitations	Market access definition covering 5 limitations	Other (different definitions)
Positive	52	0	6
Negative	3	42	29
Other (incl. n/a)	1	0	8
<b>Total</b>	<b>56</b>	<b>42</b>	<b>43</b>

#### 4.5.3.2 National treatment obligation

The questionnaire asks whether there is an obligation on national treatment. Most of the PTAs (139 out of 144) have an obligation on national treatment, though it is defined somewhat differently depending on the type of agreement. In GATS-type agreements, national treatment is defined as treatment accorded to foreign services and service suppliers that is less favorable than treatment accorded to “like” domestic services and service suppliers. It covers both de jure and de facto treatment and has a provision indicating that the national treatment clause should not be read as requiring that foreign service providers be compensated for the inherent handicaps of being foreign service providers. The negative-list-type agreements

define national treatment as less favorable treatment accorded to foreign services and service suppliers in comparison to treatment accorded, “in like circumstances,” to domestic services and service suppliers. That is, the likeness of services and service suppliers is replaced by the likeness of circumstances faced by the different services and service suppliers. In the EU-type agreements, national treatment obligations simply prohibit restrictions based on nationality.

#### 4.5.3.3 MFN obligation

Out of 144 agreements, 122 have an obligation to extend MFN benefits to trading partners in subsequent agreements, and 22 PTAs do not have such an obligation. Out of the 22 without an MFN obligation, 15 are positive-list agreements, 5 are negative-list agreements, and 2 are other types of agreements.

#### 4.5.3.4 Status quo and ratchet obligations

When a party to a PTA commits to a “standstill,” it means the measures/reservations listed per sector and mode, if they do not conform with the obligation concerned, will not become more restrictive in the future. “Ratchet” means that if the measure is amended in the future to become less restrictive, the new, more favorable treatment will set the benchmark for the standstill requirement and will thus become the new commitment. About 50 percent of the PTAs contain standstill and ratchet provisions. The vast majority of these PTAs are negative-list agreements, although a few positive-list PTAs (ASEAN-India, China-Australia, New Zealand-Singapore) also have standstill and ratchet obligations (Table 4.10).

**Table 4.10: Standstill and ratchet provisions**

Number of PTAs	Standstill provision	Ratchet provision
Positive	3	3
Negative	69	68
Other	1	2
<b>Total</b>	<b>73</b>	<b>73</b>

#### 4.5.3.5 Other obligations

These include obligations to avoid local presence requirements, performance requirements (based on exports, local content, or technology transfer), nationality/residency requirements for senior management and boards of directors, and provisions on monopolies (Table 4.11). The prohibition on performance-related requirements mostly appear in the investment chapters of negative-list agreements.

Both positive- and negative-list-type agreements generally contain provisions to discipline monopolies. Most positive-list agreements contain additional commitments, but only six negative-list agreements contain them (Table 4.12).

**Table 4.11: Obligation not to have certain requirements concerning trade in services**

Number of PTAs	Local presence requirement	Export-related performance	Local content requirement	Performance requirements in other areas	Technology transfer	Nationality requirement for board of directors or senior management
Positive	0	0	0	0	0	7
Negative	65	60	60	58	57	59
Other	1	2	2	1	2	4
<b>Total</b>	<b>66</b>	<b>62</b>	<b>62</b>	<b>59</b>	<b>59</b>	<b>70</b>

**Table 4.12: Number of PTAs with provisions on monopolies, additional commitments, and liberalization**

Number of PTAs	Discipline monopolies	Additional commitments	Cover new areas	Gradual liberalization
Positive	45	47	13	16
Negative	53	6	26	14
Other	8	1	1	1
<b>Total</b>	<b>106</b>	<b>54</b>	<b>40</b>	<b>31</b>

#### 4.5.3.6 Domestic regulation

Various aspects of domestic regulation are of interest for trade in services, and have been the subject of much discussion and negotiations over the past two decades. Concerns about domestic regulation go beyond the market access and national treatment obligations addressed in different sections of PTAs, because even in the absence of market access limitations or outright discrimination, practices related to licensing, qualifications, or technical standards may still act as obstacles to foreign services and service suppliers. While domestic regulations are important to fulfill legitimate policy objectives and prevent undesirable practices, they may also lack objective and transparent licensing requirements or technical standards, or be characterized by discretionary procedures. Depending on the PTA, domestic regulation disciplines may be mandatory, voluntary, subject to reservations and limitations, or of a best-endeavor nature. The level of enforceability is an important factor for service suppliers seeking to operate in foreign markets.

Out of the 144 agreements in the dataset, 119 include provisions relating to qualifications, licensing, and technical standards (Table 4.13). Out of the 119 PTAs that do contain such provisions, 26 refer to a necessity test; e.g., the obligation that licensing, qualification, and technical standards be not more burdensome/not more restrictive than necessary to ensure certain policy objectives such as quality of service, integrity of the profession, consumer protection, or environmental protection. There is no necessity test going beyond licensing, qualification, and technical standards.

**Table 4.13: Number of PTAs containing provisions on qualification, licensing, technical standards, and a necessity test**

Number of PTAs	Provisions on qualification, licensing, and technical standards	Of which, those subject to a necessity test
Positive	47	8
Negative	70	16
Other	2	2
<b>Total</b>	<b>119</b>	<b>26</b>

In addition to the obligation for domestic regulations to meet the necessity test, the domestic regulation section of the questionnaire asks whether each PTA in the sample includes obligations to (a) decide on applications in a timely manner; (b) inform applicants regarding the decision of authorities or the status of the review; (c) establish a single window for submitting applications; and (d) administer laws and regulations in a reasonable, objective, and impartial manner. Tables 4.14–4.16 show the results of the coding exercise with regard to the different types of domestic disciplines.

**Table 4.14: Number of PTAs with obligation to inform on status of application**

Number of PTAs	Inform on status of application	Of which, mandatory
Positive	51	49
Negative	62	62
Other	1	1
<b>Total</b>	<b>114</b>	<b>112</b>

**Table 4.15: Number of PTAs with obligation to make decisions within a certain period of time**

Number of PTAs	Make decisions within certain period of time	Of which, mandatory
Positive	36	33
Negative	56	53
Other	1	1
<b>Total</b>	<b>93</b>	<b>87</b>

**Table 4.16: Obligation to administer the measures / laws / regulations in a reasonable, objective, and impartial manner**

Number of PTAs	Administer in a reasonable, objective, and impartial manner	Of which, mandatory
Positive	49	48
Negative	70	47
Other	3	2
<b>Total</b>	<b>122</b>	<b>97</b>

Regarding the obligation to provide information on application decisions, 114 PTAs include such provisions, which for the vast majority of agreements (110) is a general and mandatory obligation, as in the GATS (Table 4.14). This is not the case for 4 agreements (e.g., Japan-Indonesia, which is on a best-endeavor basis).

A smaller number, 93 PTAs, include a provision relating to the timing of licensing decisions (62 percent of GATS-type agreements, and 75 percent of negative-list agreements). For 89 of those, it is a mandatory obligation (Table 4.15).

A larger number of PTAs (122) include an obligation to administer the measures/laws/regulations in a reasonable, objective, and impartial manner. This can be found in most negative-list-type agreements (93 percent), but also in many GATS-type agreements (84 percent). It is interesting that this obligation is mandatory in almost all of the GATS-type agreements but in only two-thirds of the negative-list agreements (Table 4.16).

It appears from the results that, except for ASEAN, none of the services-related chapters or annexes of PTAs has a provision for setting up a single window for applications, even though the single window is regularly raised by many commentators as a facilitation factor for trade in services.

#### 4.5.3.7 Mutual recognition

While 137 PTAs include provisions on recognition of standards, education, experience obtained, or licenses granted in certain jurisdictions (Table 4.17), only 44 percent are more binding than the voluntary treatment in the GATS. Out of the 60 PTAs with provisions that go beyond voluntary treatment, 28 are GATS-type and 25 are negative-list-type PTAs. Most of the other types of PTAs include provisions that go beyond voluntary treatment. The way recognition is articulated may differ among PTAs. While in many cases provisions mention the recognition of education, experience, or licenses obtained in other countries (whether parties or non-parties to the agreements), some others specify that the provisions on recognition only apply to experience or education obtained in the parties to the agreement (e.g., ASEAN, CARICOM).

**Table 4.17: PTAs with mutual recognition provisions**

Number of PTAs	Mutual recognition provisions	Of which, mandatory (general or on specific commitments), or best endeavor
Positive	58	28
Negative	70	26
Other	9	7
<b>Total</b>	<b>137</b>	<b>61</b>

### 4.5.3.8 Transparency

Transparency is an important pillar of the trading system and is necessary at various levels, ranging from (a) the opportunity to comment during the drafting of laws and regulations; to (b) the publication of finalized laws/regulations/policy guidelines; to (c) enforcement of rules and procedures; to (d) establishment of contact points for information requests and provision of information to oversight bodies. This study concentrated on two aspects of transparency – the opportunity for interested parties to comment on proposed and regulations; and the publication of legal texts or their availability to interested persons.

One hundred thirty of the PTAs include provisions related to the publication of information on relevant laws and regulations, of which 113 make this obligation mandatory, as in the GATS. Concerning the latter point, the overall proportion of mandatory obligations is the same whether GATS-type or negative-list-type PTAs are considered. The three other types of PTAs that include those types of provisions all correspond to general obligations and have a mandatory nature (Table 4.18). All remaining PTAs refer to best endeavor.

**Table 4.18: Obligation to publish**

Number of PTAs	Publish relevant laws and regulation	Of which, mandatory
Positive	52	45
Negative	75	65
Other	3	3
<b>Total</b>	<b>130</b>	<b>113</b>

**Table 4.19: Obligation to provide for prior comment on proposed regulation**

Number of PTAs	Provide for prior comment on new regulation	Of which, mandatory
Positive	31	10
Negative	56	12
Other	2	1
<b>Total</b>	<b>89</b>	<b>23</b>

Eighty-nine PTAs include provisions that foresee the possibility of interested parties providing prior comments on proposed regulation, which is not incorporated in the GATS. Around half the GATS-type PTAs and 75 percent of the negative-list agreements contain such provisions. Twenty-three agreements consider this a general obligation of a mandatory nature (Table 4.19). The clear majority of the remaining PTAs indicate a best-endeavor nature. There is no specific trend depending on the type of agreement.

#### 4.5.3.9 Independent authority for appeal procedures

One hundred nineteen PTAs include an obligation to set up an independent authority to which an appeal can be brought. In all cases, the obligation is of a general and mandatory nature (Table 4.20).

**Table 4.20: Obligation to set up an independent authority for appeal procedures**

Number of PTAs	Obligation to set up independent authority	Of which, mandatory
Positive	48	48
Negative	68	68
Other	3	3
<b>Total</b>	<b>119</b>	<b>119</b>

#### 4.5.4 Movement of natural persons (MNP)

There are various aspects in PTAs addressing the question of the movement and the temporary presence of persons. One hundred fifteen PTAs include specific provisions on the presence of natural persons, generally in the form of a chapter or an annex. Only 29 identify specific categories of professions (with specific provisions for those professionals); and only 20 go beyond GATS by covering permanent residency/ employment or job seekers (Table 4.21).

**Table 4.21: Treatment of the movement of natural persons**

Number of PTAs	Specific provisions on presence of natural persons	Specific categories of professionals	Coverage of permanent or temporary employment
Positive	44	11	3
Negative	60	17	16
Other	11	1	1
<b>Total</b>	<b>115</b>	<b>29</b>	<b>20</b>

#### 4.5.5 Beneficiaries

Beneficiaries may be referred to in terms of rules of origin. Unlike PTAs that cover trade in goods, services PTAs do not have a chapter on rules of origin. Instead, services PTAs have sections defining cases in which “denial of benefits” can be invoked. These sections have the effect of covering rules of origin for juridical persons and natural persons (Tables 4.22 and 4.23).

#### 4.5.6 Exceptions

Regardless of type of agreement, almost all PTAs include general exceptions and allow for security exceptions. Eighty-seven PTAs allow for prudential exceptions for financial services (Table 4.24).

**Table 4.22: Rules of origin for juridical persons**

Number of PTAs	Be owned or controlled by persons of the other party (whether juridical or natural) AND have substantial business operations (in the other party or a third party)	Be (i) owned or controlled by natural persons of the other party, OR (ii) be owned or controlled by juridical persons of the other party AND have substantial business operations	Be owned or controlled by natural persons of the other party	Incorporated under the domestic law of the party	Incorporated under the domestic law of the party and have substantive business operations in the territory of a member	Other
Positive	13	32	5	3	2	3
Negative	19	17	6	16	17	0
Other	5	2	0	1	0	3
<b>Total</b>	<b>37</b>	<b>51</b>	<b>11</b>	<b>20</b>	<b>19</b>	<b>6</b>

**Table 4.23: Rules of origin for natural persons**

Number of PTAs	Be a national of the party (whether resident there or in a third party)	Have the right of permanent residence in that party	Be a national of that party (and be resident there or in a third party) or have the right of permanent residence in that party	Have a center of economic interest in the territory of the party	Other
Positive	16	0	40	0	1
Negative	22	1	51	0	1
Other	4	0	4	0	3
<b>Total</b>	<b>42</b>	<b>1</b>	<b>95</b>	<b>0</b>	<b>5</b>

**Table 4.24: Exceptions**

Number of PTAs	General exceptions	Security exceptions	Prudential exception for financial services
Positive	58	56	36
Negative	75	74	46
Other	10	9	5
<b>Total</b>	<b>143</b>	<b>139</b>	<b>87</b>

### 4.5.7 Safeguard mechanisms

Only a small number of PTAs (36) have a provision allowing for emergency safeguard actions in specific sectors and modes. A smaller number of PTAs (mostly positive-list agreements) contain provisions allowing the renegotiation of specific commitments or reservations. In contrast, the majority of PTAs have a provision allowing measures to counter balance-of-payments difficulties (Table 4.25).

**Table 4.25: Safeguard mechanisms**

Number of PTAs	Emergency safeguard provision	Allowing renegotiation of commitments or reservations	Provision allowing measures to counter balance-of-payments difficulties
Positive	25	20	54
Negative	8	6	57
Other	3	0	10
<b>Total</b>	<b>36</b>	<b>26</b>	<b>121</b>

#### 4.5.8 Dispute settlement

Most positive-list-type agreements (72 percent) refer only to state-to-state dispute settlement (DS). The remaining positive-list agreements also include investor-state dispute settlement for relevant mode 3 issues. Most negative-list agreements (84 percent) include provisions covering both state-to-state and investor-state dispute settlement (Table 4.26).

**Table 4.26: Dispute settlement**

Number of PTAs	State-state settlement only	State-state and investor-state settlement
Positive	42	16
Negative	12	63
Other	7	3
<b>Total</b>	<b>61</b>	<b>82</b>

## 4.6. CONCLUSIONS

Most preferential trade agreements negotiated in the last two decades - 144 notified to the WTO as of end-December 2016 - contain rules for the liberalization of trade and investment in services. Despite this clear upward trend, there are still significant gaps in the collection and systematization of information on services PTAs for the purpose of policy analysis.

This chapter presents a new database on the design of PTAs covering services trade. This dataset, which contains information for 144 services PTAs signed by 105 economies, covers in a comprehensive manner the most important aspects of these agreements, from the design of the regulatory framework through to the specific commitments liberalization. The dataset consists of two sections: the first one comprises the coding of the main architectural and design features of these services PTAs, while the second comprises the coding of liberalization commitments/reservations made by each signatory under each of

these PTAs. The new dataset improves over previous attempts in both the intensive margin (more PTAs are covered) and the extensive margin (more PTA aspects are covered and with further granularity).

Based on these data, we provide a first overview and analysis of results and trends in the provisions included in such PTAs. At the time of writing, this chapter's authors are working on a quantification exercise on the commitments made in PTAs with services. The exercise compares those with the levels of restriction identified in applied services policies. Preliminary findings show, first, that commitments under PTAs seldom go beyond countries' applied policies and, therefore, the explicit liberalization resulting from the agreements is usually limited to a few members and a few areas. Second, the PTAs do enhance transparency and policy certainty because parties' services commitments cover more trading partners and more sectors, and in some cases are closer to applied policies than their commitments under GATS. Finally, and importantly, the new rules that the agreements create, including on data flows, state-owned enterprises, government procurement and competition policy, could enhance access to service markets.

## **ACKNOWLEDGMENTS**

We would like to thank Claudia Castillo Comabilla and Evgeniia Shannon for their assistance with the construction of the database as well as for helpful comments and suggestions. We would also like to thank our discussant Roberto Echandi, and other participants in the conference "Evolution of Deep Trade Agreements" for their comments. All errors remain the authors'.

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## ANNEX

Annex Table 4.A.1: Template on architecture and design of services PTAs

AREA	SUB-AREA	QUESTION	Answer type yes=1; no=0; letters or NA)
<b>AGREEMENT STRUCTURE</b>	<i>Coverage of modes of supply</i>	How is services trade contemplated in this agreement? Please choose one of the options. A) All 4 modes covered in a self-contained chapter (plus an Annex on M4, as in the GATS)? B) All 4 modes covered in a self-contained chapter (plus an Annex on M4) and an additional Investment chapter/protocol. C) Chapter on cross-border trade in services (as in NAFTA, M1, M2, and M4), PLUS one chapter on investment (dealing with M3) and other annexes/chapters on movement of persons. D) Chapter on cross-border trade in services (M1 & M2), plus an investment chapter (M3), plus a chapter on movement of persons (M4), as in CETA.	A, B, C, D
		Does the agreement contain provisions clarifying the hierarchy/relationship between the investment chapter/protocol and the other chapters?	1, 0, NA
	<i>Separate Chapters and/or Annexes (except for movement of natural persons)</i>	Are there separate sector-specific chapters (e.g., financial services, telecommunications)? Please list such sectors in the comments (please also consider those when replying to subsequent questions).	1 or 0
		Are there sector-specific annexes to a chapter on trade in services (such as express delivery as an annex to CBTS chapter, financial services) or to a chapter on investment? Please list such sectors in the comments.	1, 0, NA
<b>SCOPE AND COVERAGE</b>	<i>Sectoral exclusions</i>	Are any of the following services excluded from the 1) Chapter on CBTS and/or 2) Chapter on Investment? Please indicate the chapter in the comments Services supplied in exercise of governmental authority Air traffic rights (cross-border air transport)	1, 0, NA 1, 0, NA
		For air transport, are there services covered beyond (1) computer reservation systems, (2) marketing and sale services, or (3) maintenance and repair services? (e.g., specialty air services, airport operation services - please list in the comments)	1, 0, NA
		Other	1, 0, NA
	<i>Policy exclusions</i>	Are any of the following policy areas excluded from the Agreement? If some of them (e.g., government procurement of services, or subsidies to service sectors) are included in chapters other than the CBTS chapter, please indicate so. Government procurement Subsidies Job seekers; citizenship, residence, or employment on a permanent basis.	1, 0, NA 1, 0, NA 1, 0, NA
		Other	1, 0, NA
		<i>Liberalization approach</i>	In the case of disciplines subject to scheduling/reservations (i.e., market access), what is the approach followed? A) Positive list (as in GATS); B) Negative list (as in NAFTA); C) Other (including combinations of the previous ones depending on the discipline, e.g., positive list for MA and negative list for NT); If C, please give details in the comments
<i>Market access</i>	Does the agreement contain a standstill provision?	1 or 0	
	Does the agreement contain a ratchet provision - implying all unilateral liberalization is legally bound?	1 or 0	
	How is the market access obligation defined?: A: As defined in the GATS (by reference to 6 prohibited market access limitations) B: As defined in the US FTAs (by reference to 5 prohibited market access limitations, and omitting foreign equity limitations) C: Other (no provision on market access; used different definitions; or other reasons)	A, B, C	
<b>SUBSTANTIVE DISCIPLINES</b>	<i>Non-discrimination</i>	Does the agreement/services chapter contain an MFN provision?	1 or 0
		Is there a national treatment (NT) obligation?	1 or 0
	<i>Others</i>	Does the agreement contain a prohibition of local presence requirement as a pre-condition to supply services cross-border?	1, 0 or NA
		Does the agreement contain obligations not to apply export related performance requirements? Please provide comments on the particular obligation	1, 0 or NA
		Does the agreement contain obligations not to apply local content related performance requirements? Please provide comments on the particular obligation	1, 0 or NA
		Does the agreement contain obligations not to apply technology transfer related performance requirements? Please provide comments on the particular obligation	1, 0 or NA
		Does the agreement contain obligations not to apply performance requirements in other areas? Please provide comments on the particular obligation	1, 0 or NA
		Is there a general or sector specific obligation not to require nationality or residency requirements for senior managers and/or members of Board of Directors?	1, 0 or NA
		Does the agreement contain provisions to discipline monopolies? If yes, does it contain it to A. protect the interest of foreign suppliers, B. protect consumers?	1, 0 or NA A, B, NA
		Can parties to the agreement make additional commitments? If yes, please specify?	1, 0, NA
		Are there other provisions that cover new issues (i.e., cross-border data flows)?	1, 0, NA
Does the agreement include obligations to liberalize specific sectors/transactions gradually over time (if yes, please specify)?	1, 0 or NA		

AREA	SUB-AREA	QUESTION	Answer type yes=1; no=0; letters or NA)
	<i>Domestic Regulation (DR)</i>	Does the agreement contain provisions on qualification, licensing, and technical standards?	1 or 0
		If yes, are those measures (qualifications, licensing, and technical standards) subject to a "necessity test"?	1 or 0
		If yes, does the necessity test apply to other types of measures (beyond licensing, qualifications, and technical standards)?	1 or 0 or NA
		Is there a provision requiring the Party's competent authority to inform the applicant of the decision concerning the application?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA
		Is there a provision requiring the Party's competent authority to provide information concerning the status of the application?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA
		Is there an obligation to set up a single window for submission of applications?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA
		Is the competent authority required to make the licensing decision within a certain period of time?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA
		Do the Parties have to administer the measures/laws/regulations in a reasonable, objective, and impartial manner?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA
		Does the agreement contain provisions on mutual recognition?	1 or 0
	Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA	
	<i>Transparency</i>	Is there a provision requiring publications of relevant laws and regulations or making the laws and regulations available to interested persons?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA
		Is there an obligation to allow interested parties an opportunity for prior comment on proposed regulation?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA
		Is there an obligation to set up an independent authority to which an appeal could be launched?	1 or 0
		Please indicate the nature of the discipline above: A. General obligation and mandatory nature B. Obligation subject to limitations or reservations C. General obligation, but best-endeavor nature D. Voluntary obligation	A, B, C, D, NA

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AREA	SUB-AREA	QUESTION	Answer type yes=1; no=0; letters or NA)
<b>EXCEPTIONS</b>	<i>General</i>	Does the agreement include general exceptions? (GATS Article XIV list) If yes, please list the general exceptions which go beyond the GATS Article XIV list	1 or 0
	<i>Security</i>	Does the agreement allow for security exceptions?	1 or 0
	<i>Prudential</i>	Does the agreement contain a prudential exception for financial services?	1 or 0
	<i>Other</i>	Do other exceptions apply to services sectors or measures?	1 or 0
<b>SAFEGUARD MECHANISMS</b>	<i>Emergency safeguard</i>	Is there a provision allowing emergency safeguard action in specific sectors and/or modes?	1 or 0
	<i>Renegotiation of commitments</i>	Is there a provision allowing the renegotiation of specific commitments or reservations?	1 or 0
	<i>Balance-of-payments</i>	Is there a provision allowing measures to counter balance-of-payments difficulties?	1 or 0
<b>MOVEMENT OF NATURAL PERSONS</b>		Are there specific provisions clarifying the scope of the presence of natural persons (e.g., Chapter/annex on temporary presence of business persons)?	1 or 0
		If yes, does the chapter/annex on movement of natural persons cover specific categories of professionals? (e.g., architects, lawyers, and accountants)?	1, 0, NA
		If yes, does the chapter/annex on movement of natural persons cover permanent or temporary employment (i.e. beyond GATS mode 4)?	1, 0, NA
<b>RULES OF ORIGIN</b>	<i>Rules of origin for juridical persons</i>	To be considered a service supplier of a party to the agreement, in the case of the supply of services through commercial presences, does a juridical person have to:  A. Be owned or controlled by natural persons of the other party B. Be owned or controlled by persons of the other party (whether juridical or natural) AND have substantial business operations (in the other party or a third party) C. Be owned or controlled by juridical persons of the other party AND have substantial business operations (in the other party, a third party, or WTO Members) D. Be (i) owned or controlled by natural persons of the other party, OR (ii) be owned or controlled by juridical persons of the other party, AND have substantial business operations (in the other party or a third party) E. Incorporated under the domestic law of the party; F. Incorporated under the domestic law of the party and have substantive business operations in the territory of a member G. Other (please specify in the comments)	A, B, C, D, E
	<i>Rules of origin for natural persons</i>	To be considered a service supplier of a party to the agreement, does a natural person have to:  A. be a national of the party (whether resident there or in a third party) B. have the right of permanent residence in that party C. be a national of that party (and be resident there or in a third party) or have the right of permanent residence in that party D. have a center of economic interest in the territory of the party E. Other	A, B, C, D, E
<b>DISPUTE SETTLEMENT</b>		Please indicate which one of the following dispute settlement provision applies to the services agreement?  A. State-state dispute settlement; B. Investors-state dispute settlement; C. Both	A, B, C